

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);

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- (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.

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

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

[Regulations 3 to 14, 17 to 31 make various amendments to, and Schedules 4A & 4B inserted into S.I. 2001/1004.]

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.

Steve Lamey
Stephen Banyard

14th March 2012

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

(a) S.I. 2003/2682, amended by S.I. 2012/822; there are other amending instruments but none is relevant.

(b) S.I. 2012/822.

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.

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.

