

EXPLANATORY MEMORANDUM TO
SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO.2) REGULATIONS
2014

2014 No. 572

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument amends the Social Security (Contributions) Regulations 2001 (SI 2001/1004) ("the Regulations") to:

- Clarify who the secondary contributor is for workers on the UK Continental Shelf (UKCS) where their employer is based outside Great Britain;
- Clarify to whom these regulations apply and that where someone falls within the definitions within these regulations and other regulations, these regulations apply; and
- Provide details about who is eligible for a certificate and when and how they may apply.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 This is the first use of the power in section 120(4) of the Social Security Contributions and Benefits Act 1992, which was inserted by section 12 of the National Insurance Contributions Act 2014. This power allows HM Treasury to make regulations for, and in connection with, the issuing of certificates to secondary contributors of Oil and Gas workers where those liabilities are being met by another person.. The certification process for the oil and gas industry recognises the unique nature of the industry and the complexity of the contractual arrangements within it.

4. Legislative Context

4.1 The instrument amends the Regulations that apply to workers on the UKCS. The regulations already treat certain workers as being UKCS workers and as employed earners for the purposes of Class 1 employers and employees National Insurance Contributions ("NICs"). This means that they remain liable when working there and continue to be part of the social security system provided for under the Act. To prevent attempts to avoid secondary (employers') Class 1 NICs in relation to UKCS workers by locating the employer outside the UK. This instrument amends the Regulations and set out who the secondary contributor is in regard to UKCS workers.

4.2 A system of certification is provided for in new regulations 114A to 114C, so that the employer can discharge the obligations of secondary contributor on behalf of the oil field licensees. The instrument defines who a UKCS worker is to prevent the Regulations from applying to certain persons who work in traditional marine crew occupations and on certain kinds of vessel and inserts a priority provision to ensure where anyone could fall within the amended regulation 114 and the regulations applying to mariners, their NICs .

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 Under the Regulations workers on the UKCS are treated as employed earners in Great Britain and as being liable for primary Class 1 NICs. In recent years, the contractual employer of UKCS workers has been placed outside the UK. Paragraph 9 to Schedule 3 of the Social security (Categorisation of Earners) Regulations 1978 contains anti-avoidance provisions that treat the UK "host employer" as the secondary contributor when the contractual employer is outside the UK. Establishing the necessary facts to enable enforcement is difficult when contractual employer and worker are either outside the UK or at sea. Other schemes hope to take advantage of a statutory disregard in Paragraph 9 to Schedule 3 of the Social security (Categorisation of Earners) Regulations 1978 for host employers of certain mariners within regulation 115 of the Regulations by claiming all oil and gas industry workers on ships and vessels to be mariners.
- 7.2 The new measure restores the original policy intention that those on oil and gas industry vessels are not to be treated as mariners and should pay employer and employee Class 1 NICs. The instrument provides for Case B of the Regulations (relating to UKCS workers) to take precedence over mariner rules in Case of the Regulations (relating to mariners). The instrument treats an associated company in Great Britain as the secondary contributor where the employer is outside Great Britain.
- 7.3 In situations where the employer of the worker is outside Great Britain and they have no associated company in Great Britain, the regulations set out that the oil field licensee is the secondary contributor. This is because one of the conditions of holding a licence is that the licensee is present in the UK. To recognise that a licensee is removed from the operation of an oil rig, the instrument also introduces a system of certification where the licensee is the secondary contributor. A certificate can be issued where the employer of the mariner is paying in full all tax and NICs through RTI and is undertaking all duties of a secondary contributor. While a certificate is in place the oil and gas licensee cannot be held liable for any underpayment of tax and NICs. A certificate can be withdrawn if the employer of the worker does not comply with all of the tax and NICs obligations. Once a certificate has been withdrawn the licensee is responsible for all the duties of the secondary contributor.

- *Consolidation*

- 7.4 There are currently no plans to consolidate the instruments that are being amended.

8. Consultation outcome

- 8.1 The consultation on offshore employment intermediaries ran from 30 May to 8 August 2013. HMRC received 50 written responses during the consultation period. HMRC have held meetings with the oil and gas industry and the maritime industry throughout

the consultation period and following it. Copies of the consultation documents, the proposed draft legislation, and a formal summary of responses to the consultation can be accessed at:

<https://www.gov.uk/government/consultations/offshore-employment-intermediaries>

9. Guidance

- 9.1 HMRC is developing detailed guidance taking into account the comments made by respondent to both the off shore and onshore intermediaries consultations. This will be published on the HMRC website.

10. Impact

- 10.1 A Tax Information and Impact Note covering this instrument was published on 10 December 2013 alongside the draft legislation and is available on the Gov.uk website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins#finance-bill-2014-10-december-2013>. An updated Tax Information and Impact Note will be published on that website.

11. Regulating small business

- 11.1 The legislation changes will apply to all employers equally irrespective of their size. There is therefore no impact that is specific or unique to small businesses.

12. Monitoring & review

- 12.1 HMRC will continue to work closely with the Department for Work and Pension and the Department for Social Development (Northern Ireland) to monitor the impact of the changes being effected.

13. Contacts

Sarah Radford at HM Revenue and Customs (telephone number: 03000 586474 or email: sarah.radford@hmrc.gsi.gov.uk) can answer any queries regarding the provisions in the instrument.