
STATUTORY INSTRUMENTS

2012 No. 821

**The Social Security (Contributions)
(Amendment No. 3) Regulations 2012**

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 3) Regulations 2012 and come into force on 6th April 2012.

(2) In these Regulations—

“the 2001 Regulations” means the Social Security (Contributions) Regulations 2001(1);

“the 2003 Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(2); and

“the 2012 Regulations” means the Income Tax (Pay As You Earn) (Amendment) Regulations 2012(3).

Amendment of the 2001 Regulations

2. The 2001 Regulations are amended as provided for in regulations 3 to 14 and 17 to 31.

PART 2

Real Time Information

CHAPTER 1

Amendments to the 2001 Regulations

Collection and recovery of earnings-related contributions and Class 1B contributions

3. After regulation 67(2) (collection and recovery of earnings-related contributions and Class 1B contributions) insert—

“(3) Schedules 4A (real time returns) and 4B (additional information about payments) apply to and for the purposes of earnings-related contributions.”.

(1) S.I. 2001/1004; relevant amending instruments are S.I. 2001/2187, 2002/2929, 2003/193, 2004/770, 2006/476, 2006/567, 2007/1056, 2007/2068, 2008/636, 2009/600, 2010/721 and 2010/2450.
(2) S.I. 2003/2682, amended by S.I. 2012/822; there are other amending instruments but none is relevant.
(3) S.I. 2012/822.

Mandatory electronic payment

4. In regulation 90H(2) (mandatory electronic payment), before “68” insert “67G or”.

Interpretation of Schedule 4

5. In paragraph 1 of Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations 2003: interpretation)—

- (a) in sub-paragraph (2) insert the following in the appropriate places—

““non-Real Time Information employer” means an employer other than one within sub-paragraph (4);”;

““Real Time Information employer” has the meaning given in sub-paragraph (4);”,
and

- (b) after sub-paragraph (3) insert—

“(4) The following are Real Time Information employers for the purposes of this Schedule—

(a) an employer who has entered into an agreement with HMRC to comply with the provisions of this Schedule which are expressed as relating to Real Time Information employers;

(b) an employer within sub-paragraph (5);

(c) on and after 6th April 2013, employers to whom paragraph 21D (exceptions to paragraph 21A) applies; and

(d) on and after 6th October 2013, all employers.

(5) An employer is within this paragraph if the employer has been given a general or specific direction by the Commissioners for Her Majesty’s Revenue and Customs before 6th October 2013 to deliver to HMRC returns under paragraph 21A of this Schedule (real time returns of information about payments of general earnings).”.

Payment of earnings-related contributions monthly by employer

6. In paragraph 10 of Schedule 4 (payment of earnings-related contributions monthly by employer)—

- (a) in sub-paragraph (2), after “tax month” insert “(and, where required, reported under paragraph 21A or 21D)”; and

- (b) after sub-paragraph (3) insert—

“(3A) The amount specified in sub-paragraph (2) must be adjusted to take account of errors corrected under paragraph 21E(5), other than in cases where paragraph 21E(4) applies.”.

Payments of earnings-related contributions quarterly by employer

7. In paragraph 11 of Schedule 4 (payment of earnings related contributions quarterly by employer)—

- (a) in sub-paragraph (2), after “tax quarter” insert “(and, where required, reported under paragraph 21A or 21D)”; and

- (b) after sub-paragraph (3) insert—

“(3A) The amount specified in sub-paragraph (2) must be adjusted to take account of errors corrected under paragraph 21E(5), other than in cases where paragraph 21E(4) applies.”; and

(c) in sub-paragraph (4), in the definition of “P”, before “68” insert “67G or”.

Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under paragraph 21E(6)

8. After paragraph 11 of Schedule 4 insert—

“Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under paragraph 21E(6)

11ZA.—(1) This paragraph applies if, during any tax period, an employer makes a return under paragraph 21E(6) (returns under paragraph 21A and 21D: amendments) other than by virtue of paragraph 21E(4).

(2) The amount specified in paragraph 10(2) or, as the case may be, 11(2) for the final tax period in the year covered by the return is to be adjusted to take account of the information in the return.

(3) If the value of the adjustment required by paragraph (2) is a negative amount, the employer may recover that amount—

- (a) by setting it off against the amount the employer is liable to pay under paragraph 10(2) or, as the case may be, 11(2) for the tax period the return is made in; or
- (b) from the Commissioners for Her Majesty’s Revenue and Customs.

(4) But paragraph (3) does not apply in relation to primary Class 1 contributions in a case where those contributions were deducted in error and the excess deduction has not been refunded to the employee.”.

Employer failing to pay earnings-related contributions

9. In paragraph 14(1) of Schedule 4 (employer failing to pay earnings-related contributions), for “the employer” in the first place it appears substitute “a non-Real Time Information employer”.

Specified amount of earnings-related contributions payable by the employer

10. In paragraph 15 of Schedule 4 (specified amount of earnings-related contributions payable by the employer), after paragraph (1A) insert—

“(1B) In arriving at an amount under paragraph (1), HMRC may also take into account any returns made by the employer under this Schedule in the tax period in question or earlier tax periods.”.

Returns

11. After paragraph 21 of Schedule 4 (application of paragraphs 10, 12, 16, 17, 18, 19 and 20) insert—

“Real time returns of information about payments of general earnings

21A.—(1) On or before making any payment of general earnings to an employee a Real Time Information employer must deliver to HMRC the information specified in

Schedule 4A (real time returns) in accordance with this paragraph unless the employer is not required to maintain a deductions working sheet for any employees.

(2) The information must be included in a return.

(3) Subject to paragraph (4), if payments of general earnings are made to more than one employee at the same time, the return under sub-paragraph (2) must include the information required by Schedule 4A in respect of each employee to whom a payment of general earnings is made at that time.

(4) If payments of general earnings are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications 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).

(6) Section 98A of the Taxes Management Act 1970(4) (special penalties in case of certain returns) applies to returns within sub-paragraph (7).

(7) A return is within this sub-paragraph if it is one of the following—

- (a) a return which relates to payments of general earnings made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return; or
- (b) a return which contains information about the final payment of general earnings made to any employee in the tax year 2012-13 where—
 - (i) the payment is made after the employee's final normal pay day in the tax year, or
 - (ii) the employee is paid at irregular intervals.

(8) Schedule 24 to the Finance Act 2007(5) (penalties for errors), as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (2).

Modification of the requirements of paragraph 21A: notional payments

21B.—(1) This regulation applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax, is a notional payment within the meaning given by section 710(2) of ITEPA 2003 (including a notional payment arising by virtue of a retrospective tax provision).

(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—

- (a) the time at which the employer delivers the information required by regulation 67B of the PAYE Regulations(6) (real time returns of information about relevant payments) in respect of the payment;

(4) 1970 c.9. Section 98A was inserted by section 165(1) of the Finance Act 1989 (c.26). It was amended, so far as relevant, by paragraph 138 of Schedule 6 to ITEPA and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c.11).

(5) 2007 c.11.

(6) "The PAYE Regulations" is defined by regulation 1(2) of S.I. 2001/1004 as meaning the Income Tax (Pay as You Earn) Regulations 2003 (S.I. 2003/2682).

- (b) the time at which the employer makes a deduction from earnings in respect of the payment in accordance with paragraph 7 (calculation of deduction); or
 - (c) 14 days after the end of the tax month the payment is made in,
- whichever is earliest.

Relationship between paragraph 21A and aggregation of earnings

21C.—(1) Where an employee's earnings are aggregated, a Real Time Information employer or, as the case may be, Real Time Information employers must make such arrangements as are necessary to ensure that the information specified in paragraph (2) in respect of all the aggregated earnings is included in the information given in respect of one of the employee's employments only.

(2) The information specified in this paragraph is the information specified in paragraphs 7 and 10(b) and (d) of Schedule 4A (real time returns).

Exceptions to paragraph 21A

21D.—(1) This paragraph applies to—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications;
- (b) a partnership, if all the partners fall within sub-paragraph (a);
- (c) a company, if all the directors and the company secretary fall within sub-paragraph (a);
- (d) a care and support employer.

(2) A Real Time Information employer to whom this paragraph applies may proceed in accordance with this paragraph instead of paragraph 21A.

(3) A Real Time Information employer must deliver to HMRC the information specified in Schedule 4A in respect of each employee to whom a payment of general earnings is made in a tax month unless the employer is not required to maintain a deductions working sheet for any employees and, for the purposes of this paragraph, references in Schedule 4A to a payment of general earnings shall be read as if they were references to all the payments made to the employee in the tax month.

(4) The information must be included in a return in such a form as HMRC may approve or prescribe.

(5) The return required under sub-paragraph (4) must be delivered within 14 days after the end of the tax month the return relates to.

(6) If payments of general earnings have been made to more than one employee in the tax month, the return under sub-paragraph (4) must include the information required by Schedule 4A in respect of each employee to whom a payment of general earnings has been made.

(7) Section 98A of the Taxes Management Act 1970 applies to returns within sub-paragraph (8).

(8) A return is within this sub-paragraph if it is one of the following—

- (a) a return which contains information about the payment of general earnings made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return; or
- (b) a return which contains information about the final payment of general earnings made to any employee in the tax year 2012-13 where—

- (i) the payment is made after the employee's final normal pay day in the tax year, or
- (ii) the employee is paid at irregular intervals.

(9) Schedule 24 to the Finance Act 2007, as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (4).

(10) In sub-paragraph (1)(c), "company" means a body corporate or unincorporated association but does not include a partnership.

(11) In sub-paragraph (1)(d), "care and support employer" means an individual ("the employer") who employs a person to provide domestic or personal services at or from the employer's home where—

- (a) the services are provided to the employer or a member of the employer's family;
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm; and
- (c) it is the employer who delivers the return (and not some other person on the employer's behalf).

Returns under paragraphs 21A and 21D: amendments

21E.—(1) This paragraph applies where an employer discovers an error in a return made under paragraph 21A (real time returns of information about payments of general earnings) or 21D (exceptions to paragraph 21A) and sub-paragraph (2), (3) or (4) applies.

(2) This sub-paragraph applies where the error relates to the information given in the return in respect of an employee under paragraphs 7, 10(b), 10(d), 13, 14, 15, 16 or 18 of Schedule 4A (real time returns).

(3) This sub-paragraph applies where the error was the omission of details of a payment of general earnings to an employee.

(4) This sub-paragraph applies where retrospective earnings increase the total amount of the general earnings paid to the employee for any tax year in which the employer was a Real Time Information employer.

(5) The employer must provide the correct information in the first return made after the discovery of the error under paragraph 21A or 21D for the tax year in question.

(6) But if the information given has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this sub-paragraph.

(7) A return under sub-paragraph (6)—

- (a) must include the following—
 - (i) the information specified in paragraphs 2 and 12 of Schedule 4A,
 - (ii) the year to which the return relates,
 - (iii) the value of the adjustment, if any, to the information given under each of the paragraphs of Schedule 4A referred to in sub-paragraph (2) in the final return under paragraph 21A or 21D containing information in respect of the employee in the tax year in question,
 - (iv) if an adjustment is made to the information given under paragraph 7 or 10(b) or (d) of Schedule 4A, the information specified in paragraph 6 of that Schedule,
 - (v) if an adjustment is made to the information given under paragraph 10(d) of Schedule 4A that decreases the amount reported under that paragraph,

an indication of whether the employer has refunded the primary Class 1 contributions paid in error to the employee, and

(vi) if an adjustment is made to the information given under paragraph 16 of Schedule 4A, the information specified in paragraph 17 of that Schedule if it has not already been provided;

(b) must be made as soon as reasonably practicable after the discovery of the error; and

(c) must be made using an approved method of electronic communications.

(8) In the application of sub-paragraphs (6) and (7) to cases within sub-paragraph (3), if no information was given in any returns under paragraph 21A or 21D in respect of the employee in the tax year, the value of any adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(9) Sub-paragraph (7)(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.

Additional information about payments

21F.—(1) A Real Time Information employer must inform HMRC of each of the amounts specified in Schedule 4B (additional information about payments) for each tax period unless sub-paragraph (4) or (5) applies.

(2) The information must be given in a return.

(3) The return must be delivered within 14 days after the end of the tax period.

(4) This sub-paragraph applies if—

(a) all of the amounts are zero; and

(b) the employer has not made a return under sub-paragraph (2) in the tax year.

(5) This paragraph applies if none of the amounts has changed in the tax period.

(6) If an employer makes an error in a return under this paragraph, the employer must provide the correct information in the first return made under sub-paragraph (2) after the discovery of the error.

(7) But if the information given has not been corrected before 20th April following the end of the year in question, the employer must provide the correct information for the year in question in a return under this sub-paragraph.

(8) A return under sub-paragraph (2) or (7)—

(a) must state—

(i) the year to which the return relates,

(ii) the employer's HMRC office number,

(iii) the employer's PAYE reference, and

(iv) the employer's accounts office reference;

(b) is to be made using an approved method of electronic communications.

(9) A return under sub-paragraph (2) may include the information required by paragraph 12 of Schedule 4A (real time returns) if it is the final return the employer expects to make under sub-paragraph (2) for the year, in which case it need not be notified in accordance with paragraph 12 of Schedule 4A.

(10) For the purposes of sub-paragraph (8)(b), 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).

(11) The requirement to use an approved method of electronic communications does not apply if the employer is one to whom paragraph 21D (exceptions to paragraph 21A) applies but in those circumstances the return must be in such a form as HMRC may approve or prescribe.

(12) Schedule 24 to the Finance Act 2007 (penalties for errors), as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (2) or (7).”.

Return by employer at end of year

12. In paragraph 22 of Schedule 4 (return by employer at end of year), before sub-paragraph (1) insert—

“(A1) This regulation applies to—

- (a) non-Real Time Information employers;
- (b) Real Time Information employers in relation to years in which they were, for the whole of the year, non-Real Time information employers; and
- (c) Real Time Information employers to whom HMRC has given a notice requiring a return under regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax (Forms P35 and P14) in respect of a tax year.”.

Return by employer of recovery under the Statutory Sick Pay Percentage Threshold Order

13. In paragraph 25(1) of Schedule 4 (return by employer of recovery under the Statutory Sick Pay Percentage Threshold Order), for “an employer” substitute “a non-Real Time Information employer”.

New Schedules

14. After Schedule 4 insert Schedules 4A and 4B as set out in the Schedule to these Regulations.

CHAPTER 2

Transitional provisions

15. Regulation 54 of the 2012 Regulations (information about payments to employees) applies as if paragraph (2) of that regulation included a requirement to provide the information specified in paragraphs 6, 7 and 10 and, if applicable, paragraphs 5, 8 and 9 of Schedule 4A to the 2001 Regulations, as inserted by these Regulations.

16. A notification under regulation 56 of the 2012 Regulations (postponement of first return under regulation 67B or 67D of the 2003 Regulations) applies to returns under paragraphs 21A and 21D of Schedule 4 to the 2001 Regulations, as inserted by these Regulations, as if they were returns under regulations 67B (real time returns of information about relevant payments) and 67D (exceptions to regulation 67B) of the 2003 Regulations.

PART 3

Security for the payment of Class 1 and Class 1A contributions

Amendments relating to Class 1A contributions

17. After regulation 83 (set-off of Class 1A contributions falling to be repaid against earnings-related contributions) insert—

“Requirement to give security or further security for amounts of Class 1A contributions

83A. Paragraphs 29M to 29X of Schedule 4 (security for payment of Class 1 contributions) apply in relation to Class 1A contributions as they apply in relation to Class 1 contributions but as if—

- (a) in paragraph 29N—
 - (i) the reference to “Class 1 contributions” were a reference to “Class 1A contributions”; and
 - (ii) the reference to “paragraph 10, 11 or 11A” were a reference to “section 10 or 10ZA of the Social Security Contributions and Benefits Act 1992, or section 10 or 10ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as the case may be”; and
- (b) in paragraph 29O(1) for “within the meaning given in paragraph 1(2)” there were substituted “within the meaning given in regulation 70(4)”.

Amendments relating to Class 1 contributions

18. After Part 3A of Schedule 4 (debts of managed service companies) insert—

“PART 3B

Security for the payment of Class 1 contributions

Interpretation

29M. In this Part—

- “employer” has the meaning given in paragraph 29O(1);
- “a further notice” has the meaning given in paragraph 29U(3);
- “PGS” has the meaning given in paragraph 29S(1).

Requirement for security

29N. In circumstances where an officer of Revenue and Customs considers it necessary for the protection of Class 1 contributions, the officer may require a person described in paragraph 29P(1) to give security or further security for the payment of amounts which an employer is or may be liable to pay to HMRC(7) under paragraph 10, 11 or 11A.

(7) “HMRC” is defined in regulation 1(2) of S.I. 2001/1004 as meaning Her Majesty’s Revenue and Customs.

Employers

29O.—(1) An “employer” is any employer within the meaning given in paragraph 1(2) other than—

- (a) the Crown;
- (b) a person to whom sub-paragraph (2) applies;
- (c) a person who employs only employees who are personal employees within the meaning given in regulation 34(3) of the PAYE Regulations; and
- (d) a care and support employer within the meaning given in regulation 90NA(3) of these Regulations.

(2) This sub-paragraph applies to persons who at the relevant time could not be liable to a penalty under Schedule 56 to the Finance Act 2009⁽⁸⁾ by virtue of paragraph 10 of that Schedule (suspension of penalty for failure to make payments on time during currency of agreement for deferred payment).

(3) In sub-paragraph (2), the relevant time is a time at which, but for sub-paragraph (1) (b), the officer would require security.

Persons from whom security can be required

29P.—(1) The persons are—

- (a) the employer;
- (b) any of the following in relation to the employer—
 - (i) a director;
 - (ii) a company secretary;
 - (iii) any other similar officer; or
 - (iv) any person purporting to act in such a capacity; and
- (c) in a case where the employer is a limited liability partnership, a member of the limited liability partnership.

(2) An officer of Revenue and Customs may require—

- (a) a person to give security or further security of a specified value in respect of the employer; or
- (b) more than one person to give security or further security of a specified value in respect of the employer, and where the officer does so those persons shall be jointly and severally liable to give that security or further security.

Notice of requirement

29Q.—(1) An officer of Revenue and Customs must give notice of a requirement for security to each person from whom security is required and the notice must specify—

- (a) the value of security to be given;
- (b) the manner in which security is to be given;
- (c) the date on or before which security is to be given; and
- (d) the period of time for which security is required.

(2) The notice must include, or be accompanied by, an explanation of—

⁽⁸⁾ 2009 c. 10. Schedule 56 was applied by regulations 67A and 67B of S.I. 2001/1004.

- (a) the employer's right to make a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009; and
 - (b) the effect of paragraph 29R(2) and (3).
- (3) In a case which falls within paragraph 29P(2)(b), the notice must include, or be accompanied by, the names of each other person from whom security is required.
- (4) The notice may contain such other information as the officer considers necessary.
- (5) A person shall not be treated as having been required to provide security unless HMRC comply with this paragraph and paragraph 29R(1).
- (6) Notwithstanding anything in regulation 1(4)(b), where the notice, or a further notice, ("contributions notice") is to be given with a notice or further notice mentioned in regulations 97Q(1) and 97U(3) of the PAYE Regulations ("PAYE notice") the contributions notice shall be taken to be given at the same time that the PAYE notice is given.

Date on which security is due

- 29R.**—(1) The date specified under paragraph 29Q(1)(c) may not be earlier than the 30th day after the day on which the notice is given.
- (2) If, before the date specified under paragraph 29Q(1)(c), the employer makes a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009, the requirement to give security on or before that date does not apply.
- (3) In a case which falls within sub-paragraph (2), if HMRC does not agree to the employer's request, security is to be given on or before the 30th day after the day on which HMRC notifies the employer of that decision.

Application for reduction in the value of security held

- 29S.**—(1) A person who has given security ("PGS") may apply to an officer of Revenue and Customs for a reduction in the value of security held by HMRC if—
- (a) PGS' circumstances have changed since the day the security was given because—
 - (i) of hardship; or
 - (ii) PGS has ceased to be a person mentioned in paragraph 29P(1); or
 - (b) since the day the security was given there has been a significant reduction in the number of employed earners of the employer to whom the security relates or that employer has ceased to be an employer.
- (2) Where paragraph 29P(2)(b) applies, a person who has not contributed to the value of the security given may not make an application under sub-paragraph (1).

Outcome of application under paragraph 29S

- 29T.**—(1) If an application under paragraph 29S(1) is successful, the officer must inform PGS of the reduced value of security that is still required or, where that value is nil, that the requirement for security has been cancelled.
- (2) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of security held.

Outcome of application under paragraph 29S: further provision

- 29U.**—(1) This paragraph applies—
- (a) in cases which fall within paragraph 29P(2)(b); and

(b) where PGS' application is made under paragraph 29S(1)(a).

(2) As a consequence of arrangements made under paragraph 29T(2), an officer of Revenue and Customs may require any other person who was given notice under paragraph 29Q in relation to the security ("the original security"), or any other person mentioned in paragraph 29P(1), to provide security in substitution for the original security.

(3) Where an officer of Revenue and Customs acts in reliance on sub-paragraph (2), the officer must give notice ("a further notice").

(4) Paragraph 29Q(1) to (5) and paragraph 29R apply in relation to a further notice.

(5) Subject to sub-paragraph (6), paragraph 29V(1) applies in relation to a further notice.

(6) A person who is given a further notice and who was also given notice under paragraph 29Q in relation to the original security may only appeal on the grounds that the person is not a person mentioned in paragraph 29P(1).

Appeals

29V.—(1) A person who is given notice under paragraph 29Q may appeal against the notice or any requirement in it.

(2) PGS may appeal against—

(a) the rejection by an officer of Revenue and Customs of an application under paragraph 29S(1); and

(b) a smaller reduction in the value of security held than PGS applied for.

(3) Notice of an appeal under this paragraph must be given—

(a) before the end of the period of 30 days beginning with—

(i) in the case of an appeal under sub-paragraph (1), the day after the day on which the notice was given; and

(ii) in the case of an appeal under sub-paragraph (2), the day after the day on which PGS was notified of the outcome of the application; and

(b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.

(4) Notice of an appeal under this paragraph must state the grounds of appeal.

(5) On an appeal under sub-paragraph (1) that is notified to the tribunal, the tribunal may—

(a) confirm the requirements in the notice;

(b) vary the requirements in the notice; or

(c) set aside the notice.

(6) On an appeal under sub-paragraph (2) that is notified to the tribunal, the tribunal may—

(a) confirm the decision on the application; or

(b) vary the decision on the application.

(7) On the final determination of an appeal under this paragraph—

(a) subject to any alternative determination by a tribunal or court, any security to be given is due on the 30th day after the day on which the determination is made; or

(b) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of the security held.

(8) Part 5 of the Taxes Management Act 1970(9) (appeals and other proceedings) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under the Taxes Acts(10) but as if—

- (a) sections 46D, 47B, 50(6) to (9) and (11)(c) and 54A to 57 were omitted; and
- (b) in section 48(1)—
 - (i) in paragraph (a) the reference to “the Taxes Acts” were a reference to “paragraph 29V of Schedule 4 to the Social Security (Contributions) Regulations 2001”; and
 - (ii) in paragraph (b) the reference to “any provision of the Taxes Acts” were a reference to “paragraph 29V of Schedule 4 to the Social Security (Contributions) Regulations 2001”.

Appeals: further provision for cases which fall within paragraph 29R(2)

29W. In a case which falls within paragraph 29R(2), if the request mentioned in that provision is made before an appeal under paragraph 29V(1), paragraph 29V(3)(a)(i) applies as if the words “the day after the day on which the notice was given” were “the day after the day on which HMRC notifies the employer of its decision”.

Offence

29X.—(1) Section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003(11) (PAYE regulations – security for payment of PAYE: offence) applies in relation to a requirement imposed under these Regulations as it applies in relation to a requirement imposed under the PAYE Regulations.

- (2) For the purposes of section 684(4A) as it applies by virtue of sub-paragraph (1)—
 - (a) in relation to a requirement for security under a notice under paragraph 29Q the period specified is the period which starts with the day the notice is given and ends with—
 - (i) the first day after the date specified under paragraph 29Q(1)(c); or
 - (ii) in a case which falls within paragraph 29R(2), the first day after the date determined under paragraph 29R(3);
 - (b) in relation to a requirement for security under a further notice the period specified is the period which starts with the day the further notice is given and ends with—
 - (i) the first day after the date specified under paragraph 29Q(1)(c) as it applies in relation to the further notice; or
 - (ii) in a case which falls within paragraph 29R(2), the first day after the date determined under paragraph 29R(3) as it applies in relation to the further notice; and
 - (c) in relation to a requirement for security to which paragraph 29V(7)(a) applies the period specified is the period which starts with the day the determination is made and ends with the first day after—
 - (i) the day the tribunal or court determines to be the day that the security is to be given; or

(9) Part 5 was amended in particular by Schedule 1 to S.I. 1994/1813, paragraph 7 of Schedule 22 to the Finance Act 1996 (c. 8), Schedule 1 to S.I. 2009/56 and paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

(10) “The Taxes Acts” is defined for the purposes of the Taxes Management Act 1970 by section 118(1) of that Act.

(11) 2003 c. 1. Section 684(4A) was inserted by section 85(3) of the Finance Act 2011 (c. 11).

(ii) the day determined in accordance with that paragraph, as the case may be.”.

PART 4

Other amendments

- 19.** In regulation 80 (return by employer)—
- (a) for paragraph (3) substitute—
 - “(3) The declaration must be —
 - (a) signed by the employer; or,
 - (b) where the employer is a body corporate, signed either by the secretary or by a director.”; and
 - (b) after paragraph (3) insert—
 - “(3A) Where the return referred to in this regulation is rendered as mentioned in paragraph (1A)(b) the declaration must, instead of being signed, be authenticated by or on behalf of the employer in such a manner as may be approved by HMRC.”.
- 20.** In paragraph 1(2) of Schedule 4 (interpretation)—
- (a) for “general earnings” and its definition substitute—
 - ““general earnings” means so much of a person’s remuneration or profits derived from employed earner’s employment as constitutes earnings for the purposes of the Act;”; and
 - (b) omit the definition of “the Reimbursement Regulations”.
- 21.** In paragraph 7(13)(b) of Schedule 4 (calculation of deduction)—
- (a) for sub-paragraph (ii) substitute—
 - “(ii) earnings which exceed the current lower earnings limit but do not exceed the current primary threshold;”; and
 - (b) for sub-paragraph (iii) substitute—
 - “(iii) earnings which exceed the current primary threshold but do not exceed the upper accrual point.”.
- 22.** In paragraph 9 of Schedule 4 (certificate of contributions paid)—
- (a) in sub-paragraph (2), for “general earnings” substitute “relevant payments”; and
 - (b) after sub-paragraph (2) insert—
 - “(3) In sub-paragraph (2), “relevant payments” has the meaning given in the PAYE Regulations.”.
- 23.** In paragraph 10(2) of Schedule 4 (payment of earnings-related contributions monthly by employer), omit the words “and the Reimbursement Regulations”.
- 24.** In paragraph 11(2) of Schedule 4 (payments of earnings-related contributions quarterly by employer), omit the words “and Reimbursement Regulations”.
- 25.** In paragraph 11(4) of Schedule 4, in the definition of “L”, for “regulation 39(1) of the Education (Student Loans) (Repayment) Regulations 2000 (payment of repayments deducted to the Inland Revenue)” substitute “regulation 54(1) of the Education (Student Loans) (Repayment) Regulations 2009 (payment of repayments deducted to HMRC)”.

26. In—

- (a) paragraph 15(1A)(c) of Schedule 4 (specified amount of earnings-related contributions payable by the employer);
- (b) paragraph 16(5)(e) of Schedule 4 (recovery of earnings-related contributions or Class 1B contributions); and
- (c) the first column of the table in Part 2 of Schedule 7 (corresponding Northern Ireland enactments),

for “Education (Student Loans) (Repayment) Regulations 2000” substitute “Education (Student Loans) (Repayment) Regulations 2009”.

27. In paragraph 22(1) and (2) of Schedule 4 (return by employer at end of year)—

- (a) at the end of sub-paragraph (daa) insert “and”;
- (b) for “; and” in sub-paragraph (db) substitute a full stop; and
- (c) omit sub-paragraph (e).

28. In paragraph 22(2)(daa) of Schedule 4, after “Paternity” insert “Pay”.

29. In paragraph 24(2) of Schedule 4 (special return by employer at end of voyage period)—

- (a) at the end of sub-paragraph (f) insert “and”;
- (b) for “; and” in sub-paragraph (g) substitute a full stop; and
- (c) omit sub-paragraph (h).

30. In paragraph 25(2) of Schedule 4 (return by employer of recovery under the Statutory Sick Pay Percentage Threshold Order), for “23(3)” substitute “22(3)”.

31. In the second column of the table in Part 2 of Schedule 7, for “Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000” substitute “Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(12)”.

14th March 2012

Steve Lamey
Stephen Banyard
Two of the Commissioners for Her Majesty’s
Revenue and Customs