HM Revenue & Customs

Offshore Employment Intermediaries

Consultation document
Publication date: 30 May 2013
Closing date for comments: 8 August 2013

Subject of this consultation:	The use of offshore employers of workers based in the UK to avoid National Insurance and employment taxes.
Scope of this consultation:	This consultation is in two parts, the first is a technical consultation on creating Employment Obligations on offshore employers and, in the case of a default moving these obligations to an onshore engager of the labour. The second is a policy consultation on the associated record keeping and filing requirements associated with this measure.
Who should read this:	We would like to hear from individuals and businesses who are affected by the measure, particularly anyone involved in the supply of workers to the UK, or within the UK, their representative bodies or other interested parties.
Duration:	The consultation will run for 10 weeks starting on 30 May 2013 and closing on 8 August 2013.
Lead official:	Sarah Radford HMRC
How to respond or enquire about this consultation:	Written responses should be submitted to: Sarah Radford HMRC 1E/10 100 Parliament Street London SW1A 2BQ Or by email to: paye.policy@hmrc.gsi.gov.uk Please contact Sarah Radford on 020 7147 2414 or email: paye.policy@hmrc.gsi.gov.uk for enquiries about the content or scope of the consultation, requests for hard copies, information about consultation events, or any other enquiries.
Additional ways to be involved:	We will also be holding roundtable stakeholder events. If you would like to be involved with these please contact Robert Burton on 020 7147 3433 or email paye.policy@hmrc.gsi.gov.uk
After the consultation:	After the consultation primary NICs legislation will be included in the National Insurance Bill that is planned to be introduced to Parliament in September. The tax part of these proposals will be introduced into Finance Bill 2014. We plan to publish the draft legislation for the record keeping, the response document and guidance at Autumn Statement and legislate at Finance Bill 2014.
Previous engagement:	We have already met informally with a number of key stakeholders and have discussed the existing legislation and this proposal with them.

Contents

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille format.

Foreword

Recent years have seen a growing use of offshore employers to employ UK workers who are working for UK based companies. This can be for legitimate commercial reasons – for example workers on international secondments.

However, some businesses are using these structures to avoid paying employment taxes including National Insurance for their UK-based workers. This is not fair and undermines compliant businesses. Often the workers engaged in this way and the ultimate users of the workers' labour are unaware that these arrangements are in place and therefore do not know that their access to some benefits may have been put at risk. These structures are increasingly being marketed and promoted as a legitimate way to avoid employer's National Insurance. In several industries their use has become widespread.

This consultation sets out our plans to provide a level playing field so that UK businesses that are playing by the rules cannot be undercut by those who are involved in avoidance arrangements. It is not our intention to stop anyone from being employed by an offshore employer. Instead, we intend to ensure that where someone is working in the UK the right amount of tax and National Insurance is being paid on their behalf.

We are committed to tackling areas of the tax system where avoidance behaviour is widespread. In the last few years we have made a great deal of progress in preventing the avoidance of employment taxes with the disguised remuneration rules, the employee benefit trust settlement opportunity and the changes to the intermediaries (IR35) legislation. This is the next step in creating a level playing field for all businesses engaging workers in the UK and stopping unfair arrangements. We will continue to seek out avoidance of employment taxes and act to stop it.

Danny Alexander

1. Introduction

About this consultation

Following HMRC's review of offshore employment intermediaries it was announced at Budget that the Government would be strengthening the legislation in respect of offshore employment intermediaries. The Budget text said:

1.210 Autumn Statement 2012 also announced that HMRC would review the use of offshore employment intermediaries. As a result of that review, **the Government will strengthen obligations to ensure the correct income tax and NICs are paid by offshore employment intermediaries,** with consultation on the details. As part of its ongoing compliance work, HMRC will continue to gather evidence about other forms of employment tax avoidance in order to inform future policy and operational decisions.

This consultation document considers how the current legislation works in practice and sets out the proposed new legislation.

This consultation document is presented in two parts. The first part (Chapters 4-5) is a technical consultation on creating an income tax and National Insurance Contributions (NICs) charge on offshore employers and, if the employer fails to pay, moving this charge to an onshore engager of the labour, in specified circumstances. For this section of the consultation we will be publishing draft legislation in due course.

The second part of the consultation (Chapter 6) relates to requirements to keep records and file returns with HMRC. We are consulting on this proposal in order to design the record keeping and filing requirements and will be publishing draft legislation in the autumn.

This consultation sets out in detail:

- the issues currently encountered with offshore employers of workers engaged in the UK;

- the current legislation that applies for UK workers with an offshore employer;
- our proposed solution;
- sector specific considerations; and
- record keeping and filing requirements.

Outline proposition

There are many legitimate reasons why people working in the UK may be employed offshore, for example internationally mobile workers. However, since the 1990s there has been a significant increase in the number of workers based in the UK, working in the UK for UK based companies but being employed by an offshore employer. These arrangements are often put in place to avoid tax and NICs; a structure that sometimes neither the worker nor the ultimate user of the worker's labour are aware of.

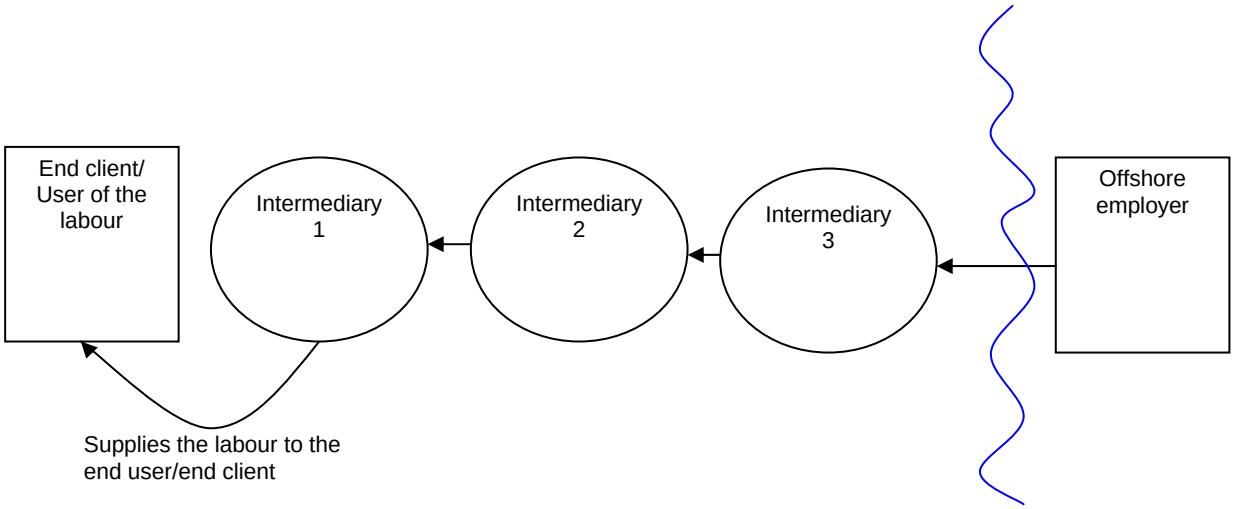
The proposal at its simplest is to create an income tax and NICs charge on offshore employers of workers engaged in the UK. The offshore employer will be liable in the first instance for deducting income tax and NICs from the worker and will be the secondary contributor, making them liable to pay employer (secondary) NICs and statutory payments (e.g. statutory sick pay) to the worker and deduct student loan payments.

If the offshore employer fails to account for and remit to HMRC the tax and NICs due, the employer's responsibilities (with regard to tax and NICs) will move to the intermediary business contracting with the end client/end user of the labour to supply labour, or a service that includes the provision of labour. In the case that there is no intermediary business, or the intermediary business defaults on its new tax and NICs obligations, this responsibility will move to the end user of the labour/end client.

Being able to establish the facts behind the labour supply chain can be a key challenge for the end user as well as for HMRC. So we propose that the first intermediary with whom the end user contracts will need to know how the worker is engaged and maintain records of this.

2. The Issue

Offshore Employment Structure



A growing number of businesses are setting up outside the UK with the primary purpose of avoiding employment taxes. These businesses are located offshore but supply workers based in the UK to UK based businesses. Usually these workers are not internationally mobile but are UK residents, UK domiciled and only work in the UK.

The existing legislation has been exploited, particularly in certain sectors, allowing companies who are willing to set up offshore arrangements to gain a competitive advantage over those businesses who play by the rules. This has led in some cases to other businesses in these industries feeling that they have little choice but to set up similar arrangements in order to compete. This new legislation that is proposed is intended to level the playing field and ensure that the correct income tax and NICs is paid in respect of all workers in the UK.

In many cases the offshore employer makes 'voluntary' payments of income tax and employee (primary) Class 1 NICs through the PAYE system but fails to make payments for the employer (secondary) NICs. The offshore employer will claim to have, or may genuinely have no presence, residence or place of business in the UK so they are not liable to pay employer NICs. However, there is legislation, known as

the host regulations, which (where the employer is outside of the UK) places the requirement to pay employer and deduct employee NICs on the UK end user of the labour/end client where the worker provides their personal service. Offshore employers will often claim that there is no requirement for personal service of the worker, or that they are supplying a composite service, so the host regulations do not apply.

These arrangements are sometimes hidden from both the UK end user of the labour and the worker, especially where they occur in the temporary labour market. They can often be complex structures involving a number of intermediaries as illustrated in the diagram above. It can therefore be difficult for HMRC to establish the contractual chain and who the eventual end user of the labour is. While HMRC has had some success in tackling these types of arrangements, especially where large companies have outsourced their entire payrolls offshore, it is often problematic and time consuming to establish the facts.

Even where the offshore employer is making voluntary payments of income tax and employee NICs, HMRC has little power to check that these are correct or to ensure that they are made on time. There has already been a reluctance to make monthly returns to HMRC.

Currently, the tax and National Insurance legislation differs for offshore employers of workers engaged in the UK. There are different tests in the tax and National Insurance legislation for creating a requirement for the end client to deduct income tax and National Insurance on behalf of workers employed offshore. These differences are often exploited by the offshore employer in an attempt to claim that no charge is effectively created on the UK end client for the supply of the worker's labour.

3. Existing Legislation

Introduction

The current legislation does not apply to employers based outside of the UK. Instead both the tax and the National Insurance legislation require the person in the UK who is the recipient of the labour to operate PAYE and NICs, even though they are not the worker's employer, providing they meet certain conditions. However, both the tax and NICs legislation allow the offshore employer to make these payments if they choose to.

Tax Legislation

Section 689 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 applies where there is an offshore employer who is supplying workers who are working in the UK for a UK business. Under this legislation the UK business will be responsible for making deductions of income tax and remitting this to HMRC through the Pay As You Earn (PAYE) system, where the offshore employer has not already made these payments.

Although the legislation places responsibility onto the UK business, that business is often unaware that the employee is being paid by an offshore employer. It is also difficult for HMRC to establish that the employee is being paid by an offshore employer and so compel the UK business to operate PAYE.

If there is no UK place of business then, under Section 7 Taxes Management Act (TMA) 1970 the worker will be responsible for making a return through self assessment to account for their income tax. However, the worker is often unaware of the arrangements that are in place or that there is a requirement on them to make a return.

National Insurance Legislation

Paragraph 9 of Schedule 3 to the Social Security (Categorisation of Earners) Regulations 1978 (SI 1978/1689), known as the "host regulations", may apply where

there is an offshore employer but the worker is working in the UK for a UK company. The legislation applies where the personal service of the worker is made available to the UK host employer.

The Social Security Administration Act 1992 provides the vires for giving effect to reciprocal social security arrangements with countries outside of the UK. The UK has an agreement with the Isle of Man. The effect of this agreement, by virtue of the Social Security (Isle of Man) Order 1977, is that an employer in the Isle of Man is liable for contributions in respect of employees in the UK.

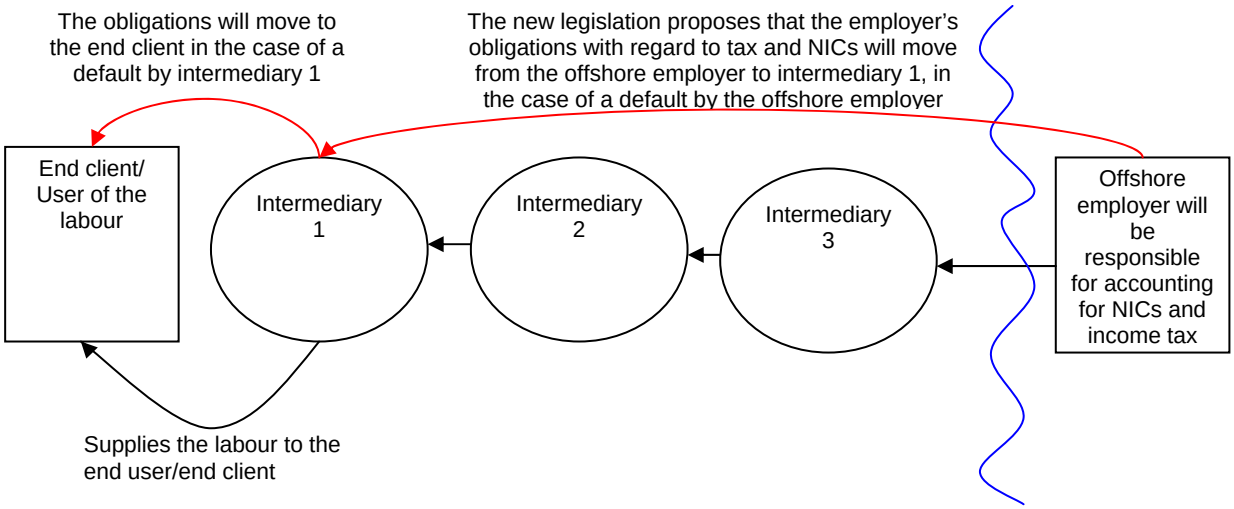
The social security legislation of European Union Member states is coordinated by EU Regulations 883/2004 and 987/2009. These regulations can have the effect of modifying national rules where a person moves between Member states with work or in cross border situations. The rules apply throughout the European Economic Area (EEA) and Switzerland.

In Article 21 987/2009 where the employee is subject to the legislation of the UK (and liable to contributions) the employer also has the social security obligations imposed by the national law as if he has a place of business there – even through the employer may be outside of that member state. Article 21 also ensures that employees in the UK social security scheme with a foreign employer are not disadvantaged by Regulation 145(1)(b) Social Security Contributions Regulations (SSCR) 2001 and still have an employer to operate contributions and to pay statutory payments. There are also cross-border enforcement powers in the regulations that enable contributions to be enforced within Member states.

As with PAYE the UK end client may not know that the worker is supplied by an offshore employer and HMRC has difficulty in identifying such cases.

4. The proposal

Offshore Employment Structure
New Proposal



Making the offshore employer the secondary contributor

The Government is planning, in the first instance, to make the offshore employer the secondary contributor, responsible for accounting for income tax, NICs and student loan deductions and remittance to HMRC through the Real Time Information system. This means that for tax and NICs they will have all of the usual obligations of a UK based employer, including liability to pay statutory payments to the worker such as statutory sick pay and maternity pay (the "Employer Obligations"). Where the income tax and NICs have both been paid or otherwise accounted for to HMRC, irrespective of by whom, the legislation will treat the offshore employer as having fulfilled its obligations.

The requirements for the offshore employer to deduct income tax and employee (primary) NICs, and to pay employer (secondary) NICs will apply equally to office-holders as they do for employees.

In the case of default by the offshore employer

If the offshore employer defaults on any of its Employer Obligations (excluding making statutory payments) for a 3 month period commencing from the first day of employment of the worker then the responsibility for the Employer Obligations in respect of that worker will move to Intermediary 1 (as illustrated in the diagram above.)

Intermediary 1 is defined as the business that contracts directly with the end client to provide the worker's labour or for provision of service that includes the supply of labour. This will mean that this provision will apply for composite services where part of that service includes the supply of labour. We want to ensure that this provision cannot be sidestepped through the use of a composite service contract. However, we are mindful of the commercial realities that such a definition may entail.
We also propose that intermediary 1 will record where the workers provided to the end client come from and how they are ultimately paid.

We will publish draft legislation for comment in due course.

Question 1: Would these proposals defining intermediary 1 cause any practical difficulties e.g. to genuine commercial arrangements? Please provide details and examples.

Following a default by the employer, HMRC will serve a notice on Intermediary 1 making them responsible for deducting employee Class 1NICs and income tax in respect of that worker and remitting it to HMRC. They will also be responsible for employer secondary NICs payments and making electronic returns through the Real Time Information system. They will be the secondary contributor from this point, so they will also be responsible for payment of statutory payments to the worker (when the worker meets the relevant qualifying conditions). The historic underpayment of tax and NICs by the offshore employer will also be transferred as a debt to Intermediary 1, but historic liability for unpaid statutory payments will not transfer.

If the offshore employer defaults, and there is no Intermediary 1, then upon service of notice by HMRC both the historic debt in respect of any underpayment of tax or NICs and the prospective obligations will transfer directly to the end client.

A default by the offshore employer constitutes a failure to pay to HMRC or account for the full tax and NICs (as statutorily defined) in respect of the worker. This means that HMRC will move all of the liabilities to intermediary 1, or the end client, if a default of any part of either tax or NICs occurs. A default in making statutory payments to the worker will not enable HMRC to move the Employer Obligations to Intermediary 1 or the end client. The employee will still be able to pursue the employer for statutory payments in the usual way.

In the case that there is more than one Intermediary 1

There will be cases where these offshore arrangements are in place in the temporary labour market and the worker will have worked through more than one Intermediary 1 and for more than one end client during the 3 month period of default by the offshore employer. In these situations, HMRC will send a notice transferring the Employer Obligations to the Intermediary 1 through which the employee is currently working, or where there is no intermediary, to the end client they are currently working for. The historic debt will be apportioned between each of the Intermediary 1 businesses or end clients for which the employee worked according to the amount of time the employee worked for them. Notices detailing the amount due will be issued by HMRC to each of the intermediary 1 or end clients.

In the case of a default by Intermediary 1

In the case that there is an Intermediary 1 and that business defaults the historic debt and prospective Employer Obligations will move to the end client.

A default in this respect will mean that Intermediary 1 has entered insolvency or bankruptcy proceedings or proceedings have begun against them.

The charge will not move to the end client where they are an individual who is not making use of the labour or services including the provision of labour as part of

carrying on a trade or profession. So where services are provide to an individual for private, not business, purposes the charge will not move.

The End Client

The end client is the UK based business who is the ultimate user of the worker's labour, or is receiving a composite service that includes the worker's labour.

For the oil and gas industry the end client will be defined as the licensee of the oil field. Because of the unique nature of the oil and gas industry it is not possible to define the end user in another way.

Question 2: Are there likely to be any commercial difficulties with the proposed definition of end user, above? If so please say what they are likely to be and provide examples.

Calculating the Payment

There will be circumstances where the ongoing responsibility for remitting income tax and NICs to HMRC has moved to Intermediary 1, or to the end client, but they are not aware what the worker is paid. In these circumstances the income tax and NICs should be calculated on the amount that Intermediary 1 or the end client is paying to the offshore employer for that worker or to another intermediary in the contractual chain. If Intermediary 1 or the end client can show what the worker is actually paid, then they can remit tax and NICs based on this amount to HMRC.

Question 3: Are calculating the payments in this way likely to cause any problems? If so what are they? Please provide examples.

The proposal will not apply retrospectively.

Exceptions

There are two exceptions to the proposal set out above.

EEA

The transfer of historic debt and future liabilities will not occur if the employer is in the European Economic Area (EEA) and the employer fails to make payment for 3 months. In this case HMRC are able to pursue the offshore employer for the debts and force returns to HMRC through the reciprocal NICs arrangements and through Mutual Assistance Recovery Directive (MARD).

However, where an EEA employer enters into insolvency or bankruptcy proceedings then the debt and future Employer Obligations will transfer in the way that has been described above to intermediary 1 or in the case that there is no intermediary 1 to the end client.

Isle of Man

It is also intended that this provision will not apply for National Insurance purposes to employers in the Isle of Man. This is because under the Social Security (Isle of Man) Order 1977, we have joint social security arrangements with the Isle of Man under which companies, with a place of business in the Isle of Man employing workers engaged in the UK have to pay NICs to the Isle of Man Treasury and they then send money relating to UK residents to the UK National Insurance Fund. The same applies in reverse to UK employers employing Isle of Man resident workers. Recent cases have shown that this arrangement, that has been in place for a number of years, works well.

For tax purposes however, this legislation will apply to employers in the Isle of Man in the way that it does for employers in non-EEA countries, as has been described above.

We will be seeking comments on the legislation as drafted when it is published.

5. Specific Sectors

Internationally Mobile Workers

Many companies have internationally mobile staff and choose to manage all of these employees from one central location, which could be located anywhere in the world. These arrangements are in place for legitimate commercial reasons and workers are supplied to locations all over the world. Currently in the vast majority of cases for the periods that these workers are seconded to the UK, their income tax and NICs is accounted for and paid by the UK subsidiary (host) company under the existing legislation at S689 ITEPA 2003 and, for NICs, the host regulations. These arrangements work well and we do not propose to stop them.

As such, and as described above, the Government intends the legislation to treat the offshore employer as having fulfilled its obligations, if the tax and NICs have been paid or otherwise accounted for, irrespective of by whom e.g. by the UK subsidiary. This enables the UK host employer to account for and pay the income tax and NICs to HMRC in the same way as they are now. However, it will also allow the offshore company to account for and pay the NICs and income tax from the offshore employer if it chooses to do so. Where there is no NICs liability arising for the worker because of EU Regulations or existing Social Security agreements, the contributions have already been accounted for in the home country (under a A1 certificate or a certificate of coverage), or the 52 week rule applies this will be treated as fulfilling the new requirements.

Question 4: Is there any reason why this proposal might disrupt existing arrangements? Please provide reasons.

Mariners

Employers of mariners, who are based outside of the UK, even where there is a UK host employer, are currently exempt from the host regulations. This is to allow British

crews to be able to compete on a level footing with other European countries that have reduced Social Security rates for mariners.

The Government intends that the existing arrangements in respect of mariners will remain. So, employers of mariners, who are based outside of the UK, where the mariner works wholly or mainly outside of category A, B, C and D waters will be exempt from having to pay employer secondary Class 1 contributions for the mariners.

Oil and Gas workers on the UK Continental Shelf

Since the Oleochem decision in 2008 many oil and gas workers on floating platforms on the UK Continental Shelf have been classed as mariners and their employers have enjoyed the same employer (secondary) NICs exemption as employers of mariners. However, to the extent that those workers are on fixed platforms that exemption does not apply as the fixed platforms are not classed as vessels and therefore the workers are not mariners.

Oil and gas workers move between fixed and floating platforms so their treatment for NICs purposes is inconsistent, and it is therefore difficult for both the contractor companies who supply the workers and for HMRC to be able to apportion the time spent on these different types of installations. The Government is therefore proposing that all oil and gas workers whether they are on fixed or floating platforms will be within the new legislation.

There are a number of ways that this might be achieved. One would be that the exemption could be amended so that it specifically excludes those who are within Case B in Regulation 114 SSCR 2001.

Another might be to amend the definition of mariners in Regulation 115 SSCR 2001, to more closely align it to the definition of seafarers for tax purposes in Part 5 Chapter 6 ITEPA 2003. The tax definition of seafarers excludes anyone employed on an installation.

Question 5: Do you have views about how about how the Government's proposal that all oil and gas workers on the UK continental shelf should be included in this measure? If so what are they?

Question 6: Is this likely to have any unintended consequences? If so what are they likely to be?

Question 7: Would it be better for the industry to amend the definition of mariner in Regulation 115 SSCR 2001 or to amend the exemption so that those who meet Case B SSCR 2001 will be excluded from the exemption? Or is there another way that this could be achieved, that would be better for the industry? Please state the reason for your preference.

As noted above, for the oil and gas sector we intend to define the licensee of the oil field as the end client. In this sector Intermediary 1 will be the company that is contracting directly with the licensee to provide labour or a service which includes the supply of labour.

Question 8: For oil and gas workers it is intended that the end client will be the licensee of the oil field. Are there likely to be any adverse impacts from this?

6. Record Keeping Requirements

Records that need to be kept

It is proposed that all Intermediary 1 businesses will be required to have in their power or possession information about how all of the workers they place with end clients, whether or not as part of a composite service, are ultimately paid and engaged. As these businesses are supplying labour, or a service that includes the supply of labour, it is a reasonable expectation that they should know where that labour comes from and how these workers are ultimately paid.

This means that intermediary 1 will need to know how a worker is engaged e.g:

- through their own company and if so in what capacity;
- through an umbrella company and if so in what capacity;
- through a number of intermediaries but, ultimately self-employed; or
- if employed, whether by an offshore employer.

The business will not need to retain these records on a database but will need to be able to produce when requested records for all the workers that they have placed in the last 3 years.

Question 9: What is your assessment of the administrative burden of this requirement? Please provide examples and as far as possible illustrative costings as part of your response.

Reporting Requirements to HMRC

It is proposed that there will be a requirement for all Intermediary 1 businesses, or in the case of there being no Intermediary 1 the end client, to make a quarterly return to HMRC detailing information about all workers they place/engage who are employed offshore. This will be quarterly to strike the balance between HMRC putting appropriate checks in place to ensure that offshore employers are paying the right amount of tax and NICs and the burden that it places on UK businesses. There will be

no requirement to make this return where the tax and NICs are accounted for directly by Intermediary 1 or the end client.

Question 10: What is your assessment of the administrative burden of making a quarterly return to HMRC? Would a more or less frequent return be desirable? Please provide reasons for your answer.

HMRC are proposing that this return would include:

- The name of the worker
- The worker's National Insurance Number
- The address of the worker
- The time that the worker has been engaged through the intermediary/worked for the end client
- The name of the offshore employer
- The address of the offshore employer

This requirement will support HMRC's enforcement of the regime, as well as providing a degree of protection to intermediary 1 or the end client where they are engaging with an offshore employer. We would expect that end clients and Intermediary 1 businesses will place in their contract for businesses that they are engaging with in the contractual chain to provide them with this information. We are not intending to prescribe how a business should do this.

Question 11: What difficulties will Intermediary 1 need to overcome to obtain this information? Please provide reasons and examples with your answer.

Question 12: Is there anything that it is likely to be particularly difficult to produce? If so please provide reasons.

Question 13: Is there anything additional that Intermediary 1 or end client businesses should provide when they are engaging offshore employees?

Initially these reports will be made on a new form to HMRC. However, to minimise the burden to business we will consider in the longer term, if there is a possibility of integrating this requirement into the Real Time Information reporting requirements.

Implementation – soft landing

For the first year, after the new regime is introduced, it is proposed that there will be no penalties for making late returns or for providing incomplete information on the return.

When the penalty regime is introduced in 2015/16 there will still be mitigations for incorrect returns where a business has taken reasonable care to assure itself that the information it is returning to HMRC in respect of workers who are employed offshore is correct.

7. Summary of Impacts

This is our current understanding of the impacts. The responses to the consultation will feed into the data that will form the final TIIN to be published in the autumn.

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	+0	+80	+85	+85	+90
Economic impact	This measure is not expected to have any significant economic impact.				
Impact on individuals and households	No impact on individuals or households has been identified.				
Equalities impacts	No equalities impact has been identified.				
Impact on businesses and Civil Society Organisations	This measure is expected to have a negligible impact on businesses who will have a small increase in their administrative burdens as they will have to assure their supply chain.				
Impact on HMRC or other public sector delivery organisations	The operational impact of this measure is expected to be negligible.				
Other impacts					

8. Summary of Consultation Questions

Chapters 4 to 5

Question 1: Would these proposals defining intermediary 1 cause any practical difficulties e.g. to genuine commercial arrangements? Please provide details and examples.

Question 2: Are there likely to be any commercial difficulties with the proposed definition of end user, above? If so please say what they are likely to be and provide examples.

Question 3: Are calculating the payments in this way likely to cause any problems? If so what are they? Please provide examples.

Question 4: Is there any reason why this proposal might disrupt existing arrangements? Please provide reasons.

Question 5: Do you have views about how about how the Government's proposal that all oil and gas workers on the UK continental shelf should be included in this measure? If so what are they?

Question 6: Is this likely to have any unintended consequences? If so what are they likely to be?

Question 7: Would it be better for the industry to amend the definition of mariner in Regulation 115 SSCR 2001 or to amend the exemption so that those who meet case B SSCR 2001 will be excluded from the exemption? Or is there another way that this could be achieved, that would be better for the industry? Please state the reason for your preference.

Question 8: For oil and gas workers it is intended that the end client will be the licensee of the oil field. Are there likely to be any adverse impacts from this?

Chapter 6

Question 9: How big an administrative burden is the requirement to have in the power or possession of an intermediary business, records of how the worker is ultimately engaged and paid where that business is supplying labour or services including the supply of labour likely to be? Please provide examples and as far as possible illustrative costings as part of your response.

Question 10: How big an administrative burden is it likely to be to make a quarterly return to HMRC? Would a more or less frequent return be desirable? Please provide reasons for your answer.

Question 11: How difficult is it likely to be for intermediary 1 to obtain this information? Please provide reasons and examples with you answer.

Question 12: Is there anything that it is likely to be particularly difficult to produce? If so please provide reasons.

Question 13: Is there anything additional that Intermediary 1 or end client businesses should provide when they are engaging offshore employees?

9. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process for the record keeping and filing requirements. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

This consultation is taking place during stage 3 of the process for creating an obligation on the offshore employer, making them the secondary contributor and moving the historic debt and future obligations in the case of a default. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

How to respond

A summary of the questions in this consultation is included at chapter 8.

Responses should be sent by 8 August 2013 by e-mail to paye.policy@hmrc.gsi.gov.uk or by post to: Sarah Radford, 1E/10 100 Parliament Street, London, SW1A 2BQ.

Telephone enquiries 020 7147 2414 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC Inside Government. All responses will be

acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

Amy Burgess, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: List of stakeholders consulted

Representative Bodies

Oil and Gas UK

Recruitment and Employers Confederation

Accountancy Firms

Deloitte

Ernst and Young

KPMG

Annex B: Relevant (current) Government Legislation

Section 689 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003

689 Employee of non-UK employer

(1) This section applies if—

(a) an employee during any period works for a person ("the relevant person") who is not the employer of the employee,

(b) any payment of, or on account of, PAYE income of the employee in respect of that period is made by a person who is the employer or an intermediary of the employer or of the relevant person,

(c) PAYE regulations do not apply to the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer, and

(d) income tax and any relevant debts are not deducted, or not accounted for, in accordance with the regulations by the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer.

(1A) Subject to subsection (4), subsection (1)(b) does not apply in relation to a payment so far as the sum paid is employment income under Chapter 2 of Part 7A.

(2) The relevant person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount given by subsection

(3) The amount referred to is—

(a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of income tax and any relevant debts due under the PAYE regulations, the aggregate of the amount of the payment and the amount of any income tax and any relevant debts deductible due, and

(b) in any other case, the amount of the payment.

(4) If, by virtue of any of sections 687A and 693 to 700, an employer would be treated for the purposes of PAYE regulations (if they applied to the employer) as making a payment of any amount to an employee, this section has effect as if—

(a) the employer were also to be treated for the purposes of this section as making an actual payment of that amount, and

(b) paragraph (a) of subsection (3) were omitted.

(5) For the purposes of this section a payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer or of the relevant person if it is made—

(a) by a person acting on behalf of the employer or the relevant person and at the expense of the employer or the relevant person or a person connected with the employer or the relevant person, or

(b) by trustees holding property for any persons who include or class of persons which includes the employee.

(6) In this section and sections 690 and 691 "work", in relation to an employee, means the performance of any duties of the employment of the employee and any reference to the employee's working is to be read accordingly.

Paragraph 9 of Schedule 3 to the Social Security (Categorisation of Earners) Regulations (SI 1978/1689)

SCHEDULE 3

Regulation 5

EMPLOYMENTS IN RESPECT OF WHICH PERSONS ARE TREATED AS SECONDARY CLASS 1 CONTRIBUTORS

Column (A)	Column (B)
Employments	*Persons treated as secondary Class 1 contributors*
9. Employment by a foreign employer where – (a) in pursuance of that employment the personal service of the person employed is made available to a host employer; and (b) the personal service is rendered for the purposes of the business of that host employer; and (c) that personal service for the host employer begins on or after 6th April 1994. Where the employment is as a mariner, this paragraph only applies where the duties of the employment are performed wholly or mainly in category A, B, C or D waters	9. The host employer to whom the personal service of the person employed is made available.

STATUTORY INSTRUMENTS

1977 No. 2150

SOCIAL SECURITY

The Social Security (Isle of Man) Order 1977

Made 21st December 1977
Coming into Operation 1st January 1978
At the Court at Buckingham Palace, the 21st day of December 1977

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 143 of the Social Security Act 1975, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Social Security (Isle of Man) Order 1977 and shall come into operation on 1st January 1978.
(2) Any reference in this Order to any provision made by, or contained in, any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument, and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.
(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889shall apply for the purposes of the Interpretation of this Order and the revocation effected by it as they would apply if this Order and the Order which it revokes were Acts of Parliament and there vocation were a repeal.

Modification and Adaptation of the Social Security Act 1975

2.—(1) The Social Security Act 1975 shall be modified to such extent as may be required to give effect to the provisions contained in the Agreement relating to Social Security set out in Schedule 1to this Order, so far as the same relate to England, Wales and Scotland.
(2) In particular and without prejudice to paragraph (1) above any provision of the Social Security Act 1975 specified in Schedule 2 to this Order shall be adapted so that any act, omission or event to which the corresponding provision in Isle of Man legislation relates is deemed to be an act, omission or event to which that provision of the Social Security Act 1975 relates; and in that provision references to—
(a) the Secretary of State shall be construed as including references to the Isle of Man Board of Social Security;
(b) the National Insurance Fund shall be construed as including references to the Manx National Insurance Fund;
(c) benefit, contributions and employed earners shall be construed as references to benefit, contributions and employed earners respectively within the meaning of the Social Security Act 1975 (an Act of Parliament) as applied to the Isle of Man by virtue of orders made under the Social Security Legislation (Application) Act 1974 (an Act of Tynwald), and cognate expressions shall be construed accordingly.

Revocation and Variation of Orders

3.—(1) The National Insurance (Industrial Injuries) (Isle of Man Reciprocal Agreement) Order1948 is hereby revoked.
(2) In Schedule 1 to the Social Security (Reciprocal Agreements) Order 1976 the references to the said Order of 1948 and to the National Insurance (Isle of Man Reciprocal Agreement) Order1948 shall be omitted.
N. E. Leigh
Clerk of the Privy Council

SCHEDULE 1 **Article 2(1)**
AGREEMENT RELATING TO SOCIAL SECURITY BETWEEN THE SECRETARY OF STATE FOR SOCIAL SERVICES AND THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES FOR NORTHERN IRELAND OF THE ONE PART AND THE LIEUTENANT-GOVERNOR OF THE ISLE OF MAN, WITH THE ADVICE AND CONSENT OF THE ISLE OF MAN BOARD OF SOCIAL SECURITY CONSTITUTED UNDER THE ISLE OF MAN BOARD OF SOCIAL SECURITY ACT 1970, OF THE OTHER PART

1.—(1) In the present Agreement, unless the context otherwise requires:
"the Acts" means, in relation to the United Kingdom, the Social Security Act 1975 and the Social Security (Northern Ireland) Act 1975 in each case as amended, modified, adapted, extended, supplemented, replaced or consolidated by any subsequent enactment or by any instrument and, in relation to the Isle of Man, any applied legislation relating to social security; but does not include any enactment made for the purpose of giving effect to the provisions of any agreement applying to one of the territories and providing for reciprocity with a scheme of social security in force outside the United Kingdom and the Isle of Man;
"applied legislation relating to social security" means any legislation having effect in the Isle of Man by virtue of an order made under the Social Security Legislation (Application) Act 1974 (an Act of Tynwald) as amended by any subsequent Act of Tynwald but not including legislation relating to supplementary benefit or child benefit;
"competent authority" means, in relation to the United Kingdom, the Secretary of State for Social Services or the Department of Health and Social Services for Northern Ireland as the case may require and in relation to the Isle of Man, the Isle of Man Board of Social Security;
"territory" means, in relation to the United Kingdom, England, Scotland, Wales and Northern Ireland, and in relation to the Isle of Man, the Isle of Man.
(2) Unless the context otherwise requires, in the application of the present Agreement to a territory, expressions in the present Agreement shall have the same respective meanings as in the Act which relates to that territory.
(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889 shall apply for the purposes of the interpretation of the present Agreement as they apply for the purpose of the interpretation of an Act of Parliament.
2.—(1) For the purposes of all or any of the provisions of the systems of social security established by the Acts—
(a) acts, omissions and events and in particular residence, presence, employment (including employment as a mariner or airman), the occurrence of an industrial accident or the development of any prescribed disease, the payment, crediting or treating as paid of contributions (including graduated contributions and payments in lieu of graduated contributions), the refund of contributions paid in excess of the annual maximum amounts payable and the claiming or payment of benefit; and
(b) the operation of any provisions as to exception from liability to pay contributions,
having effect for all or any of those purposes in one territory shall have corresponding effect for all or any of those purposes in the other territory.

(2) If an employed earner has an accident after he leaves one territory to go in the course of his employment to the other territory and before he arrives in the latter territory, then for the purpose of any right to benefit in respect of that accident:—
(a) a claim for benefit may be made in either territory; and
(b) the accident shall be treated as if it had happened in the territory in which the claim is made; and
(c) the employed earner's absence from either territory shall be disregarded in determining whether the employment is employed earner's employment for the purposes of those provisions of the Acts relating to industrial injuries benefits.
(3) Subject to paragraph (4) of this Article any appeal from a determination of any claim or question arising under or in connection with the Acts shall be made, and any question with a view to the review of any such decision shall be raised, in the territory in which such decision was given.
(4) An assessment of the extent of disablement may be reviewed in one territory, on account of an unforeseen aggravation of the results of the relevant injury, notwithstanding that the assessment was made in the other territory.
3. The provisions of Article 2 of the present Agreement shall not confer a right to double benefit.
4. The competent authorities with the consent of the Treasury, the Department of Finance for Northern Ireland and the Isle of Man Finance Board as the case may require, shall be responsible for making any necessary financial adjustments between the National Insurance Funds of the territories as they may agree to be necessary for the purposes of the present Agreement.
5. The competent authorities shall, from time to time determine the administrative procedures appropriate for the purpose of giving effect to the provisions of the present Agreement.
6. The present Agreement shall come into force on 1st January 1978 but either Party may terminate it by giving not less than six months notice in writing to the other.
7. The Agreements relating to National Insurance and Industrial Injuries made in 1948 between the Minister of National Insurance of the one part and the Lieutenant-Governor of the Isle of Man, with the advice and consent of the Isle of Man Board of Social Services, of the other part, and the Agreements relating to National Insurance and Industrial Injuries made in 1949 between the Ministry of Labour and National Insurance for Northern Ireland of the one part and the Lieutenant-Governor of the Isle of Man, with the advice and consent of the Isle of Man Board of Social Services, of the other part shall be terminated upon the coming into force of the present Agreement, and anything whatsoever occurring, done or suffered before such termination and having effect for the purposes of the said Agreements shall be treated as having a corresponding effect for the purpose of the present Agreement.

Given under the Official Seal of the Secretary of State for Social Services this 15th day of September 1977.
David Ennals
Secretary of State for Social Services.
Given under the Official Seal of the Department of Health and Social Services for Northern Ireland this 22nd day of September 1977.
N. Dugdale,
Secretary.
Given under the hand of the Lieutenant-Governor of the Isle of Man this 10th day of November 1977.
Sir John Paul,
Lieutenant-Governor.
The consent of the Isle of Man Board of Social Security is hereby given to this Agreement.
Noel Q. Cringle,
Chairman, Isle of Man Board of Social Security.

SCHEDULE 2
CERTAIN PROVISIONS OF THE SOCIAL SECURITY ACT 1975 TO BE ADAPTED UNDER ARTICLE 2(2)

Provision	Subject matter
Section 1(4) and paragraph 3(2) of Schedule 1	Penalty for unlawful deduction of employer's contribution
Section 87	Benefit to be inalienable
Regulations for the time being in force under section 88(b)	Obligations of employers
Section 144(2)	Powers of inspectors
Section 146	Offences and penalties
Section 147	General provisions as to prosecutions
Section 148	Questions arising in proceedings
Section 149	Evidence of non-payment
Section 150	Recovery on prosecution
Section 151	Proof of previous offences
Section 152	Provisions supplementary to 2 preceding sections
Section 153(1) and Schedule 18	Priority in cases of personal and company insolvency

EXPLANATORY NOTE
This Order makes provision for modification of the Social Security Act 1975 so as to give effect to the Agreement relating to Social Security (set out in Schedule 1) between the Secretary of State for Social Services and the Department of Health and Social Services for Northern Ireland of the one part and the Lieutenant-Governor of the Isle of Man on the other. The Agreement provides that acts, omissions and events having effect for social security purposes in the territory of one party shall have effect for those purposes in the territory of the other. The Order makes adaptations to certain provisions of the Social Security Act 1975 (which are set out in Schedule 2) as to administration and enforcement so that certain matters to which corresponding provisions of Isle of Man legislation relate are deemed to be matters to which the provisions of the 1975 Act relate.

Social Security (Contributions) Regulations 2001

114 Application to employment in connection with continental shelf of Part I of the Act and so much of Part VI of the Act as relates to contributions

(1) For the purposes of section 120 of the Act (employment at sea (continental shelf operations)), prescribed employment shall be any employment (whether under a contract of service or not) in any area which may from time to time be designated by Order in Council under section 1(7) of the Continental Shelf Act 1964, where the employment is in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998 in the designated area.
(2) Where a person is employed in any employment specified in paragraph (1), the provisions of Part I of the Act and so much of Part VI of the Act as relates to contributions shall, subject to the provisions of paragraph (3), apply as though the area so designated were in Great Britain, and notwithstanding that he does not satisfy the conditions as of residence or presence in Great Britain prescribed in regulation 145(1)(a).
(3) Where a person employed in any employment specified in paragraph (1) is, on account of his being outside Great Britain by reason of that employment, unable to perform any act required to be done either immediately or on the happening of a certain event or within a specified time, he shall be deemed to have complied with the requirement if he performs the act as soon as reasonably practicable, although after the happening of the event or the expiration of the specified time.

Social Security (Contributions) Regulations 2001

145 Condition as to residence or presence in Great Britain or Northern Ireland

(1) Subject to paragraph (2)1, for the purposes of section 1(6) of the Act (conditions as to residence or presence in Great Britain for liability or entitlement to pay Class 1 or Class 2 contributions, liability to pay Class 1A or Class 1B contributions or entitlement to pay Class 3 Contributions) the conditions as to residence or presence in Great Britain or Northern Ireland (as the case requires) shall be—
(a) as respects liability of an employed earner to pay primary Class 1 contributions in respect of earnings for an employed earner's employment, that the employed earner is resident or present in Great Britain or Northern Ireland (or but for any temporary absence would be present in Great Britain or Northern Ireland) at the time of that employment or is then ordinarily resident in Great Britain or Northern Ireland (as the case may be);
(b) as respect liability to pay secondary Class 1 contributions, Class 1A contributions or Class 1B contributions that the person who, but for any conditions as to residence or presence in Great Britain or Northern Ireland (as the case may be and including the having of a place of business in Great Britain or Northern Ireland), would be the secondary contributor or the person liable for the payment of Class 1B contributions (in this Case referred to as “the employer”) is resident or present in Great Britain or Northern Ireland when such contributions become payable or then has a place of business in Great Britain or Northern Ireland (as the case may be), so however that nothing in this paragraph shall prevent the employer paying the said contributions if he so wishes;
(c) as respects entitlement of a self-employed earner to pay Class 2 contributions, that that earner is present in Great Britain or Northern Ireland (as the case may be) in the contribution week for which the contribution is to be paid;
(d) as respects liability of a self-employed earner to pay Class 2 contributions, that the self-employed earner is ordinarily resident in Great Britain or Northern Ireland (as the case may be), or, if he is not so ordinarily resident, that before the period in respect of which any such contributions are to be paid he has been resident in Great Britain (as the case may be) for a period of at least 26 out of the immediately preceding 52 contribution weeks under the Act, the Social Security Act 1975 or the National Insurance Act 1965 or under some or all of those Acts.

(e) as respects entitlement of a person to pay Class 3 contributions in respect of any year, either that—
(i) that person is resident in Great Britain or Northern Ireland (as the case may be) throughout the year,
(ii) that person has arrived in Great Britain or Northern Ireland (as the case may be) during that year and has been or is liable to pay Class 1 or Class 2 contributions in respect of an earlier period during that year,
(iii) that person has arrived in Great Britain or Northern Ireland (as the case may be) during that year and was either ordinarily resident in Great Britain or Northern Ireland (as the case may be) throughout the whole of that year or became ordinarily resident during the course of it, or
(iv) that person not being ordinarily resident in Great Britain or Northern Ireland (as the case may be), has arrived in that year or the previous year and has been continuously present in Great Britain or Northern Ireland (as the case may be) for 26 complete contribution weeks, entitlement where the arrival has been in the previous year arising in respect only of the next year.

(2) Where a person is ordinarily neither resident nor employed in the United Kingdom and, in pursuance of employment which is mainly employment outside the United Kingdom by an employer whose place of business is outside the United Kingdom (whether or not he also has a place of business in the United Kingdom) that person is employed for a time in Great Britain or Northern Ireland (as the case may be) as an employed earner and, but for the provisions of this paragraph, the provisions of sub-paragraph (a) of paragraph (1) would apply, the conditions prescribed in that sub-paragraph and in sub-paragraph (b) of that paragraph shall apply subject to the proviso that—
(a) no primary or secondary Class 1 contribution shall be payable in respect of the earnings of the employed earner for such employment;
(b) no Class 1A contribution shall be payable in respect of something which is made available to the employed earner or to a member of his family or household by reason of such employment; and
(c) no Class 1B contribution shall be payable in respect of any PAYE settlement agreement in connection with such employment, after the date of the earner's last entry into Great Britain or Northern Ireland (as the case may be) and before he has been resident in Great Britain or Northern Ireland (as the case may be) for a continuous period of 52 contribution weeks from the beginning of the contribution week following that in which that date falls.