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STATUTORY INSTRUMENTS

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**2013 No. 622**

The Social Security (Contributions)  
(Amendment and Application of Schedule 38  
to the Finance Act 2012) Regulations 2013

PART 3

Real Time Information

CHAPTER 1

Real Time Information

**Amendment of Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As Your Earn) Regulations 2003**

5. Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations) is amended as provided for in regulations 6 to 22.

**Interpretation**

6. In paragraph 1 (interpretation) omit sub-paragraph (4)(c) (but not the “and” after it).

**Payment of earnings-related contributions monthly by employer**

7. In paragraph 10(3A) (payment of earnings-related contributions monthly by employer) after “applies” insert “, or failures rectified under paragraph 21EA(2)(1)”.

**Payments of earnings-related contributions quarterly by employer**

8. In paragraph 11(3A) (payments of earnings-related contributions quarterly by employer) after “applies” insert “, or failures rectified under paragraph 21EA(2)”.

**Payments to and recoveries from HMRC for each tax period by Real Time Information employers: return under paragraph 21E(6) or 21EA(3)**

9.—(1) In paragraph 11ZA(1) (payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under paragraph 21E(6)) after “21E(4)” insert “, or paragraph 21EA(3) (failure to make a return under paragraph 21A or 21D of Schedule 4)”.

(2) Accordingly, in the heading of paragraph 11ZA after “21E(6)” insert “or 21EA(3)”.

### **Real Time returns of information about payments of general earnings**

**10.**—(1) Paragraph 21A (real time returns of information about payments of general earnings) is amended as follows.

(2) In sub-paragraph (1) for “unless the employer is not required” to the end substitute—  
“unless—

- (a) the employer is not required to maintain a deductions working sheet for any employees, or
  - (b) an employee’s earnings are below the lower earnings limit and the employer is required to make a return under regulation 67B(1), regulation 67D(3), regulation 67E(6) or regulation 67EA(3) of the PAYE Regulations(2).”.
- (3) Omit sub-paragraphs (6) and (7).

### **Exceptions to paragraph 21A**

**11.** After paragraph 21A (real time returns of information about payments of general earnings) insert—

#### **“Employees in respect of whom employer is not required to maintain a deductions worksheet**

**21AA.**—(1) This paragraph applies if an employer makes a payment of general earnings to an employee in respect of whom the employer is not required to maintain a deductions working sheet.

(2) The employer need not deliver the information required by paragraph 21A in respect of that employee on or before making the payment.

(3) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

#### **Employees paid in specified circumstances**

**21AB.**—(1) This paragraph applies if—

- (a) an employer makes a payment of general earnings to an employee, and
  - (b) all of the circumstances in sub-paragraph (2) apply.
- (2) The circumstances are that—
- (a) the payment includes an amount of general earnings which is for work undertaken by the employee on—
    - (i) the day the payment is made, or
    - (ii) provided that the payment is made before the employee leaves the place of work at the end of the employee’s period of work, the day before the payment is made,
  - (b) in respect of the work mentioned in paragraph (a), it was not reasonably practicable for the employer to calculate the payment due before the completion of the work, and
  - (c) it is not reasonably practicable for the employer to deliver the information required by paragraph 21A on or before making the payment.

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(2) Regulations 67B, 67D and 67E were inserted into the PAYE Regulations by regulation 27 of [S.I. 2012/822](#) and regulation 67EA was inserted by regulation 23 of [S.I. 2013/521](#).

(3) The employer need not deliver the information required by paragraph 21A on or before making the payment.

(4) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

**Paragraphs 21AA and 21AB: supplementary**

**21AC** Where paragraph 21AA or 21AB applies, the information required by paragraph 21A in respect of the payment of general earnings may be included in a return with the information for any other payment of general earnings.

**Benefits and expenses – returns under regulations 85 to 87 of the PAYE Regulations**

**21AD.**—(1) This paragraph applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax, falls to be included in a return under—

- (a) regulations 85 and 86 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must be provided for each employee), or
- (b) regulations 85 and 87 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must also be provided for benefits code employees) or would fall to be so included if the employee’s employment was subject to the benefits code for the purposes of regulation 85 of the PAYE Regulations.

(2) If the employer is unable to comply with the requirement in paragraph 21A(1) to deliver the information required by that paragraph on or before making the payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than 14 days after the end of the tax month in which the payment is made.”.

**Modification of the requirements of paragraph 21A: notional payments**

**12.**—(1) Paragraph 21B (modification of the requirements of paragraph 21A: notional payments) is amended as follows.

- (2) In sub-paragraph (1) for “regulation” substitute “paragraph”.
- (3) In sub-paragraph (2) omit paragraph (b) (but not the “or” after it).

**Notifications of payments of general earnings to and by providers of certain electronic payment methods**

**13.** After paragraph 21C (relationship between paragraph 21A and aggregation of earnings) insert—

**“Notifications of payments of general earnings to and by providers of certain electronic payment methods**

**21CA.**—(1) A Real Time Information employer who makes a payment of general earnings using an approved method of electronic communications which falls to be included in a return under paragraph 21A must—

- (a) generate a reference and include it in that return,
- (b) notify the service provider that the payment is a payment of general earnings, and

- (c) generate a sub-reference in respect of the payment of general earnings and notify the service provider of that sub-reference.
- (2) A service provider who receives a notification under paragraph (1)(b) must notify HMRC of the information it holds that is required for generating a reference in relation to the payment of general earnings.
- (3) In sub-paragraphs (1) and (2), “service provider” means the provider of the approved method of electronic communications by which the payment is made.
- (4) For the purposes of sub-paragraphs (1) and (3), an “approved method of electronic communications” is any method of electronic communications which has been approved for the purposes of regulation 90H (mandatory electronic payment).
- (5) Any direction given under regulation 67CA of the PAYE Regulations (notification of relevant payments to and by providers of certain electronic payment methods)<sup>(3)</sup> applies for the purposes of the obligations in this paragraph as if it referred to payments of general earnings.”.

### **Exceptions to paragraph 21A**

- 14.—(1) Paragraph 21D (exceptions to paragraph 21A) is amended as follows.
- (2) In sub-paragraph (1) after paragraph (d) insert—
  - “(e) an employer to whom a direction has been given under sub-paragraph (12).”.
- (3) After sub-paragraph (2) insert—
  - “(2A) Before 6th April 2014, a Real Time Information employer to whom this paragraph applies may proceed as if the employer were a non-Real Time Information employer and accordingly the provisions of this Schedule apply to such an employer.”.
- (4) In sub-paragraph (3) for “A” substitute “On and after 6th April 2014, the”.
- (5) Omit sub-paragraphs (7) and (8).
- (6) After sub-paragraph (11) insert—
  - “(12) Where the Commissioners for Her Majesty’s Revenue and Customs are satisfied that—
    - (a) it is not reasonably practicable for an employer to make a return using an approved method of electronic communications, and
    - (b) it is the employer who delivers the return (and not some other person on the employer’s behalf),
 they may make a direction specifying that the employer is not required to make a return using an approved method of electronic communications.”.

### **Returns under paragraphs 21A and 21D: amendments**

- 15.—(1) Paragraph 21E (returns under paragraphs 21A and 21D: amendments) is amended as follows.
- (2) In sub-paragraph (2) for “paragraphs 7” substitute “one or more of paragraphs 3A, 7”<sup>(4)</sup>.
- (3) In sub-paragraph (7)—
  - (a) in paragraph (a)(i) for “2 and 12” substitute “2 to 7 and 10 to 12”,
  - (b) omit paragraph (a)(ii), and

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<sup>(3)</sup> Regulation 67CA of the PAYE Regulations was inserted by regulation 2 of S.I. 2012/1895.

<sup>(4)</sup> Paragraph 3A of Schedule 4A is inserted by regulation 26 of these Regulations.

(c) in paragraph (c) after “communications” insert—

“and regulation 90N(2) (mandatory use of electronic communications) applies as if the return was a paragraph 22 return within the meaning given by regulation 90M (paragraph 22 return and specified payments)”.

16. After paragraph 21E insert—

**“Failure to make a return under paragraph 21A or 21D**

**21EA.**—(1) This paragraph applies where an employer does not make a return required by paragraph 21A (real time returns of information about payments of general earnings) or 21D (exceptions to paragraph 21A).

(2) The employer must provide the information in the next return made under paragraph 21A or 21D for the tax year in question.

(3) But if the information has not been provided before 20th April following the end of the tax year in question, the employer must submit a return under this sub-paragraph before 20th May following the tax year in question.

(4) A return under sub-paragraph (3) must—

(a) include the information specified in Schedule 4A,

(b) be made as soon as reasonably practicable after the discovery of the failure to make the return, and

(c) be made using an approved method of electronic communications and regulation 90N(2) (mandatory use of electronic communications) applies as if the return were a paragraph 22 return within the meaning given by regulation 90M (paragraph 22 return and specified payments).

(5) Sub-paragraph (4)(c) does not apply if the employer is one to whom paragraph 21D applies but in those circumstances the return must be in such a form as HMRC may approve or prescribe.

(6) Section 98A of TMA 1970 (special penalties in the case of certain returns)(5) applies to a return under sub-paragraph (3).”.

**Additional information about payments**

17.—(1) Paragraph 21F (additional information about payments) is amended as follows

(2) After sub-paragraph (7) insert—

“(7A) A Real Time Information employer may send to HMRC a notification (included within a return under this paragraph or otherwise) if—

(a) for a tax period, the employer was not required to make any returns in accordance with paragraph 21A or 21D because no payments of general earnings were made during the tax periods, or

(b) the employer has sent the final return under paragraph 21A or 21D that the employer expects to make—

(i) in the circumstances described in paragraph 5 of Schedule A1 to the PAYE Regulations (real time returns)(6); or

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(5) 1970 (c. 9). Section 98A was inserted by section 165 of the Finance Act 1989 (c. 26) and has been amended by paragraphs 123 and 138 of Schedule 6 to ITEPA; paragraph 8 of Schedule 12 to the Finance Act 2004 (c. 12) and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c. 11).

(6) Schedule A1 to the PAYE Regulations was inserted by regulation 52 of S.I. 2012/822.

(ii) for the year.”.

(3) In sub-paragraph (8)—

(a) after “(7)” insert “and a notification under paragraph (7A)”,

(b) omit “and” at the end of paragraph (a)(iii), and

(c) in paragraph (a)(iv) after “reference” insert—

“, and

(v) if the notification is under sub-paragraph (7A)(b)(i), include the date of cessation;”.

(4) Omit sub-paragraph (9).

#### **Return by employer at end of year**

**18.** In paragraph 22(A1) (return by employer at end of year), for “regulation” substitute “paragraph”.

#### **Requirement for security**

**19.** In paragraph 29N (requirement for security) after “11” insert “, 11ZA”.

#### **Direct collection involving deductions working sheets**

**20.** After paragraph 30 (provisions for direct payment) insert—

##### **“Application of paragraphs 31 and 31A**

**30A.**—(1) Paragraph 31(4) to (7) does not apply on or after 6th April 2014.

(2) Paragraph 31(7A) and (7B) applies only in relation to closed tax years ending on or before 5th April 2014.

(3) Paragraph 31A applies on and after 6th April 2014.”.

**21.**—(1) Paragraph 31 (direct collection involving deductions working sheets) is amended as follows.

(2) In sub-paragraph (1) after “and” in the second place it appears insert “, subject to paragraph 30A,”.

(3) In sub-paragraphs (7A) and (7B), for “employer” substitute “employee”.

**22.** After paragraph 31 (direct collection involving deductions working sheets) insert—

##### **“Direct collection involving deductions working sheets on and after 6th April 2014**

**31A.**—(1) On receiving any general earnings which fall to be recorded on a deductions working sheet under paragraph 31(2), subject to sub-paragraph (2), an employee must proceed in accordance with paragraph 21A(1), (2) and (5).

(2) If the employee falls within paragraph 21D(1)(a), the employee may instead proceed in accordance with paragraph 21D(3), (4) and (5).

(3) For the purposes of sub-paragraph (1), paragraph 21A(8) and paragraphs 21AB, 21AC, 21AD, 21B and 21C apply as if the employee were a Real Time Information employer.

(4) For the purposes of sub-paragraph (2), paragraph 21D(9) applies as if the employee were a Real Time Information employer.

(5) For the purposes of sub-paragraphs (1) and (2), paragraphs 15, 16, 21E, 21EA and 21F(7A) and (8) and Schedule 4A apply as if the employee were a Real Time Information employer, but the information required by paragraph 10(a) and (b) of that Schedule need not be provided.”.

### **Real time returns**

**23.** Schedule 4A (real time returns)(7) is amended as provided for in regulations 24 to 28.

**24.** In paragraph 2 (information about the employer and the employee)for “4 and 18 to 14” substitute “6, 8 to 15 and 18 to 20”.

**25.** After paragraph 2 insert—

“**2A.** For the purposes of paragraph 2, the references in paragraphs 5 and 6 of Schedule A1 to the PAYE Regulations to regulation 67F of those Regulations(8) shall be taken as references to paragraph 21F of Schedule 4 to these Regulations.”.

**26.** After paragraph 3 (information about payments to the employee, etc)—

“**3A.** The total of the amounts referred to in paragraph 3 in the year to date.”.

**27.** For paragraph 12 substitute—

“**12.** If the employee’s employment is contracted-out or was contracted-out at any time during the year—

- (a) the number notified by HMRC on the relevant contracting-out certificate as the employer’s number, and
- (b) the number notified by HMRC on the relevant contracting-out certificate as the registered pension scheme’s number.”.

**28.** After paragraph 12 insert—

“**12A.** Whether, during the period since the employer last made a return under paragraph 21A or 21D of Schedule 4 containing information about the employee—

- (a) the employee has been absent from the employment because of a trade dispute at the employer’s place of work, or
- (b) the employee has been absent from the employment without pay for any other reason.

**12B.** In cases—

- (a) falling within paragraph 30 of Schedule 4, or
- (b) where the employer has no obligation to deduct or repay tax in accordance with regulation 21 of the PAYE Regulations

the amount of the payment after statutory deductions, being the amount of the payment referred to in paragraph 3 minus the total amount of primary Class 1 contributions for the period (see paragraph 10(c)) minus the value of the deduction due under the Education (Student Loans) (Repayment) Regulations 2009(9) or the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(10).

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(7) Schedule 4A was inserted by regulation 14 of S.I. 2012/821.

(8) Regulation 67F of the PAYE Regulations was inserted by regulation 27 of S.I. 2012/822.

(9) S.I. 2009/470, as amended by S.I. 2010/661, 2011/784, 2012/836 and 2012/1309.

(10) S.R. (NI) 2009 No. 128, as amended by S.R. (N.I.) 2010 No. 90, S.R. (N.I.) 2011 No. 137 and S.R. (N.I.) 2012 No. 136.

**12C.** The value of any amount which is not subject to tax or national insurance contributions paid to the employee at the same time as the payment.

**12D.** The value of any deductions made from the payment which do not otherwise fall to be reported under Schedule 4.”.

## CHAPTER 2

### Real Time Information: transitional provisions

#### Information about employees

- 29.** On becoming a Real Time Information employer, an employer must provide to HMRC—
- (a) the information specified in paragraphs 2 to 4 of Schedule A1 to the PAYE Regulations,
  - (b) the income tax year in which the employer became a Real Time Information employer,
  - (c) the following information about each of the employer’s employees during the tax year in which the employer became a Real Time Information employer—
    - (i) the employee’s name,
    - (ii) the employee’s date of birth,
    - (iii) the employee’s current gender,
    - (iv) if known, the employee’s national insurance number,
    - (v) the employee’s address, and
    - (vi) the number used by the employer to identify the employee, if any.

#### Information about payments to employees

- 30.**—(1) Within one month of making the first return under paragraph 21A or 21D of Schedule 4 to the 2001 Regulations, a Real Time Information employer must provide to HMRC the information specified in paragraph (2) in respect of—
- (a) each employee who has been employed in the tax year the return was made in but whose employment had ceased before the date on which the return was made, and
  - (b) each employee to whom the relevant payments are made on an irregular basis and—
    - (i) in respect of whom information was not included on that return, and
    - (ii) to whom the employer does not expect to make a relevant payment within one month of making the return.
- (2) The information specified in this paragraph is that specified in—
- (a) paragraphs 3A, 6 to 9, 10(b), 10(d) and 12 of Schedule 4A to the 2001 Regulations, and
  - (b) paragraphs 2 to 4 of Schedule A1 to the PAYE Regulations.

#### Provision of information under regulations 29 and 30

- 31.**—(1) If an employer is one to whom paragraph (3) applies, the information required by regulation 27 must be provided before the employer makes any returns under paragraph 21A or 21D of Schedule 4 to the 2001 Regulations.
- (2) Any other employer may provide the information required by regulation 27 as part of the first return the employer makes under paragraph 21A or 21D of Schedule 4 to the 2001 Regulations.
- (3) This paragraph applies to an employer who, on the day the employer becomes a Real Time Information employer, employs 250 or more employees.



(4) The information required by regulations 29 and 30 must be provided using an approved method of electronic communications unless the employer is one to whom paragraph 21D of Schedule 4 to the 2001 Regulations applies in which case the information must be provided in the form specified by HMRC.

### **Regulations 29 to 31 interpretation**

**32.** Terms used in regulations 29 to 31 have the same meaning as they have in the 2001 Regulations.