

2000 No. 727

SOCIAL SECURITY

**The Social Security Contributions (Intermediaries) Regulations
2000**

Made - - - - *13th March 2000*

Laid before Parliament *13th March 2000*

Coming into force *6th April 2000*

The Treasury, with the concurrence of the Secretary of State for Social Security, in exercise of the powers conferred on them by sections 4A, 122(1) and 175(1A), (2) to (4) of the Social Security Contributions and Benefits Act 1992^(a) and of all other powers enabling them in that behalf, and the Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 8(1)(m) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999^(b) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and effect

1. (1) These Regulations may be cited as the Social Security Contributions (Intermediaries) Regulations 2000 and shall come into force on 6th April 2000.
- (2) These Regulations have effect for the tax year 2000-01 and subsequent years and apply in relation to services performed, or to be performed, on or after 6th April 2000.
- (3) Payments or other benefits in respect of such services received before that date shall be treated as if received in the tax year 2000-01.

Interpretation

2. (1) In these Regulations unless the context otherwise requires –

^(a) 1992 c.4. Section 4A was inserted by section 75 of the Welfare Reform and Pensions Act 1999 (c.30). Section 122(1) is cited because of the meaning ascribed to the word “prescribe”. Section 175 was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

^(b) 1999 c.2.

“arrangements” means the arrangements referred to in regulation 6(1)(b);

“associate” has the meaning given by regulation 3;

“attributable earnings” in relation to a worker shall be construed in accordance with regulation 6(3)(a);

“the Board” means the Commissioners of Inland Revenue;

“business” shall be construed in accordance with section 4A(6) of the Contributions and Benefits Act;

“Class 1A contributions” has the meaning given by section 10 of the Contributions and Benefits Act^(a);

“client” shall be construed in accordance with regulation 6(1)(a);

“company” means any body corporate or unincorporated association, but does not include a partnership;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1979^(b);

“intermediary” has the meaning given by regulation 5;

“relevant benefit” means any benefit falling within regulation 4 that is provided to the intermediary or to or on behalf of the worker under the arrangements;

“relevant payment” means any payment made to an intermediary or to or on behalf of the worker under the arrangements;

“secondary Class 1 contributions” has the meaning given by section 6 of the Contributions and Benefits Act^(c);

“secondary contributor” has the meaning given by section 7 of the Contributions and Benefits Act^(d);

^(a) Section 10 was amended by section 52 of, and paragraph 58 of Schedule 7 to, the Social Security Act 1998 (c.14), paragraph 10 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and regulation 4 of S.I. 1994/667.

^(b) S.I. 1979/591.

^(c) Section 6 was substituted by paragraph 2 of Schedule 9 to the Welfare Reform and Pensions Act 1999.

^(d) Section 7 was amended by paragraph 7 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

“the Taxes Act” means the Income and Corporation Taxes Act 1988^(a);

“tax year” means year of assessment;

“worker” means the individual referred to in regulation 6(1)(a).

(2) References in these Regulations to payments or benefits received or receivable from a partnership or unincorporated association include payments or benefits to which a person is or may be entitled in his capacity as a member of the partnership or association.

(3) For the purposes of these Regulations –

(a) anything done by or in relation to an associate of an intermediary is treated as done by or in relation to the intermediary, and

(b) a payment or other benefit provided to a member of an individual’s family or household is treated as provided to the individual.

(4) The reference in paragraph (3)(b) to an individual’s family or household shall be construed in accordance with section 168(4) of the Taxes Act.

(5) For the purposes of these Regulations a man and a woman living together as husband and wife are treated as if they were married to each other.

Meaning of associate

3. (1) In these Regulations “associate” –

(a) in relation to an individual, has the meaning given by section 417(3) and (4) of the Taxes Act^(b), subject to the following provisions of this regulation;

(b) in relation to a company, means a person connected with the company within the meaning of section 839 of the Taxes Act^(c); and

(c) in relation to a partnership, means any associate of a member of the partnership.

(2) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees are not regarded as associates of his by reason only of that interest except in the following circumstances.

(3) The exception is where –

^(a) 1988 c.1.

^(b) Section 417 was amended by paragraph 6 of Schedule 17 to the Finance Act 1995 (c.4).

^(c) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995.

- (a) the individual, either on his own or with one or more of his associates, or
- (b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company.

(4) In paragraph (2) “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8 to the Taxes Act.^(a)

Meaning of benefit

4. (1) For the purposes of these Regulations a “benefit” includes anything that, if received by an employee for performing the duties of an employment within Schedule E –

- (a) would be an emolument of the employment, or
- (b) would be chargeable to tax as an emolument of the employment,

or that would be such an emolument, or chargeable as such an emolument, apart from any exemption.

(2) The amount of a benefit is taken to be –

- (a) in the case of a cash benefit, the amount received, and
- (b) in the case of a non-cash benefit, the cash equivalent of the benefit.

(3) The cash equivalent of a non-cash benefit is taken to be whichever is the greater of –

- (a) the amount that would be chargeable to tax under section 19(1) of the Taxes Act^(b) if the benefit were an emolument chargeable to tax under Case I of Schedule E, and
- (b) the cash equivalent determined in accordance with the rules in section 596B of that Act^(c).

^(a) Paragraph 7 was amended by paragraph 9 of Schedule 4, paragraph 18 of Schedule 12, and Parts IV and V of Schedule 17, to the Finance Act 1989 (c.26). Chapter III of Part V of the Taxes Act (profit-related pay), which includes Schedule 8 to that Act, was repealed in relation to payments made by reference to profit periods beginning on or after 1st January 2000 by section 61(2) of, and Part VI(3) of Schedule 18 to, the Finance Act 1997(c.16).

^(b) Section 19(1) was amended by section 36(2) and (3) of the Finance Act 1989, paragraph 5 of Schedule 7 to the Finance Act 1996 (c.8) and section 63(3)(a) of the Finance Act 1998 (c.36).

^(c) Section 596B was inserted by paragraph 9 of Schedule 6 to the Finance Act 1989 and amended by section 93(2) of the Finance Act 1998.

- (4) For the purposes of these Regulations a benefit is treated as received –
- (a) in the case of a cash benefit, when payment is made of or on account of the benefit; and
 - (b) in the case of a non-cash benefit, when it is used or enjoyed.

Meaning of intermediary

5. (1) In these Regulations “intermediary” means any person, including a partnership or unincorporated association of which the worker is a member –

- (a) whose relationship with the worker in any tax year satisfies the conditions specified in paragraph (2), (6), (7) or (8), and
 - (b) from whom the worker, or an associate of the worker –
 - (i) receives, directly or indirectly, in that year a payment or benefit that is not chargeable to tax under Schedule E, or
 - (ii) is entitled to receive, or in any circumstances would be entitled to receive, directly or indirectly, in that year any such payment or benefit.
- (2) Where the intermediary is a company the conditions are that –
- (a) the intermediary is not an associated company of the client, within the meaning of section 416 of the Taxes Act^(a) by reason of the intermediary and the client both being under the control of the worker, or under the control of the worker and another person; and
 - (b) either –
 - (i) the worker has a material interest in the intermediary, or
 - (ii) the payment or benefit is received or receivable by the worker directly from the intermediary, and can reasonably be taken to represent remuneration for services provided by the worker to the client.
- (3) A worker is treated as having a material interest in a company for the purposes of paragraph (2)(a) if –
- (a) the worker, alone or with one or more associates of his, or
 - (b) an associate of the worker, with or without other such associates,

^(a) Section 416 was amended by Part V of Schedule 17 to the Finance Act 1989.

has a material interest in the company.

(4) For this purpose a material interest means –

- (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5 per cent. of the ordinary share capital of the company; or
- (b) possession of, or entitlement to acquire, rights entitling the holder to receive more than 5 per cent. of any distributions that may be made by the company; or
- (c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5 per cent. of the assets that would then be available for distribution among the participants.

In sub-paragraph (c) “close company” has the meaning given by sections 414 and 415 of the Taxes Act^(a), and “participant” has the meaning given by section 417(1) of that Act.

(5) Where the intermediary is a partnership the conditions are as follows.

(6) In relation to payments or benefits received or receivable by the worker as a member of the partnership, the conditions are -

- (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
- (b) that most of the profits of the partnership derive from the provision of services under the arrangements –
 - (i) to a single client, or
 - (ii) to a single client together with an associate or 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 the arrangements.

In sub-paragraph (a) “relative” means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.

^(a) Section 414 was amended by section 104 of, and Part V of Schedule 17 to, the Finance Act 1989. Section 415 was amended by paragraph 6(2)(f) of Schedule 38 to the Finance Act 1996.

(7) In relation to payments or benefits received or receivable by the worker otherwise than as a member of the partnership, the conditions are that the payment or benefit –

- (a) is received or receivable by the worker directly from the intermediary, and
- (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

(8) Where the intermediary is an individual the conditions are that the payment or benefit –

- (a) is received or receivable by the worker directly from the intermediary, and
- (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

Provision of services through intermediary

6. (1) These Regulations apply where –

- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for the purposes of a business carried on by another person (“the client”),
- (b) the performance of those services by the worker is carried out, not under a contract directly between the client and the worker, but under arrangements involving an intermediary, and
- (c) the circumstances are such that, had the arrangements taken the form of a contract between the worker and the client, the worker would be regarded for the purposes of Parts I to V of the Contributions and Benefits Act as employed in employed earner’s employment by the client.

(2) Paragraph (1)(b) has effect irrespective of whether or not –

- (a) there exists a contract between the client and the worker, or
- (b) the worker is the holder of an office with the client.

(3) Where these Regulations apply –

- (a) the worker is treated, for the purposes of Parts I to V of the Contributions and Benefits Act, and in relation to the amount deriving from relevant payments and relevant benefits that is calculated in accordance with regulation 7 (“the worker’s attributable earnings”), as employed in employed earner’s employment by the intermediary, and

- (b) the intermediary, whether or not he fulfils the conditions prescribed under section 1(6)(a) of the Contributions and Benefits Act^(a) for secondary contributors, is treated for those purposes as the secondary contributor in respect of the worker's attributable earnings,

and Parts I to V of that Act have effect accordingly.

(4) Any issue whether the circumstances are such as are mentioned in paragraph (1)(c) is an issue relating to contributions that is prescribed for the purposes of section 8(1)(m) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (decision by officer of the Board).

Worker's attributable earnings – calculation

7. (1) For the purposes of regulation 6(3)(a) the amount of the worker's attributable earnings for a tax year is calculated as follows:

Step One

Find the total amount of all payments and benefits received by the intermediary in that year under the arrangements, and reduce that amount by 5 per cent.

Step Two

Add the amount of any payments and benefits received by the worker in that year under the arrangements, otherwise than from the intermediary, that –

- (a) are not chargeable to income tax under Schedule E, and
- (b) would be so chargeable if the worker were employed by the client.

Step Three

Deduct the amount of any expenses met in that year by the intermediary that under the Taxes Act would have been deductible from the emoluments of the employment if the worker had been employed by the client and the expenses had been met by the worker out of those emoluments.

Step Four

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary in that year that could have been claimed by the worker under section 27 of the Capital Allowances Act 1990^(b) (plant and machinery: extension of allowances to employments etc) if the worker had been employed by the client and had incurred the expenditure.

^(a) Section 1(6) was amended by paragraph 56(3) of Schedule 7 to the Social Security Act 1998.

^(b) 1990 c.1; section 27 was amended by section 87(1) and (2) of the Finance Act 1990 (c.29) and section 50(2) of the Finance Act 1999 (c.16).

Step Five

Deduct any contributions made in that year for the benefit of the worker by the intermediary to a scheme approved under Chapter I or Chapter IV of Part XIV of the Taxes Act that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

This does not apply to excess contributions made and later repaid.

Step Six

Deduct the amount of secondary Class 1 contributions and Class 1A contributions paid by the intermediary for that year in respect of earnings of the worker.

Step Seven

Deduct –

(a) the amount of any payments made by the intermediary to the worker in that year that constitute remuneration derived from the worker's employment by that intermediary including, where the intermediary is a body corporate and the worker is a director of that body corporate, payments treated as remuneration derived from that employment by virtue of regulation 17A of the Contributions Regulations^(a) (payments to directors to be treated as earnings), but excluding payments which represent items in respect of which a deduction was made under Step Three, and

(b) the amount of any benefits provided by the intermediary to the worker in that year, being benefits that constitute amounts of emoluments in respect of which Class 1A contributions are payable, but excluding any benefits which represent items in respect of which a deduction was made under Step Three.

If the result at this point is nil or a negative amount, there are no worker's attributable earnings for that year.

Step Eight

Find the amount that, together with the amount of secondary Class 1 contributions payable in respect of it, is equal to the amount resulting from Step Seven (if that amount is a positive amount).

Step Nine

The result is the amount of the worker's attributable earnings for that year.

^(a) Regulation 17A was inserted by regulation 5 of S.I. 1983/10.

(2) Where section 559 of the Taxes Act applies (sub-contractors in the construction industry: payments to be made under deduction) the intermediary is treated for the purposes of Step One of the calculation in paragraph (1) as receiving the amount that would have been received had no deduction been made under that section.

(3) For the purpose of calculating the amount of deductible expenses referred to in Step Three of the calculation in paragraph (1) it shall be assumed that all engagements of the worker under the arrangements involving the intermediary are undertaken in the course of the same employment.

(4) For the purposes of this regulation any necessary apportionment shall be made on a just and reasonable basis of amounts received by the intermediary that are referable –

(a) to the services of more than one worker, or

(b) partly to the services of the worker and partly to other matters.

(5) For the purposes of this regulation the time when payments are received by the intermediary or the worker under the arrangements shall be found in accordance with the rules contained in section 202B^(a) of the Taxes Act (receipts basis; meaning of receipt) as if the payments made were payments of emoluments, except that subsection (1)(b) of that section (the time when a person becomes entitled to payment of or on account of the emoluments) shall not apply in the period (if any) prior to actual receipt of the payment concerned.

Worker's attributable earnings – deemed payment

8. (1) The amount referred to in Step Nine of the calculation in regulation 7(1) is treated, for the purposes of Parts I to V of the Contributions and Benefits Act, as a single payment of the worker's attributable earnings made by the intermediary on the 5th April in the tax year concerned or, as the case may be, on the date found in accordance with paragraphs (4) to (7), and those Parts of that Act shall have effect accordingly.

(2) The worker's attributable earnings shall be aggregated with any other earnings paid to the worker by the intermediary in the year concerned to or for the benefit of the worker in respect of employed earner's employment, and the amount of earnings-related contributions payable in respect of that aggregate amount shall be assessed in accordance with the appropriate earnings period specified in regulation 6A of the Contributions Regulations^(b) (earnings period for directors), whether or not the worker is a director of a company during that year.

(3) Where the intermediary is a partnership or unincorporated association, the amount referred to in Step Nine of the calculation in regulation 7(1) is treated, for the

^(a) Section 202B was inserted by section 37(1) of the Finance Act 1989 (c.26).

^(b) Regulation 6A was inserted by regulation 4 of S.I. 1983/10.

purposes of Parts I to V of the Contributions and Benefits Act, as received by the worker in his personal capacity and not as income of the partnership or association.

(4) If in a tax year –

(a) an amount of the worker's attributable earnings is treated as made under paragraph (1), and

(b) before the date on which the payment would be treated as made under that paragraph any relevant event (as defined below) occurs in relation to the intermediary,

that amount is treated, for the purposes of Parts I to V of the Contributions and Benefits Act, as having been made immediately before that event or, if there is more than one, immediately before the first of them.

(5) Where the intermediary is a company the following are relevant events -

(a) where the worker is a member of the company, his ceasing to be such a member;

(b) where the worker holds an office with the company, his ceasing to hold such an office;

(c) where the worker is employed by the company, his ceasing to be so employed.

(6) Where the intermediary is a partnership the following are relevant events –

(a) the dissolution of the partnership or the partnership ceasing to trade or a partner ceasing to act as such;

(b) where the worker is employed by the partnership, his ceasing to be so employed.

(7) Where the intermediary is an individual and the worker is employed by him, it is a relevant event if the worker ceases to be so employed.

(8) The fact that an amount of the worker's attributable earnings is treated as made under paragraph (1) before the end of the tax year concerned does not affect what payments and benefits are taken into account in calculating that amount.

Multiple intermediaries –general

9. (1) Regulations 10 and 11 apply where in any tax year the arrangements involve more than one intermediary.

(2) Except as provided by regulations 10 and 11, the provisions of these Regulations apply separately in relation to each intermediary.

Multiple intermediaries – avoidance of double-counting

10. (1) This regulation applies where a payment or benefit has been made or provided, directly or indirectly, from one intermediary to another intermediary under the arrangements.

(2) In that case, the amount taken into account in relation to any intermediary in Step One or Step Two of the calculation in regulation 7(1) shall be reduced to such extent as is necessary to avoid double-counting having regard to the amount so taken into account in relation to any other intermediary.

Multiple intermediaries – joint and several liability

11. (1) Where the arrangements involve more than one intermediary, all the intermediaries are jointly and severally liable, subject to paragraph (3), to pay contributions in respect of the amount of the worker's attributable earnings treated in accordance with regulation 8(1) as paid by any of them –

(a) under those arrangements, or

(b) under those arrangements together with other arrangements.

(2) For the purposes of paragraph (1), each amount of the worker's attributable earnings shall be aggregated, and the aggregate amount shall be treated for the purposes of regulation 8(1) as a single payment of the worker's attributable earnings, but so that the total liability of the intermediaries to pay contributions in respect of that aggregate amount is not less than it would have been if the arrangements had involved a single intermediary and that aggregate amount had been an amount treated as paid in accordance with regulation 8(1) by a single intermediary.

(3) An intermediary is not jointly and severally liable as mentioned in paragraph (1) if the intermediary has not received any payment or benefit under the arrangements concerned or under any such other arrangements as are mentioned in sub-paragraph (b) of that paragraph.

Social Security (Categorisation of Earners) Regulations 1978 – Saving

12. Nothing in these Regulations affects the operation of regulation 2 of the Social Security (Categorisation of Earners) Regulations 1978^(a) (treatment of earners in one category of earners as falling within another category and disregard of employments) as that regulation applies to employment listed in paragraph 2 in column (A) of Part I

^(a) S.I. 1978/1689.

of Schedule 1 to those Regulations (earner supplied through a third person treated as employed earner).

Greg Pope
Bob Ainsworth

7th March 2000 Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State for Social Security hereby concurs

Jeff Rooker

8th March 2000 Signed by authority of the Secretary of State for Social Security

Nick Montagu
Steve Matheson

13th March 2000 Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 6th April 2000, make provision for ensuring that social security contributions payable in relation to employed earner's employment remain payable notwithstanding the existence of arrangements whereby the services of the worker for another person ("the client") are performed through another person ("the intermediary") and not pursuant to a contract of employment between the worker and the client.

Regulation 1 provides for citation, commencement and effect, and regulations 2 to 5 contain definitions.

Regulation 6 provides that, where the worker's services are carried out in pursuance of arrangements involving an intermediary, the worker shall be treated, for the purposes of social security contributions in respect of a calculated amount of payments or benefits made or provided under the arrangements, as employed in employed earner's employment by the intermediary, and the intermediary shall be treated as the secondary contributor for those purposes. The regulation also provides that an officer of the Board of Inland Revenue may make a decision on whether the regulation applies in a particular case.

Regulation 7 provides the method of calculation of the amount of payments and benefits in respect of which social security contributions are payable by virtue of regulation 6.

Regulation 8 treats the amount found under regulation 7 as a single payment of earnings made by the intermediary on 5th April in the year of assessment concerned or, where one or more specified events occur in that year, immediately before that event or the earliest of those events.

Regulations 9 to 11 make provision for the case where more than one intermediary is involved in the same arrangements.

Regulation 12 contains a saving provision that nothing in these Regulations affects the operation of secondary legislation relating to agency workers.