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STATUTORY INSTRUMENTS

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**2012 No. 821**

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

**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<sup>M1</sup> under paragraph 10, 11 or 11A.

### **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<sup>M2</sup> 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—
- (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<sup>M3</sup> (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<sup>M4</sup> 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<sup>M5</sup> (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
    - (ii) the day determined in accordance with that paragraph,

as the case may be.”.

**Marginal Citations**

- M1** “HMRC” is defined in regulation 1(2) of [S.I. 2001/1004](#) as meaning Her Majesty's Revenue and Customs.
- M2** [2009 c. 10](#). Schedule 56 was applied by regulations 67A and 67B of [S.I. 2001/1004](#).
- M3** [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 \(c. 8\)](#).
- M4** “The Taxes Acts” is defined for the purposes of the Taxes Management Act 1970 by section 118(1) of that Act.
- M5** [2003 c. 1](#). Section 684(4A) was inserted by section 85(3) of the [Finance Act 2011 \(c. 11\)](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Contributions) (Amendment No. 3) Regulations 2012, PART 3.