2007 No. 2070

SOCIAL SECURITY

The Social Security Contributions (Managed Service Companies) Regulations 2007

Made - - - -	*25th July 2007*
Laid before Parliament	*26th July 2007*
Coming into force -	*6th August 2007*

The Treasury and the Commissioners for Her Majesty's Revenue and Customs make these Regulations.

The powers exercised by the Treasury are those conferred by section 4A, 122(1) and 175(1A) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 4A, 121 and 171(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those contained in section 8(1)(m) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and Article 7(1)(m) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999(**c**) and now exercisable by them(**d**).

The Secretary of State and the Department for Social Development(**e**) concur in the making of these Regulations.

(a) 1992 c. 4. Section 4A was inserted by section 75 of the Welfare Reform and Pensions Act 1999 (c. 30: "the 1999 Act"), amended by paragraph 289 of Schedule 1 to the Income Tax Act 2007 (c. 3: "ITA 2007") and modified by S.I 2003/1874 and 2007/2071. Section 122(1) is cited because of the meaning ascribed to "prescribed". Section 175 was amended, and subsection (1A) inserted by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999(c. 2) and partly repealed by the relevant entry in Schedule 6 to the Tax Credits Act 2002(c. 21).

(b) 1992 c. 7 ("the 1992 Northern Ireland Act"). Section 4A was inserted by section 76 of the 1999 Act, amended by paragraph 292 of Schedule 1 to ITA 2007, and modified by S.I. 2003/1884 and 2007/2072. Section 121(1) is cited because of the meaning ascribed to "prescribed". Section 171 was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002.

(c) S.I. 1999/671.

(d) The functions of the Commissioners of Inland Revenue ("the former Commissioners") were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that, insofar as is appropriate in consequence of section 5, a reference to the former Commissioners (in whatever terms) in other enactments is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(e) The functions of the Department of Health and Social Services for Northern Ireland under the 1992 Northern Ireland Act 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. 1999 No. 481).

Citation and commencement

1. These Regulations may be cited as the Social Security Contributions (Managed Service Companies) Regulations 2007 and shall come into force on 6th August 2007.

Interpretation

2.—(1) In these Regulations "ITEPA" means the Income Tax (Earnings and Pensions) Act 2003, and the following expressions have the same meaning as they have for the purposes of Chapter 9 of Part 2 of that Act–

"associate";

"managed service company";

"payment or benefit";

"worker".

(2) In these Regulations–

"attributable earnings" has the meaning given by regulation 3(2);

"secondary Class 1 contributions" has the meaning given by section 6 of SSCBA;

"secondary contributor" has the meaning given by section 7 of SSCBA;

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

"SSCR" means the Social Security (Contributions) Regulations 2001**(a)**.

(3) In the application of these Regulations to Northern Ireland a reference to an enactment applying to Great Britain is to be read as a reference to the corresponding enactment applying in Northern Ireland.

Payments and benefits received by workers treated as earnings

3.—(1) This regulation applies if–

(a) the services of an individual ("the worker") are provided (directly or indirectly) by a managed service company ("the MSC"),

(b) the worker, or an associate of the worker, receives (from any person) a payment or benefit which can reasonably be taken to be in respect of the services, and

(c) the payment or benefit is not earnings derived from an employed earner's employment of the worker with the MSC.

(2) Where this regulation applies, the MSC is treated as making to the worker, and the worker is treated as receiving, a payment or benefit which is to be treated as earnings from an employed earner's employment ("the worker's attributable earnings").

(3) The amount of the worker's attributable earnings comprised in any payment or benefit is computed in accordance with section 61E of ITEPA**(b)**.

(4) The time at which a worker is treated as receiving that payment or benefit is determined in accordance with section 61F of ITEPA**(c)**.

(5) The worker's attributable earnings shall be aggregated with any other earnings paid to or for the benefit of the worker by the MSC in respect of the earnings period in which the payment or benefit mentioned in paragraph (1)(b) is received by the worker, and the amount of contributions shall be assessed in accordance with the appropriate earnings period determined in accordance with regulations 3 to 6 of SSCR**(d)**.

(6) Any issue whether the circumstances are such as are mentioned in paragraph (1) 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 Revenue and Customs).

(a) S.I. 2001/1005: there are amendments, but none are relevant for present purposes.

(b) Section 61E was inserted by paragraph 4 of Schedule 3 to the Finance Act 2007 (c. 11).

(c) Section 61F was inserted by paragraph 4 of Schedule 3 to the Finance Act 2007.

(d) Regulation 3 has been amended, and partly revoked, by S.I. 2002/2366.

Deemed employed earner's employment

4. Where regulation 3 applies–

(a) the worker is treated, for the purposes of Parts 1 to 5 of SSCBA, and in relation to the worker's attributable earnings, as employed in employed earner's employment by the MSC, and

(b) the MSC, whether or not it fulfils the conditions prescribed under section 1(6)(a) of SSCBA for secondary contributors, is treated for those purposes as the secondary contributor in respect of the worker's attributable earnings,

and Parts 1 to 5 of SSCBA have effect accordingly.

[Regulation 5 amends regulation 1 of S.I. 2001/1004.]

Alan Campbell
Frank Roy
25th July 2007 Two of the Lords Commissioners for Her Majesty's Treasury

The Secretary of State of concurs.
Signed by authority of the Secretary of State for Work and Pensions

Mike O'Brien
Minister of State
24th July 2007 Department for Work and Pensions

The Department for Social Development concurs.
The Official Seal of the Department for Social Development is affixed on the 24th July 2007.

L.S.

John O'Neill
A Senior Officer of the Department for Social Development

Dave Hartnett
Steve Lamey
24th July 2007 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about payments and benefits received by workers whose services are made available to clients by means of managed service companies ("MSCs"). Chapter 9 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) is inserted by paragraph 4 of Schedule 3 to the Finance Act 2007 (c. 11). Chapter 9 makes new provision about the treatment of such payments and benefits for tax purposes. These Regulations also make a correction to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

Regulation 1 provides for citation and commencement, and regulation 2 defines and explains the application of certain terms used in the Regulations.

Regulation 3 provides that payments and benefits which are treated as employment income for the purpose of Chapter 9 are treated as earnings from an employed earner's employment with the MSC, and that their amount is computed in the same way as for tax purposes. Paragraph (5) of that regulation provides for the aggregation of the amounts treated as earnings with any earnings actually received from the MSC in connection with an employed earner's employment with them. Paragraph (6) prescribes questions under paragraph (1) for the purposes of section 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(c. 2) and Article 7 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) as questions relating to contributions which fall for determination by an officer of Revenue and Customs.

Regulation 4 provides that, where regulation 3 applies, the worker is treated for the purposes of Parts 1 to 5 of the Social Security Contributions and Benefits Act 1992 ("SSCBA"), and in relation to the attributable earnings as if employed in an employed earner's employment with the MSC, and the MSC is treated as the secondary contributor for the purposes of Class 1 National Insurance contributions, regardless of whether it would otherwise be by virtue of section 1(6) of SSCBA.

Regulation 5 corrects a typographical error in the definition of "secondary contributor" in the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

A full Regulatory Impact Assessment in respect of the proposals on managed service companies was published by HM Revenue and Customs and is available on their website at www.hmrc.gov.uk/ria/full-ria-man-serv-coys.pdf or from the Ministerial Correspondence Unit, HM Revenue and Customs, Yorke House, Castle Meadow, Nottingham. It is also annexed to the Explanatory Memorandum to the Income Tax (Pay as You Earn) (Amendment No. 2) Regulations 2007 (S.I. 2007/2069) which is available alongside those Regulations on the OPSI website.