
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (“the 2003 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 system to HM Revenue and Customs (“HMRC”) about employees commencing and ceasing employment, the payments made to employees and the tax deducted from those payments. There are also consequential changes to the provisions dealing with the amount of tax that employers must account to HMRC for in respect of each tax period and the information that employees must receive when they cease employment.

The amendments in 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 regulation 2A of the 2003 Regulations, which is inserted by regulation 4 of these Regulations. New regulation 2B of the 2003 Regulations, which is also inserted by regulation 4, contains the definition of “Real Time Information pension payer” for the purposes of the provisions which apply specifically to pension payers when payment of a pension commences or ceases.

The amendments dealing with the cessation of employment are contained in regulations 6 to 8.

The principal amendments dealing with the commencement of employment are contained in regulations 9 to 26. In particular, these amendments deal with the procedures a Real Time Information employer and Real Time Information pension payer must go through when a new employee commences employment or a new pensioner first receives a pension.

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 tax deducted from those payments and the amount of tax the employer must accordingly pay to HMRC are in regulations 27 to 35. In particular, regulation 27 inserts new regulations 67B to 67H into Part 4 of the 2003 Regulations.

Of these, new regulations 67B and 67D contain the principal new reporting obligations. Regulation 67B 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 189 of the 2003 Regulations, which is not amended by these Regulations.

Regulation 67D contains exceptions from the obligation in regulation 67B 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 regulations 67B and 67D is set out in new Schedule A1 to the 2003 Regulations. This is inserted by the Schedule to these Regulations.

New regulations 67G and 67H of the 2003 Regulations contain the provisions dealing with how much tax a Real Time Information employer must pay to HMRC for a tax period. Regulation 35 inserts new regulations 75A and 75B dealing with the enforcement of unpaid sums.

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

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under which HMRC can delay the obligation on a Real Time Information employer to comply with new regulation 67B or 67D, as the case may be, for the first time.

Part 3 of these Regulations inserts new Part 4A into the 2003 Regulations and makes a consequential amendment to regulation 213.

Part 4A provides for an officer of Revenue and Customs to require a person to give security, or further security, in respect of certain amounts that an employer is liable to pay to HMRC under the Pay As You Earn system. New Part 4A does not apply in relation to employers excepted by new regulation 97O (which include care and support employers and those in time to pay arrangements) or to amounts which relate to social security income. An officer may require a security where he or she considers that it is necessary for the protection of the revenue.

New regulation 97P 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 regulation 97Q 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. Regulation 97R 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 regulation 97S 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. Regulation 97T 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 regulation 97S is successful. If an application made under regulation 97S results in a reduction in the value of security held by HMRC, regulation 97U provides that an officer of Revenue and Customs may require further security in substitution for the original security in certain cases.

New regulation 97V contains provisions allowing a person from whom security is required to appeal against that requirement, and a person whose application under regulation 97S is refused (in whole or in part) to appeal against that decision. With regulation 97W, it also contains (in part) the procedural requirements and practical arrangements for appeals.

Under section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003, which was inserted by section 85 of the Finance Act 2011, it is an offence for a person from whom security is required to fail for a specified period to give security. New regulation 97X specifies the period for that purpose.

Part 4 of these Regulations contains other amendments to the 2003 Regulations. These deal, in particular, with:

- the closure to new employers of the simplified deduction scheme for personal employees provided for in regulation 34 of the 2003 Regulations,
- the removal of an exception to the requirement in regulation 37(2) of the 2003 Regulations to deduct tax from relevant payments made after an employment has ceased by the former employer or another on the employer's behalf on the non-cumulative basis using the OT code. The exception related to payments in the form of securities, interest in securities and securities options and provided that such payments must be taxed using the basic rate, and
- the treatment of Commonwealth citizens on the commencement of employment.

Tax Information and Impact Notes covering Part 2 and regulations 64 and 65 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 alongside draft legislation 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.

Document Generated: 2023-10-19

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A Tax Information and Impact Note has not been prepared for regulations 61 to 63 or 66 to 68 as they contain no substantive changes to tax policy.