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Ms Margaret Falsey
PAC Secretariat
Committee of Public Accounts
Leinster House
Dublin 2

6th November 2014

Dear Margaret,

I refer to your email of 27 June 2014 concerning an issue raised at the meeting of the Public Accounts Committee on 26th June 2014 seeking a note from this Department on the issues raised.

A note on the general issue of insurability of employment and the insurability of couriers is enclosed herewith. If you have any queries please come back to me.

Yours sincerely,

A handwritten signature in cursive script that reads "Sarah Niland".

Sarah Niland
Private Secretary to the Secretary General

Insurability of employment

While the terms “employed” and “self-employed” are not defined in law, insurability under the Social Welfare Acts generally hinges on two types of employment contracts:

- a contract of service - where a person works as an employee.
- a contract for services - where the contractual relationship does not amount to a contract of service or apprenticeship and falls to be treated as self-employment.

Scope Section in the Department of Social Protection makes decisions on the insurability of employment. It decides which category a person falls into by looking at what the person actually does, the way in which it is done and the terms and conditions of the person’s work, even if they are only implied. Whether a person is employed or self-employed depends on the facts of the individual working arrangements. Each case must be determined in the light of its particular facts and circumstances.

Each case is assessed on its own merits in accordance with the general precedents of Irish law concerning contract of service. Decisions are based on all the available evidence and also on legal principles handed down in various court judgements over the years. They are based on established facts. Operations which seem to be the same may differ in the actual terms and conditions in any given case.

In recognition of the difficulty of determining whether a person is employed or self-employed the Employment Status Group (set up under the Programme for Prosperity and Fairness) published a Code of Practice for determining Employment or Self-employment status of individuals. The Programme for Prosperity and Fairness stated that “The Office of the Revenue Commissioners and the Department of Social, Community and Family Affairs in consultation with the Social Partners will seek a uniform definition of “employee” based on clear criteria, which will determine the employment status of an individual”. The Deciding Officers in Scope section use the Code of Practice to assist them in determining whether a person is employed or self-employed.

An individual’s classification for social insurance purposes is important as it affects the rate of Pay Related Social Insurance (PRSI) which they pay on their salary or income. This in

turn affects the social insurance benefits to which they are entitled. Generally an individual is classified for PRSI purposes as an employee or as self-employed.

Where an individual is classified as an employee PRSI is payable on their earnings by the employee and their employer. Generally employees pay class A PRSI at the rate of 4%. In addition, their employers make a PRSI contribution of 10.75% in respect of their employees, resulting in the payment of a combined 14.75% rate per employee under full-rate PRSI class A.

Class A provides employees with entitlement to the full range of social insurance benefits including short term benefits in respect of illness, unemployment and maternity as well as long term benefits such as widow/widower's or surviving civil partner's pension and State pension contributory.

Where an individual is classified as self-employed they pay class S PRSI at the rate of 4% on their earned income from self-employment. Those paying class S can have an entitlement to certain short-term benefits (i.e. maternity benefit) as well as long term benefits such as widow/widower's or surviving civil partner's pension and State pension contributory.

Third Report from the Advisory Group on Tax and Social Welfare on Extending Social Insurance Coverage for the Self-employed

The report from the Advisory Group on Tax and Social Welfare, published in May 2013, identified trends in the labour market which have resulted in some workers being classified as self-employed, whereas their employment characteristics would properly determine them as employees. The report suggested that in some cases persons have falsely declared themselves as self-employed so as to avail of different tax treatment. In other cases, employees have been falsely declared as self-employed so as to circumvent employer obligations under labour legislation.

Where details of specific cases are supplied to the Department of Social Protection they are investigated and the insurability of the person concerned is determined under the Code of Practice for Determining Employment or Self-Employment Status of Individuals.

The Department of Social Protection and the Office of the Revenue Commissioners investigate any cases of misclassification of employment.

In addition to the investigative activity undertaken by the Department there are also a number of structures in place to ensure the issue of insurability and classification of employment are strategically looked at

1) **DSP/Revenue High Level Group:** The Department liaises bilaterally with Revenue through the High Level Group, whose main purpose is to deepen the interaction at strategic and at operational level between the organisations. The purpose of the group is to ensure ongoing collaboration and interaction between the organisations, including in relation to social welfare fraud and tax non-compliance. A number of sub group are designated specifically to look at information and data exchanges, shadow economy & JIU, PRSI & PRSI underpayments and Joint Architectures group.

2) **The Hidden Economy Monitoring Group (HEMG):** is a formal structure to monitor developments, share experiences and make proposals for combating the hidden economy. Chaired by the Revenue Commissioners, the Department is an active member of the statutory pillar which also includes the Department of Jobs, Enterprise and Innovation and the National Employment Rights Authority. On the non-statutory side, the Group's membership also consists of Irish Business Employers' Confederation, Small Firms Association, Construction Industry Federation and Irish Congress of Trades Unions.

Employment status of couriers

Questions about the employment status of couriers were raised back in the 1990s. In order to resolve the matter at that time a number of representative “Test cases” were selected in 1993/1994 for detailed investigation and formal insurability decision under social welfare legislation. This process resulted in a decision by an Appeals Officer of the Social Welfare Appeals Office on 12 June 1995 who decided that a courier was self-employed if he

- (a) Provided his own vehicle and equipment
- (b) Was responsible for all expenses – including tax, insurance, maintenance etc., and
- (c) Payment was made on the basis of rate per job plus mileage allowance.

This Appeals Officer’s decision established the criteria in relation to the employment status of couriers that has since then, been accepted throughout the industry and also by the Office of the Revenue Commissioners for income tax purposes.

In July 2000, Mr Martin McMahon sought an insurability decision in relation to his work as a courier with Securicor Omega Express Ireland Limited. A Scope Section Deciding Officer considered that the terms and conditions of Mr McMahon’s employment differed from those of the 1995 “Test Case” and decided on 31 August 2000 that he was employed under a contract of service (i.e. employee). This decision was appealed by Securicor Omega Express Ireland Ltd. and an Appeals Officer decided that Mr McMahon was employed under a contract for services (i.e. self-employed). This decision was upheld by the Chief Appeals Officer.