

2012 No. 821

SOCIAL SECURITY

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

<i>Made</i> - - - -	<i>14th March 2012</i>
<i>Laid before Parliament</i>	<i>15th March 2012</i>
<i>Coming into force</i> - -	<i>6th April 2012</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 175(4) of, and paragraph 6(1) and (2) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(a) and section 171(4) and (10) of, and paragraph 6(1) and (2) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) and now exercisable by them(c):

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(d);

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

-
- (a) 1992 c.4. Section 175(4) was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”). Paragraph 6(1) and (2) was amended by paragraph 77 of Schedule 7 to the Social Security Act 1998 (c.14). Sub-paragraph (1) was amended by paragraph 35 of the Transfer Act so that the power to make regulations became exercisable by the Inland Revenue; and by paragraph 185 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA”).
- (b) 1992 c.7. Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) (“the Transfer Order”). Paragraph 6(1) and (2) was amended by paragraph 58(8) and (9) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)). Sub-paragraph (1) was amended by paragraph 34 of Schedule 3 to the Transfer Order 1999 so that the power to make regulations became exercisable by the Inland Revenue; and by paragraph 204 of Schedule 6 to ITEPA.
- (c) The functions of the Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c.11) (“CRCA”). Section 50(1) of CRCA provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (d) 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.
- (e) S.I. 2003/2682, amended by S.I. 2012/822; there are other amending instruments but none is relevant.

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

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.”.

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).”.

(a) S.I. 2012/822.

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(a) (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(b) (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).

(a) 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).

(b) 2007 c.11.

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^(a) (real time returns of information about relevant payments) in respect of the payment;
- (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.

(a) "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).

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

- (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^(a) 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.

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

(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(a) (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(b) 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

(a) 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).

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

- (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(a) (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.”.

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

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

(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(a)”.

Steve Lamey
Stephen Banyard

14th March 2012

Two of the Commissioners for Her Majesty’s Revenue and Customs

SCHEDULE

Regulation 14

“SCHEDULE 4A

Regulation 67(3)(b)

Real time returns

1. The information specified in this Schedule is as follows and terms used in this Schedule which are defined for the purposes of Schedule 4 bear the same meaning as in that Schedule.

Information about the employer and the employee

2. The information specified in paragraphs 2 to 4 and 8 to 14 of Schedule A1(c) (real time returns) to the PAYE Regulations.

Information about payments to the employee, etc

3. The amount of the payment made that is included in the amount of the employee’s earnings from the employment for the purposes of determining the amount of earnings-related contributions payable.

4. For the purposes of assessing earnings-related contributions based on the payment, the number of earnings periods the payment relates to.

5. Where—

- (a) the earner is concurrently employed in more than one employed earner’s employment under the same employer but regulation 14 (aggregation of earnings paid in respect of separate employed earner’s employments under the same employer) does not apply; or
- (b) regulation 15 (aggregation of earnings paid in respect of different employed earner’s employments by different persons and apportionment of contribution liability) applies in relation to the earner,

(a) S.R. (NI) 2009 No. 128, to which there are amendments not relevant to these Regulations.
(b) Regulation 67(3) is inserted by regulation 3 of these Regulations.
(c) Schedule A1 was inserted by S.I. 2012/822.

an indication of whether the return relates to earnings which have been or will be aggregated.

6. The appropriate category letter or, as the case may be, letters in relation to the employee (being the appropriate letter or letters indicated by HMRC).

7. For the category letter or, as the case may be, each category letter in relation to the employee (being the appropriate letter or letters indicated by HMRC), the total of the amounts required to be recorded by paragraph 7(13)(b)(i) to (iiia) of Schedule 4 (calculation of deduction) for the year to date.

8. If the employee is a director, in so far as relevant to the relevant category letter (being the appropriate category letter indicated by HMRC) in relation to the employee—

- (a) an indication of whether, for the purposes of assessing earnings-related contributions based on the payment, the employer has relied on regulation 8(2) or (3) (earnings periods for directors), or
- (b) an indication of whether, for the purposes of assessing earnings-related contributions based on the payment, the employer has relied or, if the earnings fall to be aggregated, will rely on regulation 8(6).

9. Where regulation 8(2) applies and the appointment was in the current tax year, the week in which the appointment was made.

10. In so far as relevant to the relevant category letter or, as the case may be, letters (being the appropriate category letter or letters indicated by HMRC) in relation to the employee—

- (a) the total amount of secondary Class 1 contributions payable on the employee's earnings in the earnings period in which the return is made,
- (b) the total amount of secondary Class 1 contributions payable on the employee's earnings in the year to date,
- (c) the total amount of primary Class 1 contributions payable on the employee's earnings in the earnings period in which the return is made, and
- (d) the total amount of primary Class 1 contributions payable on the employee's earnings in the year to date.

11. In a case where the earnings the return relates to will fall to be aggregated with other earnings in the same earnings period, the information required by paragraphs 6, 7 and 10 need only be provided when the final payment of general earnings in the earnings period is made.

12. If—

- (a) the employee's employment is contracted-out or was contracted out at any time during the year, and
- (b) the return is the final return under paragraph 21A or 21D of Schedule 4 that the employer expects to make for the year in respect of the employee,

the number notified by HMRC on the relevant contracting out certificate as the employer's number unless that number has been or will be notified as part of a return made under paragraph 21F of Schedule 4 (additional information about payments).

Information about statutory sick pay

13. In a case where the employer is entitled to recover an amount in accordance with article 2 (right of employer to recover statutory sick pay) of the Statutory Sick Pay

Percentage Threshold Order 1995(a) in respect of a payment of statutory sick pay, the total amount of statutory sick pay paid during the year to date in this employment.

Information about statutory maternity pay

14. If any, the total amount of statutory maternity pay paid during the year to date in this employment.

Information about ordinary statutory paternity pay

15. If any, the total amount of ordinary statutory paternity pay paid during the year to date in this employment.

Information about additional statutory paternity pay

16. If any, the total amount of additional statutory paternity pay paid during the year to date in this employment.

17. Where additional statutory paternity pay has been paid during the year to date, the following information from the employee's application for the payment under, as the case may be, regulation 8, 10, 15 or 17 (applications) of the Additional Statutory Paternity Pay (General) Regulations 2010(b)—

- (a) the name of the mother or, as the case may be, the adopter of the child the application relates to, and
- (b) the national insurance number of the mother or, as the case may be, the adopter of the child the application relates to.

Information about statutory adoption pay

18. If any, the total amount of statutory adoption pay paid in the year to date in this employment.

SCHEDULE 4B

Regulation 67(3)

Additional information about payments

1. The amounts specified in this Schedule are as follows and terms used in this Schedule which are defined for the purposes of Schedule 4 bear the same meaning as in that Schedule.

Deductions in respect of statutory payments

2. In respect of statutory maternity pay paid during the year to date to all employees the total of the amounts determined under regulation 3 (determination of the amount of additional payment to which a small employer shall be entitled) of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994(c) and deducted by virtue of regulation 4 (right of employer to prescribed amount) of those Regulations.

3. In respect of ordinary statutory paternity pay paid during the year to date to all employees, the total of the amounts determined under regulation 5 (deductions from

(a) S.I. 1995/512, to which there are amendments not relevant to these Regulations.
(b) S.I. 2010/1056, to which there are amendments not relevant to these Regulations.
(c) S.I. 1994/1882, amended by S.I. 2003/672; there are other amending instruments but none is relevant.

payments to HMRC) of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002(a).

4. In respect of additional statutory paternity pay paid during the year to date to all employees, the total of the amounts determined under regulation 5 (deductions from payment to the Commissioners) of the Additional Statutory Paternity Pay (Birth, Adoption and Adoptions from Overseas) (Administration) Regulations 2010(b).

5. In respect of statutory adoption pay paid during the year to date to all employees, the total of the amounts determined under regulation 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002.

6. In respect of statutory sick pay paid during the year to date to all employees, the total of the amounts recovered in accordance with article 2 (right of employer to recover statutory sick pay) of the Statutory Sick Pay Percentage Threshold Order 1995.

Regional secondary contributions holiday for new businesses

7. The total of the appropriate amounts within the meaning given by section 7 of the National Insurance Contributions Act 2011(c) (regional secondary contributions holiday for new businesses) deducted by or refunded to the employer under section 4 of that Act in the year to date.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (“the 2001 Regulations”).

The amendments contained in Chapter 1 of Part 2 of these Regulations deal with the way that employers report information under the Pay As You Earn (“PAYE”) system to HM Revenue and Customs (“HMRC”) about the payments made to employees and the Class 1 contributions in relation to those payments. There are also consequential changes to the provisions dealing with the amount of Class 1 contributions that employers must account to HMRC for in respect of each tax period.

The amendments in Chapter 1 of Part 2 come into force on 6th April 2012 but will apply to different employers at different times. Employers to whom the new reporting arrangements apply are referred to in the amendments as Real Time Information employers. The definition of a Real Time Information employer is contained in new paragraph 1(4) of Schedule 4 to the 2001 Regulations, which is inserted by regulation 5 of these Regulations.

The principal amendments dealing with the information a Real Time Information employer must send to HMRC in relation to payments made to their employees and the Class 1 contributions arising on those payments are in regulations 11 and 12. In particular, regulation 11 inserts new paragraphs 21A to 21F into Schedule 4 to the 2001 Regulations.

Of these, new paragraphs 21A and 21D contain the new reporting obligations which apply at the time a payment is made to an employee. New paragraph 21A requires employers to provide information to HMRC each time a payment is made to an employee and for this to be done using an approved method of electronic communications. “Approved method of electronic communications” is defined in regulation 1 of the 2001 Regulations, which is not amended by these Regulations.

(a) S.I. 2002/2820, to which there are amendments not relevant to these Regulations.

(b) S.I. 2010/154.

(c) 2011 c.3.

Paragraph 21D contains exceptions from the obligation in paragraph 21A for certain employers. It allows those employers to report to HMRC at the end of each tax month and does not require the reporting to be done using an approved method of electronic communications.

The information to be reported to HMRC under paragraphs 21A and 21D is set out in new Schedule 4A to the 2001 Regulations. This is inserted by regulation 14 of, and the Schedule to, these Regulations.

Additional new reporting obligations are imposed by new paragraph 21F of Schedule 4 to the 2001 Regulations. This will require employers to notify HMRC if deductions are made from the Class 1 contributions paid to HMRC by the employer because of entitlement to compensation in respect of certain statutory payments made by the employer or under the National Insurance regional secondary contributions holiday for new businesses.

Chapter 2 of Part 2 of these Regulations contains transitional provisions dealing with information that an employer must provide to HMRC when they become a Real Time Information employer and under which HMRC can delay the obligation on a Real Time Information employer to comply with paragraphs 21A or 21D of Schedule 4 to the 2001 Regulations, as the case may be, for the first time.

Part 3 of these Regulations inserts a new Part 3B into Schedule 4 to the Social Security (Contributions) Regulations 2001. New Part 3B and regulation 3 of these Regulations make provision in respect of the recovery of Class 1 and Class 1A National Insurance contributions.

New Part 3B provides for an officer of Revenue and Customs to require a person to give security, or further security, in respect of certain amounts of contributions that an employer is liable to pay to HMRC. Part 3B does not apply in relation to employers excepted by new paragraph 29O (which include care and support employers and those in time to pay arrangements). An officer may require a security where he or she considers that it is necessary for the protection of Class 1 or Class 1A contributions.

New paragraph 29P lists the persons from whom security may be required and also makes provision for liability to give security to be joint and several in cases where it is required from more than one person.

New paragraph 29Q requires the officer to give notice to a person from whom security is required and specifies the information that must be included in the notice. Paragraph 29R prevents the notice from requiring the security on a date that is earlier than the 30th day after the day on which the notice is given and also provides that the date by which the security is required is delayed if, after the notice is served, the employer makes a request to HMRC to enter into a time to pay arrangement.

New paragraph 29S makes provision for a person who has given security to apply to an officer of Revenue and Customs for a reduction in the value of security that HMRC hold. Paragraph 29T permits HMRC to make such arrangements as they think fit to ensure the reduction in the value of security held in cases where an application under paragraph 29S is successful. If an application made under paragraph 29S results in a reduction in the value of security held by HMRC, paragraph 29U provides that an officer of Revenue and Customs may require further security in substitution for the original security in certain cases.

New paragraph 29V contains provisions allowing a person from whom security is required to appeal against that requirement, and a person whose application under paragraph 29S is refused (in whole or in part) to appeal against that decision. With paragraph 29W, it also contains (in part) the procedural requirements and practical arrangements for appeals.

New paragraph 29X provides for the offence in section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003 to apply to a failure to give security in accordance with new Part 3B. Section 684(4A) was inserted by section 85 of the Finance Act 2011 and provides that it is an offence for a person from whom security is required to fail for a specified period to give security. New paragraph 29X also specifies that period.

Part 4 of these Regulations contains other amendments to Schedule 4 to the 2001 Regulations.

Regulation 19 amends regulation 80 of the 2001 Regulations, which makes provision in relation to the return which must be made, by an employer, where a Class 1A contribution is payable. These Regulations correct a minor error in regulation 80 and amend it in a manner which brings the requirements for the making of the return more closely in line with those for other returns employers must make.

Regulation 20(a) substitutes the definition of “general earnings” in the interpretation paragraph of Schedule 4 to the 2001 Regulations. The substituted definition of general earnings makes clear that so much of a person’s remuneration or profits derived from employed earner’s employment as constitute earnings (including payments treated as, or deemed to be, remuneration and earnings) for the purposes of National Insurance contributions may be collected in like manner as income tax under the PAYE system.

Regulation 21 of these Regulations reflects changes to the level of the secondary threshold. Prior to 6th April 2011, the levels of the primary threshold and the secondary threshold were aligned. As a result of changes made by the Social Security (Contributions) (Amendment No.2) Regulations 2011, the levels of the primary threshold and secondary threshold are no longer aligned. To reflect this change, paragraph 7(13)(b) of Schedule 4 to the 2001 Regulations is amended to change the appropriate information to be recorded on deductions working sheets.

Regulation 22 substitutes “general earnings” for “relevant payments” in paragraph 9(2) of Schedule 4 to the 2001 Regulations. Along with the new definition of that term in paragraph 9(3) of Schedule 4, this ensures that, notwithstanding the amendment to the definition of “general earnings”, an employee who would not otherwise be entitled to a Form P60 certificate in respect of tax for a tax year will continue to be entitled to such a certificate if the employee has paid, or is treated as having paid, primary Class 1 contributions.

Part 4 also corrects other minor errors and deals with out of date cross references to other legislation.

Tax Information and Impact Notes covering Part 2 and regulations 19, 20(a), 21 and 22 of this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

A Tax Information and Impact Note covering Part 3 of this instrument was published on 9th December 2010 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note has not been prepared for the remainder of these Regulations as they contain no substantive changes to tax policy.

© Crown copyright 2012

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£5.75

E2973 03/2012 122973T 19585

