

2017 No.

**SOCIAL SECURITY**

**The Social Security (Miscellaneous Amendments) Regulations  
2017**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

These Regulations are made by the Treasury with concurrence of the Secretary of State and the Department for Communities<sup>(a)</sup>. The powers exercised by the Treasury are those conferred by section 3(2), 3(3), 4A and paragraph 8 of Schedule 1 to the Social Security Contributions and Benefits Act 1992<sup>(b)</sup> and section 3(2), 3(3), 4A and paragraph 8 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(c)</sup>.

**Citation and commencement**

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments) Regulations 2017 and come into force on 6th April 2017.

**Amendment of the Social Security Contributions (Intermediaries) Regulations 2000**

2.—(1) The Social Security Contributions (Intermediaries) Regulations 2000<sup>(d)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) after the definition of “the Board” insert “chain payment” means a payment, or money’s worth;”,
- (b) after the definition of “the Contributions Regulations” insert “CTA 2010” means the Corporation Taxes Act 2010<sup>(e)</sup>;”, and
- (c) after the definition of “intermediary” insert “public authority” has the meaning given by regulation 14;”.

(3) After regulation 2(6) (interpretation) insert—

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- (a) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) were transferred to the Department for Social Development by Article 8(b) of, and Part 2 of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No 481). The Department for Social Development was subsequently renamed the Department for Communities, see section 1(1) of the Department Act (Northern Ireland) 2016 (c. 5 (N.I.)).
  - (b) 1992 c. 4. There have been amendments to section 4A but none are considered to be relevant.
  - (c) 1992 c. 7.
  - (d) S.I. 2000/727.
  - (e) 2010 (c. 4). Definition of “the Contributions Regulations” was substituted by the Social Security Contributions (Intermediaries) (Amendment) Regulations S.I. 2002/703 reg 3 with effect from 6th April 2002. There has been other amendments to regulation 2 but none are considered to be relevant.

“(7) For the purposes of these Regulations “connected” shall be construed in accordance with Section 993 of Income Taxes Act 2007(a).

“(8) For the purposes of these Regulations “controlled” shall be construed in accordance with Section 995 of Income Taxes Act 2007.”.

(4) Before the heading in regulation 5 (meaning of intermediary)(b) insert “Intermediaries: General Provisions”.

(5) In regulation 5(1) replace “In these Regulations” with “In regulations 5 to 11”.

(6) After regulation 6(1)(a) (provision of services through intermediary)(c) insert “(aa) the client is not a public authority.”.

(7) After regulation 12 (Social Security (Categorisation of Earners) Regulations 1978-Saving) insert—

#### **“ Worker’s services provided to public authority through intermediaries**

13.—(1) Regulations 13 to 23 apply to the provision of services to a public authority through an intermediary.

#### **Meaning of “public authority”**

14.—(1) In these Regulations “public authority” means—

- (a) a public authority as defined by the Freedom of Information Act 2000(d), or
- (b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002(e).

(2) An authority within sub-paragraph (a) or (b) of paragraph (1) is a public authority for the purposes of these Regulations in relation to all its activities even if provisions of the Act mentioned in that sub-paragraph do not apply to all information held by the authority.

#### **Engagements to which regulations 16 to 20 apply**

15.—(1) Regulations 16 to 20 apply where—

- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for another person (“the client”),
- (b) the client is a public authority,
- (c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and
- (d) the circumstances are such that—
  - (i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for Class 1 contributions(f) purposes as an employee of the client or the holder of an office under the client, or
  - (ii) the worker is an office-holder who holds that office under the client and the services relate to that office.

(2) The references in sub-paragraph (1)(c) to “third party” includes a partnership or unincorporated association of which the worker is a member.

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(a) 2007 c. 3.

(b) Regulation 5 was amended by S.I. 2004/770.

(c) Regulation 6(1)(a) was amended by S.I. 2003/2079.

(d) 2000 c. 36.

(e) 2002 asp. 13.

(f) “Class 1 contributions” has the meaning given in section 1(2) of the Contributions and Benefits Act.

(3) The circumstances referred to in sub-paragraph (1)(d) includes the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.

**Worker treated as receiving earnings from employment**

**16.**—(1) If one of Conditions A to C in paragraphs (9) to (11) is met, identify the chain of two or more persons where—

- (a) the highest person in the chain is the client,
- (b) the lowest person in the chain is the intermediary, and
- (c) each person in the chain above the lowest makes a chain payment to the person immediately below them in the chain.

(2) In this regulation and regulations 17 to 20—

- (a) “make” in relation to a chain payment that is money’s worth, means transfer, and
- (b) “the fee-payer” means the person (F) in the chain immediately above the lowest, but this is subject to regulation (3) below.

(3) Where F is a person controlled by—

- (a) the worker; or
- (b) the worker and the worker’s associates; or
- (c) the worker’s associates;

the person in the chain immediately above F shall be treated as “the fee-payer”.

(4) The fee-payer is treated as making to the worker, and the worker is treated as receiving, a payment (“the deemed direct earnings”)(a) which is to be treated for the purposes of Parts 1 to 5 of the Contributions and Benefits Act as earnings from an employed earner’s employment, but this is subject to paragraphs (6) to (8) and regulations 22 and 23.

(5) The deemed direct earnings is treated as paid at the same time as the chain payment made by the fee-payer.

(6) Paragraphs (7) and (8) apply, subject to regulations 21 and 22, if the fee-payer—

- (a) is not the client,
- (b) is not resident in the United Kingdom, and
- (c) does not have a place of business in the United Kingdom.

(7) If each person in the chain below the highest and above the lowest—

- (a) is not resident in the United Kingdom, and
- (b) does not have a place of business in the United Kingdom,

paragraphs (4) and (5) have effect as if for any reference to the fee-payer there were substituted a reference to the client.

(8) Otherwise, paragraphs (4) and (5) have effect as if for any reference to the fee-payer there were substituted a reference to the person in the chain who—

- (a) is above the lowest,
- (b) is resident in the United Kingdom or has a place of business in the United Kingdom, and
- (c) is lower in the chain than any other person in the chain who—
  - (i) is above the lowest, and

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(a) “deemed direct earnings” is calculated in accordance with regulation 19 of S.I. 2000/727.

(ii) is resident in the United Kingdom or has a place of business in the United Kingdom.

(9) Condition A is that—

- (a) the intermediary is a company, and
- (b) the conditions in regulation 17 are met in relation to the intermediary.

(10) Condition B is that—

- (a) the intermediary is a partnership,
- (b) the worker is a member of the partnership,
- (c) the provision of the services is by the worker as a member of the partnership, and
- (d) the condition in regulation 18 is met in relation to the intermediary.

(11) Condition C is that the intermediary is an individual.

(12) Where the payment or money's worth can reasonably be taken to be for both—

- (a) the worker's services to the client, and
- (b) anything else,

then, for the purposes of regulations 13 to 23, so much of it as can, on a just and reasonable apportionment, be taken to be for the worker's services is to be treated as (and the rest is to be treated as not being) a payment or money's worth, that can reasonably be taken to be for the workers's services.

#### **Conditions where intermediary is a company**

**17.**—(1) The conditions mentioned in regulation 16(9)(b) are that—

- (a) the intermediary is not an associated company of the client that falls within subparagraph (2), and
- (b) the worker has a material interest in the intermediary.

(2) An associated company of the client falls within this paragraph if it is such a company by reason of the intermediary and the client being under the control—

- (a) of the worker, or
- (b) of the worker and other persons.

(3) The worker is treated as having a material interest in the intermediary if—

- (a) the worker, alone or with one or more associates of the worker, or
- (b) an associate of the worker, with or without other associates of the worker,

has a material interest in the intermediary.

(4) For this purpose “material interest” has the meaning given by section 51(4) and (5) ITEPA 2003(a) (meaning of material interest).

(5) In this regulation “associated company” has the meaning given by section 449 of CTA 2010 (meaning of associated company).

#### **Conditions where intermediary is a partnership**

**18.**—(1) The condition mentioned in regulation 16(10)(d) is—

- (a) that the worker, alone or with one or more relatives, is entitled to 60 per cent or more of the profits of the partnership, or

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(a) 2003 c.1.

- (b) that most of the profits of the partnership derive from the provision of services under engagements to which one or other of regulations 5 to 11 and regulations 13 to 23 applies—
    - (i) to a single client, or
    - (ii) to a single client together with associates of that client, or
  - (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which one or other of regulations 5 to 11 and regulations 13 to 23 applies.
- (2) In sub-paragraph (1)(a) “relative” means spouse or civil partner, parent or remoter forebear, child or remoter issue, or brother or sister.

#### **Calculation of deemed direct earnings**

**19.**—(1) The amount of the deemed direct earnings is the amount resulting from the following steps—

##### *Step 1*

Identify the amount or value of the chain payment made by the person who is treated as making the deemed direct earnings before income tax and national insurance contributions are deducted from that payment, and deduct from that amount so much of it (if any) as is in respect of value added tax.

##### *Step 2*

Deduct, from the amount resulting from Step 1, so much of that amount as represents the direct cost to the intermediary of materials used, or to be used, in the performance of the services.

##### *Step 3*

Deduct, from the amount resulting from Step 2, the amount of any expenses met by the intermediary that under ITEPA 2003 would have been deductible from the taxable earnings of the employment, within the meaning of section 10 ITEPA 2003, in accordance with section 327(3) to (5) of that Act, if—

- (a) the worker has been employed by the client, and
- (b) the expenses had been met by the worker out of those earnings.

##### *Step 4*

If the amount resulting from Step 3 is nil or negative, there is no deemed direct earnings.

(2) In Step 3 of paragraph (1), the reference to “expenses met by the intermediary” includes—

- (a) expenses met by the worker and reimbursed by the intermediary, and
- (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.

(3) The deemed direct earnings are to be assessed on the amount of such earnings paid, or treated as paid, in the earnings period specified in regulations 3 to 6 or 9 of the Contributions Regulations save that for these purposes the definition of “regular interval” in regulation 1(2) of those Regulations shall be amended in accordance with regulation 19(4) of these Regulations.

(4) For the purposes of these Regulations in the definition of “regular interval” in regulation 1(2) of the Contributions Regulations replace “employed earner” with “intermediary” and delete the words “of earnings”.

### **Application of Social Security Contributions and Benefits Act 1992 to deemed employment**

20.—(1) This Regulation applies where a deemed direct payment is treated as having been paid in any tax year under regulation 16.

(2) For the purposes of Parts 1 to 5 of the Contributions and Benefits Act—

- (a) the amount of any deemed direct earnings calculated under regulation 19 shall be treated as remuneration derived from an employed earner's employment,
- (b) the worker shall be treated, in relation to the deemed direct earnings as employed in employed earner's employment by the person making the deemed direct earnings,
- (c) the services were performed, or are to be performed, by the worker in the course of performing the duties of that employment, and
- (d) the person treated as making the deemed direct earnings shall be treated as the secondary contributor<sup>(a)</sup> in relation to the deemed direct earnings.

### **Information to be provided by clients and consequences of failure**

21.—(1) If the conditions in regulation 15(1)(a) to (c) are met in any case, and a person as part of the arrangements mentioned in regulation 15(1)(c) enters into a contract with the client, the client must inform that person (in the contract or otherwise) of which one of the following is applicable—

- (a) the client has concluded that the condition in regulation 15(1)(d) is met in the case;
- (b) the client has concluded that the condition in regulation 15(1)(d) is not met in the case.

(2) If the information which paragraph (1) requires the client to give to a person has not been given, the client must, on a written request by the person, provide the person with a written response giving the information.

(3) If the information which paragraph (1) requires the client to give to a person has been given (whether in the contract, as required by paragraph (2) or otherwise), the client must, on a written request by the person, provide the person with a written response to any questions raised by the person about the client's reasons for reaching the conclusion identified in the information.

(4) A response required by paragraph (2) or (3) must be provided before the end of 31 days beginning with the day the request for it is received by the client.

(5) If the client fails to provide a response required by paragraph (2) within the time allowed by paragraph (4), regulations 16(3) and (4) have effect in the case as if for any reference to the fee-payer there were substituted a reference to the client, but this is subject to regulation 22.

### **Consequences of providing fraudulent information**

22.—(1) Paragraph (2) applies if in any case—

- (a) a person ("the deemed employer") would, but for this paragraph, be treated by regulation 16(4) as making a payment to another person ("the services-provider"), and
- (b) the fraudulent documentation condition is met.

(2) Regulation 16(4) has effect in the case as if the reference to the fee-payer were a reference to the services-provider, but

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(a) For the definition of "secondary contributor" see regulation 2(1) of S.I. 2000/727.

- (a) regulation 16(4) continues to have effect as if the reference to the fee-payer were a reference to the deemed employer, and
  - (b) Step 1 of regulation 19(1) continues to have effect as referring to the chain payment made by the deemed employer.
- (3) Paragraph (2) has effect even though that involves the services-provider being treated as both employer and employee in relation to the deemed employment under regulation 16(4).
- (4) “The fraudulent documentation condition” is that the services-provider, or a person connected with the services-provider, provided any person with a fraudulent document intended to constitute evidence that regulation 16(4) did not apply in the case.

**Prevention of double liability to national insurance contributions and allowance of certain deductions**

23.—(1) Paragraph (2) applies where—

- (a) a person (“the payee”) receives a payment (“the end-of-line remuneration”) from another person (“the paying intermediary”),
  - (b) the end-of-line remuneration can reasonably be taken to represent remuneration for services of the payee to a public authority,
  - (c) a payment (“the deemed payment”) has been treated by regulation 16(4) as paid to the payee,
  - (d) the underlying chain payment can reasonably be taken to be for the same services of the payee to that public authority, and
  - (e) the person treated by regulation 16(4) as making the deemed payment has deducted any amounts of primary class 1 national insurance contributions due from that person under the Contributions Regulations in respect of the deemed payment.
- (2) For national insurance contributions purposes, the paying intermediary may treat the amount of the end-of-line remuneration as reduced (but not below nil) by the amount (see regulation 19) of the deemed payment less the amount of income tax and class 1 primary national insurance contributions deducted from that amount.
- (3) In sub-paragraph (1)(d) “the underlying chain payment” means the chain payment whose amount is used at Step 1 of regulation 19(1) as the starting point for calculating the amount of the deemed direct payment.”.

**Amendment of the Social Security (Contributions) Regulations 2001**

3.—(1) Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances of the employment) in the calculation of earnings-related contributions to the Social Security (Contributions) Regulations 2001(b) is amended as follows.

(2) In paragraph 3ZB after sub-paragraph (6C) insert—

“(6D) Sub-paragraph (3) does not apply in relation to an engagement if—

- (a) regulations 16 to 20 of the Social Security Contributions (Intermediaries) Regulations 2000(c) apply in relation to the engagement,
- (b) one of Conditions A to C in regulation 16 of those Regulations is met in relation to the employment intermediary, and
- (c) the employment intermediary is not a managed service company.

(6E) This paragraph does not apply in relation to an engagement if—

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(b) S.I. 2001/1004.  
(c) S.I. 2000/727.

- (a) regulations 16 to 20 of the Social Security Contributions (Intermediaries) Regulations 2000 do not apply in relation to the engagement because the circumstances in regulation 15(1)(d) of those Regulations are not met,
- (b) assuming those circumstances were met, one of Conditions A to C in regulation 16 would be met in relation to the employment intermediary, and
- (c) the employment intermediary is not a managed service company.

(6F) In determining for the purposes of sub-paragraph (6D) or (6E) whether one of Conditions A to C in regulation 16 is or would be met in relation to the employment intermediary, read references to the intermediary as references to the employment intermediary.”.

4.—(1) Part 2 of Schedule 4 (deduction of earnings-related contributions) to the Social Security (Contributions) Regulations 2001 is amended as follows.

(2) In paragraph 7 after sub-paragraph (1) insert—

“(1A)—On making any chain payment the fee-payer may deduct the amount of employment related contributions calculated by reference to the deemed direct earnings.”.

*Name*  
*Name*

Date Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State concurs as indicated in the preamble.  
Signed by authority of the Secretary of State for Work and Pensions

*Name*  
Minister of State

Date Department of Works and Pensions

The Department for Communities concurs as indicated in the preamble.  
Sealed with the Official Seal of the Department for Communities on

*Name*

Date A senior officer of the Department for Communities



**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make a number of consequential amendments and insert new regulations into the Social Security (Intermediaries) Regulations 2000 (S.I. 2000/727) (“the Intermediaries Regulations”) and also make consequential amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the Contributions Regulations”). The Regulations reflect new provisions inserted into the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) by virtue of the Finance Act 2017.



Regulation 2 inserts new regulations 13 to 23 in particular—

- new regulation 13 sets out the scope of the new regulations inserted into the Intermediaries Regulations, covering the provision of services to a public authority through an intermediary;
- new regulation 14 provides for the definition of “public authority”;
- new regulation 15 defines the engagement to which the new regulations apply together with provisions which set out the qualifying conditions for the legislation to apply, and the terms on which the services are provided;
- new regulation 16 sets out the preliminary qualifying conditions (A to C) for the types of intermediary in a contractual chain, and defines and identifies the fee-payer in those chains. This regulation treats the worker as receiving earnings and sets out the requirements that fall on the fee-payer. It also explains the circumstances where obligations may move elsewhere within the contractual chain including situations involving non-resident fee-payers;
- new regulation 17 defines the qualifying conditions where the intermediary is a company and sets out the definitions of “associated company” and “material interest” to be used in respect of that regulation;
- new regulation 18 defines the qualifying conditions where the intermediary is a partnership and sets out the definition of “relative” to be used in respect of that regulation;
- new regulation 19 sets out four steps required to calculate the “deemed direct earnings”. The paragraphs contained in new regulation 19 explain each step and its constituent parts, including the various deductions which can be made;
- new regulation 20 applies various sections of the Social Security Contributions and Benefits Act 1992 to the deemed direct earnings, to treat the worker as if they were an employed earner, and the services are treated as performed by the worker in the course of performing the duties of that employment. New regulation 20 treats the person who is treated as making the deemed direct earnings as the secondary contributor;
- new regulation 21 outlines the information to be provided by the client to each person who would reasonably be required to need it, and the consequences of failure to do so. The provisions set out the basic form that information must take and the time limits for providing it;
- new regulation 22 outlines the consequences of providing fraudulent information and explains the fraudulent documentation condition; and
- new regulation 23 makes provision for ensuring that there is not a double liability to national insurance contributions.

Regulations 3 and 4 make consequential amendments to paragraph 3ZB of Part 8 of Schedule 3 and Part 2 of Schedule 4 to the Contributions Regulations by inserting new sub-paragraphs (6D) to (6F) and 7(1A) into those provisions to reflect amendments to be inserted into section 339A of ITEPA 2003 by virtue of the Finance Act 2017.

