Welfare Reform and Pensions Act 1999

1999 CHAPTER 30

PART V

WELFARE

CHAPTER II

NATIONAL INSURANCE CONTRIBUTIONS

76 Earnings of workers supplied by service companies etc: Northern Ireland

After section 4 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 there shall be inserted—

"**4A Earnings of workers supplied by service companies etc**

(1) Regulations may make provision for securing that 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 (within the meaning of the regulations) referable to arrangements involving a third person (and not referable to any contract between the client and the worker), and

(c) the circumstances are such that, were the services to be performed by the worker under a contract between him and the client, he would be regarded for the purposes of the applicable provisions of this Act as employed in employed earner's employment by the client,

relevant payments or benefits are, to the specified extent, to be treated for those purposes as earnings paid to the worker in respect of an employed earner's employment of his.

(2) For the purposes of this section—

(a) "the intermediary" means—

(i) where the third person mentioned in subsection (1)(b) above has such a contractual or other relationship with the worker as may be specified, that third person, or

(ii) where that third person does not have such a relationship with the worker, any other person who has both such a relationship with the worker and such a direct or indirect contractual or other relationship with the third person as may be specified; and

(b) a person may be the intermediary despite being—

(i) a person with whom the worker holds any office or employment, or

(ii) a body corporate, unincorporated body or partnership of which the worker is a member;

and subsection (1) above applies whether or not the client is a person with whom the worker holds any office or employment.

(3) Regulations under this section may, in particular, make provision—

(a) for the worker to be treated for the purposes of the applicable provisions of this Act, in relation to the specified amount of relevant payments or benefits (the worker's "attributable earnings"), as employed in employed earner's employment by the intermediary;

(b) for the intermediary (whether or not he fulfils the conditions prescribed under section 1(6)(a) above for secondary contributors) to be treated for those purposes as the secondary contributor in respect of the worker's attributable earnings;

(c) for determining—

(i) any deductions to be made, and

(ii) in other respects the manner and basis in and on which the amount of the worker's attributable earnings for any specified period is to be calculated or estimated,

in connection with relevant payments or benefits;

(d) for aggregating any such amount, for purposes relating to contributions, with other earnings of the worker during any such period;

(e) for determining the date by which contributions payable in respect of the worker's attributable earnings are to be paid and accounted for;

(f) for apportioning payments or benefits of any specified description, in such manner or on such basis as may be specified, for the purpose of determining the part of any such payment or benefit which is to be treated as a relevant payment or benefit for the purposes of the regulations;

(g) for disregarding for the purposes of the applicable provisions of this Act, in relation to relevant payments or benefits, an employed earner's employment in which the worker is employed (whether by the intermediary or otherwise) to perform the services in question;

(h) for otherwise securing that a double liability to pay any amount by way of a contribution of any description does not arise in relation to a

particular payment or benefit or (as the case may be) a particular part of a payment or benefit;

(i) for securing that, to the specified extent, two or more persons, whether—

(i) connected persons (within the meaning of section 839 of the Income and Corporation Taxes Act 1988), or

(ii) persons of any other specified description,

are treated as a single person for any purposes of the regulations;

(j) (without prejudice to paragraph (i) above) for securing that a contract made with a person other than the client is to be treated for any such purposes as made with the client;

(k) for excluding or modifying the application of the regulations in relation to such cases, or payments or benefits of such description, as may be specified.

(4) Regulations made in pursuance of subsection (3)(c) above may, in particular, make provision—

(a) for the making of a deduction of a specified amount in respect of general expenses of the intermediary as well as deductions in respect of particular expenses incurred by him;

(b) for securing reductions in the amount of the worker's attributable earnings on account of—

(i) any secondary Class 1 contributions already paid by the intermediary in respect of actual earnings of the worker, and

(ii) any such contributions that will be payable by him in respect of the worker's attributable earnings.

(5) Regulations under this section may make provision for securing that, in applying any provisions of the regulations, any term of a contract or other arrangement which appears to be of a description specified in the regulations is to be disregarded.

(6) In this section—

"the applicable provisions of this Act" means this Part of this Act and Parts II to V below;

"business" includes any activity carried on—

(a) by a government department or public or local authority (in the United Kingdom or elsewhere), or

(b) by a body corporate, unincorporated body or partnership;

"relevant payments or benefits" means payments or benefits of any specified description made or provided (whether to the intermediary or the worker or otherwise) in connection with the performance by the worker of the services in question;

"specified" means prescribed by or determined in accordance with regulations under this section.

(7) Any reference in this section to the performance by the worker of any services includes a reference to any such obligation of his to perform them as is mentioned in subsection (1)(a) above.

(8) Regulations under this section shall be made by the Treasury with the concurrence of the Department.

(9) If, on any modification of the statutory provisions relating to income tax, it appears to the Treasury to be expedient to modify any of the preceding provisions of this section for the purpose of assimilating the law relating to income tax and the law relating to contributions under this Part of this Act, the Treasury may with the concurrence of the Department by order make such modifications of the preceding provisions of this section as the Treasury think appropriate for that purpose."