EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS No. 2) REGULATIONS 2017

2017 No. 373

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument gives effect to the necessary changes required to the relevant social security regulations to move the responsibility for deciding if the off-payroll rules for engagements in the public sector apply, from an individual worker's intermediary, usually a worker's Personal Service Company (PSC) to the to the public authority. The legislation also moves the responsibility for making relevant deductions from any payments due to the intermediary and the requirement to account to HM Revenue and Customs for those deductions to the public authority, agency or third party paying them. This instrument together with the relevant income tax provisions makes that organisation responsible for deducting and paying associated employment taxes and National Insurance Contributions (NICs) to HMRC. This instrument makes a number of consequential amendments and inserts new regulations into the Social Security Contributions (Intermediaries) Regulations 2000 (S.I. 2000/727) ("the Intermediaries Regulations"), the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000 (2000/728) ("the Northern Ireland 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 to be inserted into the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003") by virtue of the Finance Bill 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Current law is included in ITEPA 2003 part 2 Chapter 8, sections 48 to 61, and the Intermediaries Regulations. Legislation to be introduced by way of the Finance Bill 2017 will include a new Chapter in ITEPA 2003 so that where an individual works for a public authority, through their own PSC and falls within the rules:

- The public authority, agency or third party paying them(‘the fee-payer”) is treated as an employer for the purposes of tax and Class 1 NICs;
- The amount paid to the worker’s intermediary for the worker’s services is deemed to be a payment of earnings for Class 1 NICs for that worker;
- The public authority or the agency (fee-payer) is liable for secondary Class 1 NICs and must deduct tax and NICs from the payments they make to the intermediary in respect of services of the worker;
- The public authority is defined using the definitions in the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Acts; and
- The person deemed to be the employer for tax purposes is obliged to make payments to HMRC and to send HMRC information about the payments using Real Time Information.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

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 These changes are being introduced to improve fairness in the tax system by ensuring that individuals are not able to sidestep employment taxes or NICs by working through a PSC.

7.2 Removal of the 5% allowance will simplify the administration of the reformed rules, and reflects the transfer of responsibility for making a decision about whether the rules apply and deducting and making the associated tax and NICs payments.

7.3 As a result of feedback received during the technical consultation, it will no longer be compulsory for the agency or public authority body to take account of all of a worker's expenses when calculating the tax due. The application of the rules to those people working for Parliament and the National Assemblies and Statutory Auditors is also clarified.

Consolidation

7.4 There are also no plans to consolidate these Regulations, which reflect new provisions inserted into the existing Intermediaries Regulations (SI 2000/727 and SI 2000/728).

8. Consultation outcome

8.1 HMRC have consulted extensively on off-payroll working in the public sector and the reform of the intermediaries legislation. At Summer Budget 2015 the government announced that it intended to reform the off-payroll rules in response to widespread non-compliance. In July 2015 HMRC published a discussion document. After considering the issues raised during that discussion, the government announced proposals to reform the rules at Budget 2016. HMRC consulted on the detail of the reform and the development of a new digital employment status service between 26 May and 18 August 2016. HMRC carried out a further technical consultation on the details of the reform between 5 December 2016 and 5 February 2017. HMRC published a draft version of the Social Security (Miscellaneous Amendments) (No.2) Regulations 2017 for consultation between 27 January and 17 February 2017. Few responses were received.

8.2 As a result of feedback received during the technical consultation for the it will no longer be compulsory for the agency or public sector body to take account of all of a worker's expenses when calculating the tax due The application of the rules to Parliament and Statutory Auditors have also been clarified.

8.3 Where the public authority has determined that the engagement falls within the off-payroll reforms and no further information has been provided by the worker to the public authority or recruiting agency, as to the ownership of the intermediary, the public authority or recruiting agency must assume that chapter 10 applies and tax and NICs must be deducted before any payment is made.

9. Guidance

9.1 HMRC have published guidance throughout the consultation periods on these reforms, in order to assist those concerned with preparing for the reforms. HMRC will also publish guidance in the HMRC Employment Status Manual.

10. Impact

10.1 This measure is expected to initial impact on public authorities who engage off-payroll workers and agencies supplying workers to public authorities. It will transfer the responsibility to consider whether the intermediaries legislation applies from the intermediary, usually a worker's Personal Service Company (PSC) to the public authority. Where the intermediaries legislation and regulations apply the engager or agency (fee-payer) will be responsible for deducting tax and NICs payments from payments made to the worker's intermediary or PSC and paying them over to HMRC. There will be a consequential impact on public authorities, who will now have to consider whether the intermediaries legislation and Regulations apply to their workers.

10.2 Affected businesses will incur one-off costs for familiarisation with the new rules and putting in place processes to share information between procurement and payroll sections. Ongoing costs for accounting and reporting through Real Time Information and using the digital tool are expected to be negligible.

10.3 The government estimates that this measure will also affect around 30,000 PSCs. Administrative costs currently incurred by compliant PSCs in calculating tax and National Insurance will now move from the PSC to the public authority organisation or the agency supplying the worker to the public authority.

10.4 A Tax Information and Impact Note covering this instrument was published on 5 December 2016, alongside the Off-payroll working in the public sector: reform of the intermediaries legislation provisions in the Finance Bill 2017. This has been updated as a result of changes to the provisions following consultation and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The basis for the final decision on what action to take to assist small businesses was that although smaller agencies may be disproportionately affected by this change if they provide workers to public authorities, (as the measure will require them to place the employee on a payroll) and these costs to smaller agencies are expected to be significant, there are likely to be overall savings for affected PSCs of £300,000 per annum.

12. Monitoring & review

12.1 The measure will be kept under review through communication with affected taxpayer groups.

13. Contact

13.1 Şirin Geçmen at the HM Revenue & Customs email: sirin.gecmen@hmrc.gsi.gov.uk and Adrian Dixon email: adrian.dixon@hmrc.gsi.gov.uk can answer any queries regarding the instrument.