

Changes in the final MSC draft offer help to contractors

A few days ago the third and final reading of the [Finance Bill for 2007](#) was completed in the House of Commons. This means that the [managed service company legislation](#), which has brought so much controversy and difficulty into the lives of contractors, has reached its final form and only awaits Her Majesty the Queen's assent to become law.

With the [guidance that HM Revenue issued](#) on July 7, 2007, the law is not quite as daunting as it originally appeared. But, as Jonathan Legg, a lawyer with the London-based firm [Lawrence Graham](#) points out, a couple of last-minute changes adopted have the effect of clearing up some significant areas where doubts still reigned. "The area of third-party liability is significantly improved," Legg says, "and it should be easier for contractors to work with agencies under the final draft."

'Facilitate' Removed From Third-Party Liability Section

The Guidance issued by the Revenue on July 7 still discusses the term 'facilitate' as it applies to companies, but this term has been removed from the final draft. "This is an important issue in third-party liability, because persons--people or companies--who 'facilitate' the work of contractors with MSCs risk having to pay contractor tax debt if the contractor company fails."

Not Splitting Hairs

The section in the law (see page 99 of the Finance Bill) now reads: "[Is liable for contractor tax debt through an MSC]: a person who (directly or indirectly) has encouraged or been actively involved in the provision by the MSC of the services of the individual..."

If all this sounds to you like lawyers splitting hairs, you should realise that it's much more than that. "Put yourself in the place of an agency advising a contractor," Legg insists. "Suppose the agency gives the contractor a list of service providers, and the contractor picks one that later turns out to be an MSC. It wouldn't be hard to claim that the agency had 'facilitated' the contractor's choice by giving out the list. But with the new draft, the agency can hardly be said to be 'encouraging' the contractor by simply listing options. 'Encouraging' would be much more like pointing to a certain one."

“ The area of third party liability is significantly improved ”

Jonathan Legg-Lawrence
Graham

Encouraging is Different

Industry veterans of course know what is meant by 'encouraging,' although the lawyers aren't able to talk about it. Some agencies--not all, by any means--have deals with providers, and when they send the contractors to specific ones, they certainly are 'encouraging' them to make a choice.

More Agency Guidance

Legg does point out that the final draft also includes another change that is of note to contractors, one that enormously simplifies work with agencies who had previously been in fear of being branded as MSCs (see page 100 of the final bill).

This reads: "A person does not fall within [the definition of a managed service company] merely by virtue of carrying on a business consisting only of placing individuals with persons who wish to obtain their services (including by contracting with companies which provide their services)."

This excludes agencies from the definition quite definitively, as Legg explains. "This text was added to the final draft at the suggestion of Stephen Timms, who is now Minister for Small Business. Timms clearly understood that a vast sector of the British economy would have been affected if agencies had to live in fear of being named as MSCs."

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“ The issues of contractors working with agencies are resolved in this final bill ”

Jonathan Legg-Lawrence
Graham



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