

---

STATUTORY INSTRUMENTS

---

**2012 No. 822**

**The Income Tax (Pay As You Earn)  
(Amendment) Regulations 2012**

**PART 3**

Security for payment of PAYE

**New Part 4A**

**58.** After regulation 97L (repayment of surplus amounts) insert—

**“PART 4A**

Security for payment of PAYE

**Interpretation**

**97M.** In this Part—

“a further notice” has the meaning given in regulation 97U(3); and  
“PGS” has the meaning given in regulation 97S(1).

**Requirement for security**

**97N.—**(1) In circumstances where an officer of Revenue and Customs considers it necessary for the protection of the revenue, the officer may require a person described in regulation 97P(1) (persons from whom security can be required) to give security or further security for the payment of amounts in respect of which an employer described in regulation 97O (employers) is or may be accountable to HMRC under regulation 67G(1), 68 or 80 (payments to HMRC and determination of unpaid amounts).

(2) Paragraph (1) does not apply to any amount which the employer is required to pay to HMRC that relates to income to which Part 8 (social security benefits) applies.

**Employers**

**97O.—**(1) The employer is any employer other than—

- (a) the Crown,
- (b) an employer to whom paragraph (2) applies,

- (c) an employer who employs only employees who are personal employees within the meaning given in regulation 34(3) (simplified deduction scheme for personal employees), and
- (d) a care and support employer within the meaning given by regulation 206(4) (employers).

(2) This paragraph applies to employers who at the relevant time could not be liable to a penalty under Schedule 56 to the Finance Act 2009(2) 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 paragraph (2), the relevant time is a time at which, but for paragraph (1)(b), the officer would require security.

### **Persons from whom security can be required**

**97P.**—(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**

**97Q.**—(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 regulation 97R(2) and (3) (date on which security is due).

(3) In a case which falls within regulation 97P(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 regulation and regulation 97R(1).

#### **Date on which security is due**

**97R.**—(1) The date specified under regulation 97Q(1)(c) (notice of requirement) may not be earlier than the 30th day after the day on which the notice is given.

(2) If, before the date specified under regulation 97Q(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 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**

**97S.**—(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 regulation 97P(1) (person from whom security can be required), or
- (b) since the day the security was given there has been a significant reduction in the number of employees of the employer to whom the security relates or that employer has ceased to be an employer.

(2) Where regulation 97P(2)(b) applies, a person who has not contributed to the value of the security given may not make an application under paragraph (1).

#### **Outcome of application for reduction in the value of security held**

**97T.**—(1) If an application under regulation 97S(1) (application for reduction in the value of security held) 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 for reduction in the value of security held: further provision**

**97U.**—(1) This regulation applies—

- (a) in cases which fall within regulation 97P(2)(b), and
- (b) where PGS' application is made under regulation 97S(1)(a).

(2) As a consequence of arrangements made under regulation 97T(2) (outcome of application for reduction in the value of security held), an officer of Revenue and Customs may require any other person who was given notice under regulation 97Q (notice of requirement) in relation to the security ("the original security"), or any other person mentioned in regulation 97P(1), to provide security in substitution for the original security.

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

(4) Regulation 97Q and regulation 97R (date on which security is due) apply in relation to a further notice.

(5) Subject to paragraph (6), regulation 97V(1) (appeals) applies in relation to a further notice.

(6) A person who is given a further notice and who was also given notice under regulation 97Q in relation to the original security may only appeal on the grounds the person is not a person mentioned in regulation 97P(1).

## Appeals

**97V.—**(1) A person who is given notice under regulation 97Q 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 regulation 97S(1), and
- (b) a smaller reduction in the value of security held than PGS applied for.

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

- (a) before the end of the period of 30 days beginning with—
  - (i) in the case of an appeal under paragraph (1), the day after the day on which the notice was given, and
  - (ii) in the case of an appeal under 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 regulation must state the grounds of appeal.

(5) On an appeal under 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 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 regulation—

- (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 it sees fit to ensure the necessary reduction in the value of security held.

(8) An appeal under this regulation is subject to the provisions of Part 5 of TMA(3) (appeals and other proceedings) apart from—

---

(3) Regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003 defines TMA as meaning the Taxes Management Act 1970. Part 5 of that Act was amended in particular by Schedule 1 to [S.I. 1994/1813](#), paragraph 7 of Schedule 22 to the Finance Act 1996, Schedule 1 to [S.I. 2009/56](#) and paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c.8).

- (a) section 46D,
- (b) section 47B,
- (c) section 50(6) to (9), and
- (d) sections 54A to 57.

**Appeals: further provision for cases which fall within regulation 97R(2)**

**97W.** In a case which falls within regulation 97R(2) (date on which security is due), if the request mentioned in that provision is made before an appeal under regulation 97V(1) (appeals), regulation 97V(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**

**97X.**—(1) For the purposes of section 684(4A) of ITEPA(4) (PAYE regulations – security for payment of PAYE: offence)—

- (a) in relation to a requirement for security under a notice under regulation 97Q (notice of requirement) 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 regulation 97Q(1)(c), or
  - (ii) in a case which falls within regulation 97R(2), the first day after the date determined under regulation 97R(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 regulation 97Q(1)(c) as it applies in relation to the further notice, or
  - (ii) in a case which falls within regulation 97R(2), the first day after the date determined under regulation 97R(3) as it applies in relation to the further notice, and
- (c) in relation to a requirement for security to which regulation 97V(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 regulation, as the case may be.”.

---

(4) Regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003 defines ITEPA as meaning the Income Tax (Earnings and Pensions) Act 2003.