

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS No. 3)**  
**REGULATIONS 2017**

**2017 No. 613**

**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 replaces the definition of "public authority" in the Social Security (Intermediaries) Regulations 2000 (S.I. 2000/727) and the Social Security (Intermediaries) (Northern Ireland) Regulations 2000 (S.I. 2000/728) (jointly referred to as "the Intermediaries Regulations"). The amendments reflect new provisions to be inserted into the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003") by way of amendment to the Finance (No.2) Bill 2017.
- 2.2 Regulations 2 and 3 replace the definition of "public authority" contained in regulation 3A of the Intermediaries Regulations. The revised definition ensures that some private sector retail businesses including high street pharmacies and opticians, which were incorrectly brought into scope because they provide services on behalf of the National Health Service (NHS), are now taken out of scope. The effect of these Regulations is that such retail businesses will no longer be required to consider whether to apply the off-payroll working in the public sector rules (as set out in the Intermediaries Regulations) to contractors working for them through an intermediary. This is consistent with the policy intention to apply this regime to the public sector.
- 2.3 The Regulations retain the requirement for NHS hospitals to consider whether to apply the off-payroll working in the public sector rules to all contractors working for them, where they are working through an intermediary. This includes contractors, who are providing ophthalmic and pharmaceutical services, (again, where they are working through an intermediary). The Regulations continue to include general practitioner surgeries and dental practices or surgeries providing NHS medical and dental services within the definition of "public authority". This means these public authorities are required to consider whether the off-payroll working in the public sector rules should be applied to contractors working for them through an intermediary.

**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 The Intermediaries Regulations currently provide that (1) “public authority” means:

- (a) a public authority as defined by the Freedom of Information Act 2000 (FOIA 2000),
- (b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002 (FOISA 2000),
- (c) the Corporate Officer of the House of Commons,
- (d) the Corporate Officer of the House of Lords,
- (e) the National Assembly for Wales Commission, or
- (f) the Northern Ireland Assembly Commission.

(2) An authority within paragraph 1(a) or (b) is a public authority for the purposes of these Regulations in relation to all its activities even if provisions of the Act mentioned in that paragraph do not apply to all information held by the authority.

4.2 The definition of public authority in FOIA 2000 and FOISA 2002 applies to the provision of pharmaceutical services and ophthalmic services for the NHS. As retail pharmacists and opticians provide NHS services they are included within this definition. This instrument replaces the definition of “public authority” in the Intermediaries Regulations to take these retail businesses out of the definition. The amendments reflect new provisions to be inserted into ITEPA 2003.

#### **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 The changes introduced by these regulations replace the definition of “public authority” in the Intermediaries Regulations. The amendments reflect a new provision to be inserted into ITEPA 2003.

##### *Consolidation*

7.2 There are also no plans to consolidate these Regulations, which reflect new provisions inserted into the existing Intermediaries Regulations.

#### **8. Consultation outcome**

8.1 HMRC have consulted extensively on the off-payroll working in the public sector rules and the reform of the intermediaries legislation, including whether the approach to defining “public authority” was the correct one. The revised definition contained within these regulations ensures that some private sector retail businesses including high street pharmacies and opticians, which were incorrectly brought into

scope because they provide services on behalf of the National Health Service (NHS), are now taken out of scope. This revised definition has not been the subject of further consultation.

## **9. Guidance**

- 9.1 HMRC will publish guidance in the HMRC Employment Status Manual.

## **10. Impact**

- 10.1 The impact on business is reduced as some private sector retail businesses will no longer be within the definition of public authority. There are no impacts on charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering the Intermediaries Regulations 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 was 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>. It remains an accurate summary of the impacts that apply to the off-payroll working in the public sector measure.

## **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 This instrument will reduce the regulatory burden on smaller agencies providing workers to retail pharmacies and opticians.

## **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](mailto:sirin.gecmen@hmrc.gsi.gov.uk) and Adrian Dixon email: [adrian.dixon@hmrc.gsi.gov.uk](mailto:adrian.dixon@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.