
D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No.

SOCIAL SECURITY

The Social Security Contributions (Limited Liability Partnership) Regulations 2014

Laid before Parliament in draft

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

The Treasury make the following Regulations in exercise of the powers conferred by sections 4AA and 175(4) of the Social Security Contributions and Benefits Act 1992(b) and, as it appears expedient to the Treasury for these Regulations to have retrospective effect, by section 4B(c) of that Act.

Accordingly, the Treasury, with the concurrence of the Secretary of State, make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security Contributions (Limited Liability Partnership) Regulations 2014 and come into force on xxx.

(2) These Regulations have effect for the tax year 2014–15 and for subsequent tax years.

Salaried Members

2.—(1) This regulation applies where—

(a) 1992 c. 4. Section 176(1)(a) was amended by section 53 of, and paragraphs 2 and 7 of Schedule 7 to, the Employment Act 2002 (c. 22) (EA 2002), sections 1(2) and 3(2) of the National Insurance Contributions Act 2006 (c. 10) (NICA 2006), section 31(2) of the Welfare Reform Act 2007 (c. 5) and section 11 of, and paragraph 22 of Schedule 1 to, the Work and Families Act 2006 (c. 18).

(b) 1992 c. 4. Section 4AA was inserted by section 14 of the National Insurance Contributions Act 2014 (c. 7) (NICA 2014). Section 175 was amended by section 2 of, and paragraph 29 of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2).

(c) Section 4B was inserted by section 2(1) of NICA 2006 and amended by section 14(3) of NICA 2014.

- (a) for the purposes of the Income Tax Acts an individual is treated by section 863A(2) of ITTOIA 2005 (limited liability partnerships: salaried members)(a) as being employed by an LLP under a contract of service, including where that is the case by virtue of section 863G(4)(a) of ITTOIA 2005; and
- (b) if an individual's employment under section 863A(2) of ITTOIA 2005 ("the deemed tax employment") were to be treated as an employment for the purposes of the Act as well, that employment would be an employed earner's employment of the individual with the LLP.

(2) For the purposes of the Act—

- (a) the individual ("the Salaried Member") is to be treated as employed in employed earner's employment by the LLP (being the deemed tax employment);
- (b) any amount of employment income from the deemed tax employment, other than employment income under Chapters 2 to 11 of Part 3 of ITEPA 2003 (the benefits code)(b), is to be treated as an amount of earnings paid to or for the benefit of the Salaried Member in respect of the Salaried Member's employed earner's employment with the LLP;
- (c) the secondary contributor in relation to those earnings is the LLP; and
- (d) in the case of an amount of earnings which is an amount of employment income by virtue of section 863G(4) of ITTOIA 2005, the earnings are to be treated as being paid by the LLP to the Salaried Member when the amount mentioned in section 863G(2)(d) of that Act arises.

(3) The definitions of "employer" and "employee" in—

- (a) section 163 (Interpretation of Part XI and supplementary provisions)(c);
- (b) section 171 (interpretation of Part XII and supplementary provisions)(d);
- (c) section 171ZJ (Part 12ZA: supplementary)(e); and
- (d) section 171ZS (Part 12ZB: supplementary)(f)

of the Act accordingly have effect as if the Salaried Member were gainfully employed in Great Britain by the LLP under the contract of service mentioned in paragraph (1)(a) with the earnings mentioned in paragraph (2)(b).

(4) In this regulation—

"the Act" means the Social Security Contributions and Benefits Act 1992;

"employment income" has the meaning given by section 7 of ITEPA 2003(g);

"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005; and

"LLP" means limited liability partnership.

(a) 2005 c. 5. ITTOIA is defined in regulation 2(4). Sections 863A – 863G were inserted by section x of, and Schedule y to, the Finance Act 2014 (c. xx).

(b) 2003 c. 1. "ITEPA 2003" is defined in section 122 of the Act as the Income Tax (Earnings and Pensions) Act 2003.

(c) Section 163 was amended by section 722 of, and paragraphs 169 and 181 of Schedule 6 to, ITEPA Act 2003 and regulation 49(1) of, and paragraph 9 of Schedule 8 to, S.I. 2006/1031.

(d) Section 171 was amended by section 722 of, and paragraphs 169 and 182 of Schedule 6 to, ITEPA 2003, regulation 49(1) of, and paragraphs 8 and 10(1) and (2) of Schedule 8 to, S.I. 2006/1031, section 1(1) of, and paragraphs 15(1) and (2) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and section 50(6) of, and paragraph 43 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11).

(e) Section 171ZJ was inserted by section 2 of the EA 2002 and amended by section 722 of, and paragraphs 169 and 183 of Schedule 6 to, ITEPA 2003 and regulation 49(1) of, and paragraph 9 of Schedule 8 to, S.I. 2006/1031.

(f) Section 171ZS was inserted by section 2 of the EA 2002 and amended by section 722 of, and paragraphs 169 and 184 of Schedule 6 to, ITEPA 2003 and regulation 49(1) of, and paragraph 12 of Schedule 8 to, S.I. 2006/1031.

(g) Section 7 was amended by section 140 of, and paragraphs 1 and 17 of Schedule 22 to, the Finance Act 2003, section 25 of, and paragraph 2 of Schedule 3 to, the Finance Act 2007 and section 26 of, and paragraphs 2 and 5 of Schedule 2 to, the Finance Act 2011.

Consequential amendment to Social Security (Contributions) Regulations 2001

3.—(1) The Social Security (Contributions) Regulations 2001(a) are amended as follows—

(2) After regulation 40 (Prescribed general earnings in respect of which Class 1A contributions not payable) insert—

“Exception from liability to pay Class 1A contributions in respect of an amount representing an amount on which Class 1 or Class 1A contributions have already been paid pursuant to the Social Security Contributions (Limited Liability Partnership) Regulations 2014

40A. Class 1A contributions shall not be payable in respect of a benefit in kind provided by an employer to an employed earner which represents an amount on which Class 1 or Class 1A contributions have been paid by a limited liability partnership in respect of that earner by virtue of regulation 2 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014 (Salaried Members)(b).”.

(3) In Part X of Schedule 3 after paragraph 24 insert—

“Payments on which Class 1 or Class 1A contributions have been paid pursuant to the Social Security Contributions (Limited Liability Partnership) Regulations 2014

25. A payment made by an employer to an employed earner which represents an amount on which Class 1 or Class 1A contributions have been paid by a limited liability partnership in respect of that earner by virtue of regulation 2 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014.”.

Consequential amendments to the Social Security Contributions (Intermediaries) Regulations 2000

4.—(1) The Social Security Contributions (Intermediaries) Regulations 2000(c) are amended as follows.

(2) In regulation 7(1) (worker’s attributable earnings —calculation)—

- (a) in “*Step One*” after “arrangements” insert “but excluding amounts on which Class 1 or Class 1A contributions have been paid by virtue of regulation 2 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014(d)”; and
- (b) in “*Step Seven*” in sub-paragraph (a) after “Three” insert “and payments within paragraph 25 of Part X of Schedule 3(e) to the Contributions Regulations”(f).

Address *Name*
Date Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State for Work and Pensions hereby concurs

Address *Name*
Date Signed by authority of the Secretary of State for Work and Pensions

(a) S.I. 2001/1004. There are amendments but none are relevant.
(b) S.I. 2014/???
(c) S.I. 2000/727. Relevant amending instruments are S.I. 2002/703, 2003/2079, 2004/770 and 2005/3131.
(d) S.I. 2014/???
(e) Paragraph 25 was inserted into S.I. 2000/727 by regulation 3(3) of S.I. 2014/???.
(f) “the Contributions Regulations” are defined in regulation 2(1) of S.I. 2000/727.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on X are a consequence of Schedule 13 to the Finance Act 2014 (c. x) which inserted sections 863A to 863G into the Income Tax (Trading and Other Income) Act 2005 (c. 5) (ITTOIA 2005) and amended section 54 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (ITEPA 2003). The Regulations mirror those provisions and prescribe that certain members of a limited liability partnership who are treated as employees for the purposes of the Income Tax Acts are also treated as employed earners for the purposes of the Social Security Contributions and Benefits Act 1992 (c. 4) (SSCBA 1992).

Regulation 1 provides for the citation, commencement and effect. Although these Regulations come into force on xxx they will have retrospective effect from the beginning of the 2014/15 tax year. The power to make these regulations with retrospective effect is to be found in section 4B (as amended by the National Insurance Contributions Act 2014 (c. 7)) of the SSCBA 1992.

Regulation 2 prescribes that where an individual is treated by section 863A of ITTOIA 2005 (including where that is the case by virtue of the anti-avoidance provisions in section 863G of ITTOIA 2005) as being employed by a limited liability partnership under a contract of service, the following provisions apply for the purposes of the Act. That individual (defined as a Salaried Member) is treated as employed in employed earner's employment by the limited liability partnership, any amounts which are treated as employment income by virtue of section 863A (except where subject to tax under the benefits code) are treated as earnings of that Salaried Member, where the earnings are employment income by virtue of section 863G(4) they are treated as paid to the Salaried Member when the amount mentioned in section 863G(2)(d) arises; the limited liability partnership is treated as the secondary contributor and the definitions of "employer" and "employee" in Parts XI (statutory sick pay), XII (statutory maternity pay), 12ZA (ordinary and additional paternity pay) and 12ZB (statutory adoption pay) of the Act are to be read as if the Salaried Member were gainfully employed in Great Britain by the limited liability partnership under a contract of service.

Regulation 3 inserts a new regulation 40A and paragraph 25 of Part X of Schedule 3 into the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004). The effect of the new regulation and paragraph is that where Class 1 or Class 1A contributions have been paid pursuant to regulation 2 by a limited liability partnership on an amount paid to an intermediary, a subsequent payment of earnings or benefit to the Salaried Member by the intermediary that relates to the original payment from the limited liability partnership to the intermediary is not subject to further Class 1 or Class 1A contributions.

Regulation 4 amends regulation 7(1) of the Social Security Contributions (Intermediaries) Regulations 2000 (S.I. 2000/727). The effect of the amendments is that any payments to the intermediary from the limited liability partnership on which Class 1 or Class 1A contributions have been paid pursuant to these Regulations and any earnings and benefits paid by the intermediary to the Salaried Member that relate to those payments are disregarded when computing the worker's attributable earnings in those Regulations.

A Tax Information and Impact Note covering this instrument was published on 10 December 2013 and is available on the HMRC website at <http://www.hmrc.gov.uk/tiin/disguised-emp.pdf>. It remains an accurate summary of the impacts that apply to this instrument.