

**2013 No. 622**

**SOCIAL SECURITY**

**The Social Security (Contributions) (Amendment and  
Application of Schedule 38 to the Finance Act 2012)  
Regulations 2013**

*Made - - - - at 2.30 p.m. on 14th March 2013*

*Laid before Parliament 15th March 2013*

*Coming into force in accordance with Regulation 1*

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs with the concurrence of the Secretary of State and the Department for Social Development<sup>(a)</sup> in relation to regulations 33, 39, 40 and 42 and to regulation 2 in so far as it relates to regulations 33, 39, 40 and 42.

The powers exercised by the Treasury are those conferred by sections 1(6), 3(2) and (3), 10(9), 12(6), 13(1) and (7), 19(1) and (5A), and 175(3) and (4) of, and paragraph 7B(5A) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992<sup>(b)</sup> and sections 1(6), 3(2) and (3), 10(9), 12(6), 13(1) and (7), 19(1) and (5A) and 171(3), (4) and (10) of, and paragraph 7B(5A) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(c)</sup> and now exercisable by them.

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- (a) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) were transferred to the Department for Social Development by Article 8(b) of, and Part 2 of Schedule 6 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No. 481).
- (b) 1992 c. 4. Section 1(6) was amended by paragraph 56 of Schedule 7 to the Social Security Act 1998 (c. 14). The power to make regulations under section 1(6) was transferred to the Treasury by paragraph 1 of Schedule 3 to the Social Security (Transfer of Functions, etc.) Act 1999 (c. 2) ("the Transfer Act"). Section 3 has been amended. The relevant amendment is that made by paragraph 3 of Schedule 3 to the Transfer Act. Section 10 was substituted by section 74(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) ("the 2000 Act") and subsection (9) was amended by paragraph 174 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) ("ITEPA 2003"). Section 12(6) was amended by paragraph 13 of Schedule 3 to the Transfer Act so that the power to make regulations became exercisable by the Treasury. Sections 13(1) and (7) were amended, and the power to make regulations under them transferred to the Treasury, by paragraphs 14(2) and (4) of Schedule 3 to the Transfer Act. Section 19(1) was amended by paragraph 5(2) of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19) ("the Contributions Act"), and subsection (5A) was inserted by paragraph 19(2) of Schedule 3 to the Transfer Act. Section 175(4) was amended by paragraph 29 of Schedule 3 to the Transfer Act. Paragraph 7B(5A) of Schedule 1 was inserted by section 76 of the 2000 Act. Paragraph 54 of Schedule 38 to the Finance Act 2012 (c. 14: "FA 2012") makes consequential provision in respect of paragraph 7B(5A) of Schedule 1 to the Social Security Contributions and Benefits Act 1992.
- (c) 1992 c. 7. Section 1(6) was amended by paragraph 38(3) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)). The power to make regulations under section 1(6) was transferred to the Treasury by paragraph 2 of Schedule 3 to Social Security (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671) ("the Transfer Order"). Section 3 has been amended. The relevant amendment is that made by paragraph 4 of Schedule 3 to the Transfer Order. Section 10 was substituted by section 78(2) of the 2000 Act and subsection (9) was amended by paragraph 195 of Schedule 6 to ITEPA 2003. Section 12(6) was amended by paragraph 14 of Schedule 3 to the Transfer Order so that the power to make regulations became exercisable by the Treasury. Sections 13(1) and (7) were amended, and the power to make regulations under them transferred to the Treasury, by paragraphs 15(2) and (4) of Schedule 3 to the Transfer Order. Section 19(1) was amended by paragraph 24(2) of Schedule 1 to the Contributions Act and subsection (5A) was inserted by paragraph 19(2) of Schedule 3 to the Transfer Order. Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those 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, effect and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment and Application of Schedule 38 to the Finance Act 2012) Regulations 2013.

(2) Regulations 1, 2 and 5 to 42 come into force on 6th April 2013 and apply in relation to the tax year 2013-14 and subsequent tax years.

(3) Regulations 3 and 4 come into force on 6th April 2014 and apply in relation to the tax year 2014-15.

(4) The amendments made by regulation 36 have effect in relation to contributions paid in respect of the tax year 2012-2013 and subsequent tax years.

(5) In these Regulations “the 2001 Regulations” mean the Social Security (Contributions) Regulations 2001(d).

#### Amendment of the 2001 Regulations

2. The 2001 Regulations are amended as provided for in regulations 3 to 28 and 33 to 40.

## PART 2

### Closure of the Simplified Deduction Scheme

#### Amendment of regulation 90NA

3. In regulation 90NA (employers) omit paragraph (1)(d) (but not the “and” after it).

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the Transfer Order. Paragraph 7B(5A) of Schedule 1 was inserted by section 80(4) of the 2000 Act. Paragraph 55 of Schedule 38 to the FA 2012 makes consequential provision in respect of paragraph 7B(5A) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

- (a) Paragraph 6(1) and (2) was amended by paragraph 77 of Schedule 7 to the Social Security Act 1998 (c. 14). Paragraph 6(1) was amended by paragraph 35 of Schedule 3 to the Transfer Act (so that the power to make regulations became exercisable by the Inland Revenue) and by paragraph 185 of Schedule 6 to ITEPA 2003.
- (b) 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)). Paragraph 6(1) was amended by paragraph 34 of Schedule 3 to the Transfer Order (so that the power to make regulations became exercisable by the Inland Revenue) and by paragraph 204 of Schedule 6 to ITEPA 2003.
- (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). Section 50(1) of that Act 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 as amended by S.I. 2001/2412, 2003/2085, 2004/770, 2007/1056, 2007/1838, 2007/2520, 2009/600, 2010/646, 2010/721, 2011/1000, 2012/817 and 2012/821. There are other amending instruments but none are relevant.

#### **Amendment of Schedule 4**

4.—(1) Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations 2003)(a) is amended as follows.

(2) In paragraph 1(2) (interpretation) in the definition of “deductions working sheet” omit from “or under” to the end.

(3) In paragraph 6(1)(a) (deduction of earnings related contributions) omit “, or in the case of an employee to whom regulation 35 of the PAYE Regulations (simplified deduction scheme) applies, maintain”.

(4) In paragraph 26(4) (retention by employer of contribution and election records) omit “(other than deductions working sheets issued under regulation 35 of the PAYE Regulations (simplified deduction schemes: records))(b)”.

(5) In paragraph 29O omit sub-paragraph (1)(c) (employers) (but not the “and” after it).

### **PART 3**

#### **Real Time Information**

##### **CHAPTER 1**

##### **Real Time Information**

#### **Amendment of Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As Your Earn) Regulations 2003**

5. Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations) is amended as provided for in regulations 6 to 22.

#### **Interpretation**

6. In paragraph 1 (interpretation) omit sub-paragraph (4)(c) (but not the “and” after it).

#### **Payment of earnings-related contributions monthly by employer**

7. In paragraph 10(3A) (payment of earnings-related contributions monthly by employer) after “applies” insert “, or failures rectified under paragraph 21EA(2)(c)”.

#### **Payments of earnings-related contributions quarterly by employer**

8. In paragraph 11(3A) (payments of earnings-related contributions quarterly by employer) after “applies” insert “, or failures rectified under paragraph 21EA(2)”.

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(a) Schedule 4 has been relevantly amended by regulations 29 to 31 and 33 of S.I. 2004/770, regulation 8(16) of S.I. 2007/1056, regulation 7 of S.I. 2008/636, regulation 8 of S.I. 2009/600 and regulations 5 to 8, 11, 12, 18 and 20 of S.I. 2012/821.

(b) Regulation 1(1) of S.I. 2001/1004 defines the “PAYE Regulations” as meaning the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682).

(c) Paragraph 21EA is inserted by regulation 16 of these Regulations.

**Payments to and recoveries from HMRC for each tax period by Real Time Information employers: return under paragraph 21E(6) or 21EA(3)**

9.—(1) In paragraph 11ZA(1) (payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under paragraph 21E(6)) after “21E(4)” insert “, or paragraph 21EA(3) (failure to make a return under paragraph 21A or 21D of Schedule 4)”.

(2) Accordingly, in the heading of paragraph 11ZA after “21E(6)” insert “or 21EA(3)”.

**Real Time returns of information about payments of general earnings**

10.—(1) Paragraph 21A (real time returns of information about payments of general earnings) is amended as follows.

(2) In sub-paragraph (1) for “unless the employer is not required” to the end substitute—

“unless—

- (a) the employer is not required to maintain a deductions working sheet for any employees, or
- (b) an employee’s earnings are below the lower earnings limit and the employer is required to make a return under regulation 67B(1), regulation 67D(3), regulation 67E(6) or regulation 67EA(3) of the PAYE Regulations(a).”.

(3) Omit sub-paragraphs (6) and (7).

**Exceptions to paragraph 21A**

11. After paragraph 21A (real time returns of information about payments of general earnings) insert—

**“Employees in respect of whom employer is not required to maintain a deductions worksheet**

21AA.—(1) This paragraph applies if an employer makes a payment of general earnings to an employee in respect of whom the employer is not required to maintain a deductions working sheet.

(2) The employer need not deliver the information required by paragraph 21A in respect of that employee on or before making the payment.

(3) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

**Employees paid in specified circumstances**

21AB.—(1) This paragraph applies if—

- (a) an employer makes a payment of general earnings to an employee, and
- (b) all of the circumstances in sub-paragraph (2) apply.

(2) The circumstances are that—

- (a) the payment includes an amount of general earnings which is for work undertaken by the employee on—
  - (i) the day the payment is made, or
  - (ii) provided that the payment is made before the employee leaves the place of work at the end of the employee’s period of work, the day before the payment is made,

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(a) Regulations 67B, 67D and 67E were inserted into the PAYE Regulations by regulation 27 of S.I. 2012/822 and regulation 67EA was inserted by regulation 23 of S.I. 2013/521.

- (b) in respect of the work mentioned in paragraph (a), it was not reasonably practicable for the employer to calculate the payment due before the completion of the work, and
  - (c) it is not reasonably practicable for the employer to deliver the information required by paragraph 21A on or before making the payment.
- (3) The employer need not deliver the information required by paragraph 21A on or before making the payment.
- (4) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

**Paragraphs 21AA and 21AB: supplementary**

**21AC** Where paragraph 21AA or 21AB applies, the information required by paragraph 21A in respect of the payment of general earnings may be included in a return with the information for any other payment of general earnings.

**Benefits and expenses – returns under regulations 85 to 87 of the PAYE Regulations**

**21AD.**—(1) This paragraph applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax, falls to be included in a return under—

- (a) regulations 85 and 86 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must be provided for each employee), or
- (b) regulations 85 and 87 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must also be provided for benefits code employees) or would fall to be so included if the employee’s employment was subject to the benefits code for the purposes of regulation 85 of the PAYE Regulations.

(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 14 days after the end of the tax month in which the payment is made.”.

**Modification of the requirements of paragraph 21A: notional payments**

**12.**—(1) Paragraph 21B (modification of the requirements of paragraph 21A: notional payments) is amended as follows.

- (2) In sub-paragraph (1) for “regulation” substitute “paragraph”.
- (3) In sub-paragraph (2) omit paragraph (b) (but not the “or” after it).

**Notifications of payments of general earnings to and by providers of certain electronic payment methods**

**13.** After paragraph 21C (relationship between paragraph 21A and aggregation of earnings) insert—

**“Notifications of payments of general earnings to and by providers of certain electronic payment methods**

**21CA.**—(1) A Real Time Information employer who makes a payment of general earnings using an approved method of electronic communications which falls to be included in a return under paragraph 21A must—

- (a) generate a reference and include it in that return,

- (b) notify the service provider that the payment is a payment of general earnings, and
- (c) generate a sub-reference in respect of the payment of general earnings and notify the service provider of that sub-reference.

(2) A service provider who receives a notification under paragraph (1)(b) must notify HMRC of the information it holds that is required for generating a reference in relation to the payment of general earnings.

(3) In sub-paragraphs (1) and (2), “service provider” means the provider of the approved method of electronic communications by which the payment is made.

(4) For the purposes of sub-paragraphs (1) and (3), an “approved method of electronic communications” is any method of electronic communications which has been approved for the purposes of regulation 90H (mandatory electronic payment).

(5) Any direction given under regulation 67CA of the PAYE Regulations (notification of relevant payments to and by providers of certain electronic payment methods)(a) applies for the purposes of the obligations in this paragraph as if it referred to payments of general earnings.”.

### Exceptions to paragraph 21A

14.—(1) Paragraph 21D (exceptions to paragraph 21A) is amended as follows.

(2) In sub-paragraph (1) after paragraph (d) insert—

“(e) an employer to whom a direction has been given under sub-paragraph (12).”.

(3) After sub-paragraph (2) insert—

“(2A) Before 6th April 2014, a Real Time Information employer to whom this paragraph applies may proceed as if the employer were a non-Real Time Information employer and accordingly the provisions of this Schedule apply to such an employer.”.

(4) In sub-paragraph (3) for “A” substitute “On and after 6th April 2014, the”.

(5) Omit sub-paragraphs (7) and (8).

(6) After sub-paragraph (11) insert—

“(12) Where the Commissioners for Her Majesty’s Revenue and Customs are satisfied that—

- (a) it is not reasonably practicable for an employer to make a return using an approved method of electronic communications, and
- (b) it is the employer who delivers the return (and not some other person on the employer’s behalf),

they may make a direction specifying that the employer is not required to make a return using an approved method of electronic communications.”.

### Returns under paragraphs 21A and 21D: amendments

15.—(1) Paragraph 21E (returns under paragraphs 21A and 21D: amendments) is amended as follows.

(2) In sub-paragraph (2) for “paragraphs 7” substitute “one or more of paragraphs 3A, 7”(b).

(3) In sub-paragraph (7)—

- (a) in paragraph (a)(i) for “2 and 12” substitute “2 to 7 and 10 to 12”,
- (b) omit paragraph (a)(ii), and
- (c) in paragraph (c) after “communications” insert—

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(a) Regulation 67CA of the PAYE Regulations was inserted by regulation 2 of S.I. 2012/1895.

(b) Paragraph 3A of Schedule 4A is inserted by regulation 26 of these Regulations.

“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)”.

**16. After paragraph 21E insert—**

**“Failure to make a return under paragraph 21A or 21D**

**21EA.**—(1) This paragraph applies where an employer does not make a return required by paragraph 21A (real time returns of information about payments of general earnings) or 21D (exceptions to paragraph 21A).

(2) The employer must provide the information in the next return made under paragraph 21A or 21D for the tax year in question.

(3) But if the information has not been provided before 20th April following the end of the tax year in question, the employer must submit a return under this sub-paragraph before 20th May following the tax year in question.

(4) A return under sub-paragraph (3) must—

- (a) include the information specified in Schedule 4A,
- (b) be made as soon as reasonably practicable after the discovery of the failure to make the return, and
- (c) be made using an approved method of electronic communications and regulation 90N(2) (mandatory use of electronic communications) applies as if the return were a paragraph 22 return within the meaning given by regulation 90M (paragraph 22 return and specified payments).

(5) Sub-paragraph (4)(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.

(6) Section 98A of TMA 1970 (special penalties in the case of certain returns)(a) applies to a return under sub-paragraph (3).”.

**Additional information about payments**

**17.**—(1) Paragraph 21F (additional information about payments) is amended as follows

(2) After sub-paragraph (7) insert—

“(7A) A Real Time Information employer may send to HMRC a notification (included within a return under this paragraph or otherwise) if—

- (a) for a tax period, the employer was not required to make any returns in accordance with paragraph 21A or 21D because no payments of general earnings were made during the tax periods, or
- (b) the employer has sent the final return under paragraph 21A or 21D that the employer expects to make—
  - (i) in the circumstances described in paragraph 5 of Schedule A1 to the PAYE Regulations (real time returns)(b); or
  - (ii) for the year.”.

(3) In sub-paragraph (8)—

- (a) after “(7)” insert “and a notification under paragraph (7A)”,
- (b) omit “and” at the end of paragraph (a)(iii), and

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(a) 1970 (c. 9). Section 98A was inserted by section 165 of the Finance Act 1989 (c. 26) and has been amended by paragraphs 123 and 138 of Schedule 6 to ITEPA; paragraph 8 of Schedule 12 to the Finance Act 2004 (c. 12) and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c. 11).

(b) Schedule A1 to the PAYE Regulations was inserted by regulation 52 of S.I. 2012/822.

(c) in paragraph (a)(iv) after “reference” insert—

“, and

(v) if the notification is under sub-paragraph (7A)(b)(i), include the date of cessation;”.

(4) Omit sub-paragraph (9).

#### **Return by employer at end of year**

18. In paragraph 22(A1) (return by employer at end of year), for “regulation” substitute “paragraph”.

#### **Requirement for security**

19. In paragraph 29N (requirement for security) after “11” insert “, 11ZA”.

#### **Direct collection involving deductions working sheets**

20. After paragraph 30 (provisions for direct payment) insert—

##### **“Application of paragraphs 31 and 31A**

30A.—(1) Paragraph 31(4) to (7) does not apply on or after 6th April 2014.

(2) Paragraph 31(7A) and (7B) applies only in relation to closed tax years ending on or before 5th April 2014.

(3) Paragraph 31A applies on and after 6th April 2014.”.

21.—(1) Paragraph 31 (direct collection involving deductions working sheets) is amended as follows.

(2) In sub-paragraph (1) after “and” in the second place it appears insert “, subject to paragraph 30A,”.

(3) In sub-paragraphs (7A) and (7B), for “employer” substitute “employee”.

22. After paragraph 31 (direct collection involving deductions working sheets) insert—

##### **“Direct collection involving deductions working sheets on and after 6th April 2014**

31A.—(1) On receiving any general earnings which fall to be recorded on a deductions working sheet under paragraph 31(2), subject to sub-paragraph (2), an employee must proceed in accordance with paragraph 21A(1), (2) and (5).

(2) If the employee falls within paragraph 21D(1)(a), the employee may instead proceed in accordance with paragraph 21D(3), (4) and (5).

(3) For the purposes of sub-paragraph (1), paragraph 21A(8) and paragraphs 21AB, 21AC, 21AD, 21B and 21C apply as if the employee were a Real Time Information employer.

(4) For the purposes of sub-paragraph (2), paragraph 21D(9) applies as if the employee were a Real Time Information employer.

(5) For the purposes of sub-paragraphs (1) and (2), paragraphs 15, 16, 21E, 21EA and 21F(7A) and (8) and Schedule 4A apply as if the employee were a Real Time Information employer, but the information required by paragraph 10(a) and (b) of that Schedule need not be provided.”.



## Real time returns

23. Schedule 4A (real time returns)(a) is amended as provided for in regulations 24 to 28.
24. In paragraph 2 (information about the employer and the employee)for “4 and 18 to 14” substitute “6, 8 to 15 and 18 to 20”.
25. After paragraph 2 insert—
- “2A. For the purposes of paragraph 2, the references in paragraphs 5 and 6 of Schedule A1 to the PAYE Regulations to regulation 67F of those Regulations(b) shall be taken as references to paragraph 21F of Schedule 4 to these Regulations.”.
26. After paragraph 3 (information about payments to the employee, etc)—
- “3A. The total of the amounts referred to in paragraph 3 in the year to date.”.
27. For paragraph 12 substitute—
- “12. If the employee’s employment is contracted-out or was contracted-out at any time during the year—
- (a) the number notified by HMRC on the relevant contracting-out certificate as the employer’s number, and
  - (b) the number notified by HMRC on the relevant contracting-out certificate as the registered pension scheme’s number.”.

28. After paragraph 12 insert—

“12A. Whether, during the period since the employer last made a return under paragraph 21A or 21D of Schedule 4 containing information about the employee—

    - (a) the employee has been absent from the employment because of a trade dispute at the employer’s place of work, or
    - (b) the employee has been absent from the employment without pay for any other reason.

12B. In cases—

    - (a) falling within paragraph 30 of Schedule 4, or
    - (b) where the employer has no obligation to deduct or repay tax in accordance with regulation 21 of the PAYE Regulations

the amount of the payment after statutory deductions, being the amount of the payment referred to in paragraph 3 minus the total amount of primary Class 1 contributions for the period (see paragraph 10(c)) minus the value of the deduction due under the Education (Student Loans) (Repayment) Regulations 2009(c) or the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(d).

12C. The value of any amount which is not subject to tax or national insurance contributions paid to the employee at the same time as the payment.

12D. The value of any deductions made from the payment which do not otherwise fall to be reported under Schedule 4.”.

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(a) Schedule 4A was inserted by regulation 14 of S.I. 2012/821.

(b) Regulation 67F of the PAYE Regulations was inserted by regulation 27 of S.I. 2012/822.

(c) S.I. 2009/470, as amended by S.I. 2010/661, 2011/784, 2012/836 and 2012/1309.

(d) S.R. (NI) 2009 No. 128, as amended by S.R. (N.I.) 2010 No. 90, S.R. (N.I.) 2011 No. 137 and S.R. (N.I.) 2012 No. 136.

## CHAPTER 2

### Real Time Information: transitional provisions

#### Information about employees

- 29.** On becoming a Real Time Information employer, an employer must provide to HMRC—
- (a) the information specified in paragraphs 2 to 4 of Schedule A1 to the PAYE Regulations,
  - (b) the income tax year in which the employer became a Real Time Information employer,
  - (c) the following information about each of the employer's employees during the tax year in which the employer became a Real Time Information employer—
    - (i) the employee's name,
    - (ii) the employee's date of birth,
    - (iii) the employee's current gender,
    - (iv) if known, the employee's national insurance number,
    - (v) the employee's address, and
    - (vi) the number used by the employer to identify the employee, if any.

#### Information about payments to employees

- 30.**—(1) Within one month of making the first return under paragraph 21A or 21D of Schedule 4 to the 2001 Regulations, a Real Time Information employer must provide to HMRC the information specified in paragraph (2) in respect of—
- (a) each employee who has been employed in the tax year the return was made in but whose employment had ceased before the date on which the return was made, and
  - (b) each employee to whom the relevant payments are made on an irregular basis and—
    - (i) in respect of whom information was not included on that return, and
    - (ii) to whom the employer does not expect to make a relevant payment within one month of making the return.
- (2) The information specified in this paragraph is that specified in—
- (a) paragraphs 3A, 6 to 9, 10(b), 10(d) and 12 of Schedule 4A to the 2001 Regulations, and
  - (b) paragraphs 2 to 4 of Schedule A1 to the PAYE Regulations.

#### Provision of information under regulations 29 and 30

**31.**—(1) If an employer is one to whom paragraph (3) applies, the information required by regulation 27 must be provided before the employer makes any returns under paragraph 21A or 21D of Schedule 4 to the 2001 Regulations.

(2) Any other employer may provide the information required by regulation 27 as part of the first return the employer makes under paragraph 21A or 21D of Schedule 4 to the 2001 Regulations.

(3) This paragraph applies to an employer who, on the day the employer becomes a Real Time Information employer, employs 250 or more employees.

(4) The information required by regulations 29 and 30 must be provided using an approved method of electronic communications unless the employer is one to whom paragraph 21D of Schedule 4 to the 2001 Regulations applies in which case the information must be provided in the form specified by HMRC.

#### Regulations 29 to 31 interpretation

**32.** Terms used in regulations 29 to 31 have the same meaning as they have in the 2001 Regulations.

## PART 4

### Other provisions relating to Class 1, 1A, 2 and 3 contributions

#### **Amendment of the Social Security (Contributions) Regulations 2001**

33. In regulation 40 (prescribed general earnings in respect of which Class 1A contributions not payable) omit paragraph (2)(za).

34. In regulation 48(3)(b) (Class 3 contributions) for “and 50B” substitute “, 50B and 50C”.

35. After regulation 50B (Class 3 contributions: tax years 1993-94 to 2007-08) insert—

#### **“Class 3 contributions: tax years 2006-07 to 2015-16: unavailability of pension statements 2013-14 to 2016-17**

**50C.**—(1) This regulation applies to Class 3 contributions payable in respect of one or more of the tax years 2006-07 to 2015-16 (“the relevant contribution years”).

(2) Paragraph (3) applies if a person (“the contributor”)—

- (a) was entitled under regulation 48, 146(2)(b) or 147(1)(b) to pay a Class 3 contribution in respect of one or more of the relevant contribution years;
- (b) had not, before the coming into force of this regulation, paid that contribution; and
- (c) will reach pensionable age on or after 6th April 2017.

(3) The contributor may pay a Class 3 contribution under this regulation, in respect of any of the relevant contribution years, within the period specified in paragraph (4).

(4) The period within which the contribution may be paid is the period beginning on 6th April 2013 and ending on 5th April 2023.

(5) Notwithstanding section 13(6) of the Act, the amount of a Class 3 contribution payable under this regulation shall be—

- (a) in respect of contribution years 2006-07 to 2009-10, the amount payable in relation to tax year 2012-13; or
- (b) in respect of contribution years 2010-11 to 2015-16, the amount payable in the contribution year to which the payment relates.

(6) Paragraph (5) does not apply to a Class 3 contribution paid on or after 6th April 2019.

(7) Nothing in this regulation limits the application of regulations 50, 50A and 50B.”.

36. In regulation 52A (return of contributions paid in excess of maxima prescribed in regulation 21) for “10.4%” in each place where it appears, substitute “10.6%”.

37. After regulation 61A (voluntary Class 2 contributions: tax years 1993-94 to 2007-08) insert—

#### **“Voluntary Class 2 contributions: tax years 2006-07 to 2015-16: unavailability of pension statements 2013-14 to 2016-17**

**61B.**—(1) This regulation applies to Class 2 contributions which a person (“the contributor”) was entitled, but not liable, to pay in respect of one or more of the tax years 2006-07 to 2015-16 (“the relevant contribution years”).

(2) Paragraph (3) applies if the contributor—

- (a) was entitled under regulation 46 or 147(1)(a) to pay a Class 2 contribution in respect of one or more of the relevant contribution years;
- (b) had not, before the coming into force of this regulation, paid that contribution; and
- (c) will reach pensionable age on or after 6th April 2017.

(3) The contributor may pay a Class 2 contribution under this regulation, in respect of any of the relevant contribution years, within the period specified in paragraph (4).

(4) The period within which the contribution may be paid is the period beginning on 6th April 2013 and ending on 5th April 2023.

(5) Notwithstanding section 12(3) of the Act, the amount of a Class 2 contribution payable under this regulation shall be—

- (a) in respect of contribution years 2006-07 to 2010-11, the amount payable in relation to tax year 2012-13; or
- (b) in respect of contribution years 2011-12 to 2015-16, the amount payable in the contribution year to which the payment relates.

(6) Paragraph (5) does not apply to a Class 2 contribution paid on or after 6th April 2019.

(7) Nothing in this regulation limits the application of regulations 61 and 61A.”.

**38.** After regulation 63 (Class 2 contributions paid late in accordance with a payment undertaking) insert—

**“Collection of unpaid Class 2 contributions through PAYE code**

**63A.**—(1) Where—

- (a) the amount of any Class 2 contributions (“relevant debt”) would fall to be computed in accordance with section 12(3) of the Act<sup>(a)</sup> (late paid Class 2 contributions), and
- (b) paragraph (2) applies,

the amount of the relevant debt must be computed in accordance with paragraph (4).

(2) This paragraph applies where—

- (a) the code (“the PAYE code”) required by regulation 13 of the PAYE Regulations<sup>(b)</sup> (determination of code by Inland Revenue) for use by an employer for a year<sup>(c)</sup> in respect of the person liable to pay the relevant debt is determined in accordance with regulation 14A of the PAYE Regulations (determination of code in respect of recovery of relevant debts) so as to effect recovery of the relevant debt;
- (b) the determination of the PAYE code is made assuming the amount of the relevant debt is the amount computed in accordance with paragraph (4); and
- (c) the relevant debt is paid in the year in respect of which the PAYE code is determined for use by an employer of the person liable to pay the relevant debt.

(3) For the purpose of determining whether a relevant debt is paid in accordance with paragraph (2)(c), the amount of the relevant debt must be assumed to be the amount computed in accordance with paragraph (4).

(4) The amount referred to in paragraphs (1), (2)(b) and (3) is the highest weekly rate of a Class 2 contribution in the period beginning with the contribution week to which the relevant debt relates and ending with the day the PAYE code mentioned in paragraph (2)(a) is determined.”.

**39.** In Schedule 2 (calculation of earnings for the purposes of earnings-related contributions in particular cases) for paragraph 14(3) (valuation of non-cash meal vouchers) substitute—

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(a) Regulation 1(2) of S.I. 2001/1004 provides that “the Act” means the Social Security Contributions and Benefits Act 1992. Regulation 156 provides that a reference to a provision in an enactment that applies only to Great Britain, shall be construed so far as necessary as including a reference to the corresponding enactment applying in Northern Ireland. Schedule 7 provides that the corresponding enactment is the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(b) S.I. 2003/2682, amended by S.I. 2011/1584.

(c) Regulation 1(2) of S.I. 2001/1004 provides that “year” means “tax year”.

“(3) For the purposes of sub-paragraph (2) the chargeable expense shall be reduced by any part of that which the employed earner makes good to the person incurring it.”.

**40.** In Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions)—

- (a) in Part 5 (certain non-cash vouchers to be disregarded as payments in kind)—
  - (i) omit paragraph 6A; and
  - (ii) in paragraph 7A(4)(a) for “£22” substitute “£25”.
- (b) in Part 6 (pensions and pensions contributions) after paragraph 10 insert—

**“Armed forces early departure scheme payments**

**10A.** A payment under a scheme established by the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437).”.

## PART 5

### Tax agents: dishonest conduct

#### **Application of Schedule 38 to the Finance Act 2012**

**41.** The provisions of Schedule 38 to the Finance Act 2012(a) (tax agents: dishonest conduct) apply in relation to Class 1, Class 1A, Class 1B and Class 2 National Insurance contributions as in relation to tax to the extent that they do not already apply(b).

## PART 6

### Repeals

#### **Amendment of the Social Security (Contributions) (Amendment No. 5) Regulations 2001**

- 42.** In the Social Security (Contributions) (Amendment No. 5) Regulations 2001(c) omit—
- (a) regulation 3(2)(a);
  - (b) regulation 4; and
  - (c) regulation 5(2)(b).

*Robert Goodwill*  
*David Evennett*

At 2.30 p.m. on 14th March 2013      Two of the Lords Commissioners of Her Majesty’s Treasury

*Jennie Grainger*  
*Jim Harra*

At 12.12 p.m. on 14th March 2013      Two of the Commissioners for Her Majesty’s Revenue and Customs

- 
- (a) 2012 c. 14. S.I. 2013/279 (C. 13) appoints the 1st of April 2013 as the day on which Schedule 38 to Finance Act 2012 comes into force.
  - (b) Paragraphs 56 and 57 of Schedule 38 to the Finance Act 2012 makes consequential provision in respect of section 110ZA of the Social Security Administration Act 1992 (c. 5) (Class 1, 1A, 1B or 2 contributions: powers to call for documents etc) and section 104ZA of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (Class 1, 1A, 1B or 2 contributions: powers to call for documents) to apply Part 3 of Schedule 38 (power to obtain agent’s files etc) to Class 1, 1A, 1B and 2 contributions.
  - (c) S.I. 2001/2412.

The Secretary of State concurs with the making of these Regulations as indicated in the preamble  
Signed by authority of the Secretary of State for Work and Pensions

*Steve Webb*

Minister of State

Department for Work and Pensions

12th March 2013

The Department for Social Development concurs with the making of these Regulations as indicated in the preamble

Sealed with the Official Seal of the Department for Social Development on 8th March 2013



*Anne McCleary*

8th March 2013

A senior officer of the Department for Social Development

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the principal Regulations”).

Part 2 of these Regulations amends the principal Regulations as a consequence of the simplified deduction scheme for personal employers (“the Scheme”) being closed to new employers by virtue of the amendments made to regulation 34 of the Income Tax (Pay As You Earn) Regulation 2003 (S.I. 2003/2682) by regulation 64(a) of the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S.I. 2012/822).

Chapter 1 of Part 3 of these Regulations amends Schedules 4 and 4A to the principal Regulations to make further provision in relation to the provision of Real Time Information (“RTI”) to the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) on or before the making of a payment to an employee.

Regulation 6 amends the definition of an RTI employer in paragraph 1(4) of Schedule 4 to exclude certain employers from becoming RTI employers on 6th April 2013.

Regulations 7 to 9 amend specified paragraphs of Schedule 4 to make amendments consequential upon the insertion of new paragraph 21EA by regulation 16 of these Regulations.

Regulation 10 amends paragraph 21A of Schedule 4 to make provision in respect of the information required where the employee is one whose earnings are below the lower earnings level. The regulation also makes a consequential amendment to paragraph 21A following the insertion of new paragraph 21EA into Schedule 4.

Regulation 11 inserts new paragraphs 21AA to 21AD into Schedule 4. New paragraph 21AA and 21AB make provision for exceptions from the requirement in paragraph 21A to report information on or before the making of a payment. Where new paragraph 21AA or 21AB applies the employer is required to report the payment by the end of a period of 7 days beginning with the day after the day on which the payment is made. New paragraph 21AC makes provision for including such information in a return in respect of any other relevant payment. New paragraph 21AD makes provision for employers who make a payment of general earnings which falls within regulation 85, 86 or 87 of the PAYE Regulations to deliver the information required as soon as practicable and no later than 14 days after the end of the tax month in which the payment is made.

Regulation 12 amends paragraph 21B of Schedule 4 to require an employer who makes a notional payment to report the payment no later than 14 days after the end of the tax month in which the payment is made.

Regulation 13 inserts new paragraph 21CA into Schedule 4 which details the information that an employer must provide when making a payment of general earnings by an approved method of electronic communications. New paragraph 21CA also requires a service provider who receives notification from the employer that the payment is one of general earnings to report the information that it holds to HMRC.

Regulation 14 amends paragraph 21D of Schedule 4 to extend those who are not required to make a return in accordance with paragraph 21A to include those employers whom HMRC are satisfied are unable to file using an approved method of electronic communications. It also amends paragraph 21D to make provision for the specified employers to file as non-Real Time Information employers for the tax year 2013-14.

Regulation 15 makes consequential amendments to paragraph 21E of Schedule 4 to expand the information that an employer must provide when making a return to include details of information omitted from an earlier return.

Regulation 16 inserts new paragraph 21EA into Schedule 4 to make provision for the situation where an employer has failed to make a return of information. New paragraph 21EA requires the employer to provide the information in the next return made under paragraph 21B or 21D for the tax year in question. If the information has not been included in such a return before 20th April following the tax year to which the information relates, the employer is required to report the information under paragraph 21EA(3) before 20th May. New paragraph 21EA(6) makes provision for section 98A of the Taxes Management Act 1970 (c. 9) to apply if the return is not made before 20th May following the end of the tax year to which the information relates. As a consequence of new paragraph 21EA(6) an employer who has not reported all the payments (either under paragraph 21B or 21D or under paragraph 21E(2) before 20th April or under paragraph 21EA(3) on or after 20th April but before 20th May) could be liable to a penalty for late filing.

Regulation 17 amends paragraph 21F of Schedule 4 to make provision for an employer to notify HMRC that for a particular tax period the employer was not required to make any returns under RTI or that the employer has made the final return for the tax year and to notify the date of cessation of the scheme.

Regulation 18 amends paragraph 22(A1) of Schedule 4 to correct an error in regulation 12 of S.I. 2012/821.

Regulation 19 amends paragraph 29N of Schedule 4 to include a reference to paragraph 11ZA of that Schedule to enable HMRC to seek security in respect of any amount due as a consequence of the rectification of an error or omission.

Regulations 20 to 22 insert new paragraphs 30A and 31A into Schedule 4 and amend paragraph 31 of that Schedule to make provision for employees within paragraph 30 to continue to submit paper returns for the tax year 2013-14. These employees will submit RTI returns from 6th April 2014.

Regulations 24 to 28 insert new paragraphs into Schedule 4A. This Schedule sets out the information which must be provided to HMRC by an employer when making a payment to an employee.

Chapter 2 of Part 3 sets out the transitional provisions which apply when an employer becomes an RTI employer on or after 6th April 2013. Regulation 29 requires any employer who has more than 250 employees (“a large employer”) on the day on which it becomes an RTI employer to provide certain information to HMRC at that time. This is a one off data alignment exercise.

Regulation 30 requires the employer to provide HMRC with the information specified in that regulation within one month of making the first return under either paragraph 21A or 21D of the principal Regulations.

Regulation 31 requires a large employer to provide the information specified in regulation 29 before any return is made under paragraph 21A or 21D of Schedule 4 to the principal Regulations. An employer who is not a large employer may provide the information specified by regulation 29 but is not required to do so.

Part 4 of these Regulations makes a number of amendments to the principal Regulations.

The principal Regulations provide for certain payments to be disregarded in the calculation of earnings for National Insurance purposes. Regulations 33, 39 and 40(a)(i) remove from the principal Regulations the disregard from Class 1 National Insurance contributions (“NICs”) on the first 15 pence per working day of a meal voucher provided by an employer to an employee.

The provisions of the principal Regulations removed by regulations 33, 39 and 40(a)(i) were inserted by, or amended by, a later statutory instrument. Part 6 of these Regulations makes a corresponding amendment to that later instrument in order to make sure that redundant legislation is removed from the statute book.

The Principal Regulations make provision, amongst other things, for the payment of voluntary NICs (voluntary Class 2 and Class 3). The principal Regulations make provision for those contributions to be made, subject to certain conditions, within a period of 6 years from the contribution year to which they relate.

Regulations 34, 35 and 37 make amendments to the principal Regulations in order to extend the period of time in which to make voluntary contributions for contributors who, as a consequence of the unavailability of pension statements between 2013-14 and 2016-17 (inclusive), will not be in a position to make an informed decision regarding payment of voluntary contributions for the tax years 2006-07 to 2016-17 and who will reach pension age on or after 6th April 2017.

Regulation 35 inserts new regulation 50C into the principal Regulations to give effect to the extended time period for Class 3 contributions by allowing, subject to conditions, contributions to be paid between 6th April 2013 and 5th April 2023. New regulation 50C also dis-applies the higher rate provisions in section 13(6) of the Social Security Contributions and Benefits Act 1992 (c. 4) (“SSCBA”) until 5th April 2019.

Regulation 37 inserts new regulation 61B into the principal Regulations to give effect to the extended time period for voluntary Class 2 contributions by allowing, subject to conditions, contributions to be paid between 6th April 2013 and 5th April 2023. New regulation 61B also dis-applies the higher rate provisions in section 12(3) SSCBA until 5th April 2019.

Regulation 36 amends the principal Regulations to reflect a change to the reduced rates of primary Class 1 NICs in respect of members of certain contracted-out pension schemes in relation to contributions paid with effect from the tax year 2012-2013 and subsequent tax years. Regulation 52A of the principal Regulations provides for the return of NICs paid in excess of the annual maximum prescribed in regulation 21 of the principal Regulations.

Regulation 36 reflects a change to the reduced rates of primary Class 1 NICs in respect of members of certain contracted-out pension schemes from 10.4% to 10.6%. The main rate of primary Class 1 NICs is 12%. Section 41 of the Pension Schemes Act 1993 (c.48) (the “1993 Act”) provides for a reduction in the rates of primary Class 1 NICs in respect of members of salary related contracted-out pension schemes. Article 2 of the Social Security (Reduced Rates of Class 1 Contributions, Rebates and Minimum Contributions) Order 2011 (S.I. 2011/1036) alters, with effect from the tax year 2012-2013, the percentage to be deducted from main rate of primary Class 1 NICs in respect of members of contracted-out pension schemes for the purposes of section 41 of the 1993 Act from 1.6% to 1.4%. Therefore, from 6th April 2013, the rate of primary Class 1 NICs in respect of members of salary related contracted-out pension schemes will increase from 10.4% to 10.6%.

Regulation 38 amends the principal Regulations to provide for the computation of the amount of a person’s Class 2 NICs where it is paid in the tax year to which an Income Tax “Pay As You Earn” code (“PAYE Code”) relates if the PAYE Code was determined in order to effect recovery of the contribution that should have been paid in an earlier tax year.

Schedule 3 of the principal Regulations allows certain payments to be disregarded in the calculation of earnings for the purpose of establishing liability for earnings-related NICs.



Part 5 of Schedule 3 to the principal Regulations provides for certain non-cash vouchers to be disregarded as payments in kind in the calculation of earnings for the purpose of establishing liability for earnings-related NICs. Paragraph 7A of the principal Regulations provides a limited disregard for qualifying childcare vouchers where employees join a scheme on or after 6th April 2011. The amount of the disregard is determined on the basis of an estimate of an employee's relevant earnings for the tax year. For additional rate taxpayers the maximum weekly amount to be disregarded is £22. Regulation 40(a)(ii) amends the maximum weekly amount to be disregarded with effect from 6th April 2013 to £25.

Regulation 40(b) inserts a new paragraph 10A into Part 6 of Schedule 3 to the principal Regulations in order to provide that payments made under the Armed Forces Early Departure Scheme (S.I. 2005/437) are disregarded when calculating a person's earnings for those purposes.

Part 5 applies the information and penalty provisions in Schedule 38 to the Finance Act 2012 (c. 14) (tax agents: dishonest conduct). This Schedule provides for tax agents who engage in dishonest conduct to be subject to penalties and for officers of Revenue and Customs to obtain relevant documents from such agents. Regulation 41 applies these provisions to NICs, as they apply to tax and duties, following the commencement of Schedule 38 on 1st April 2013.

A Tax Information and Impact Note covering regulations 3 and 4 was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S.I. 2012/822) 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 covering regulations 5 to 32 was published on 15th March 2012 alongside the Social Security Income (Contributions) (Amendment No 3) Regulations 2012 (S.I. 2012/821). This has been updated as a result of changes to the impacts as a result of the year long RTI pilot and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

A Tax Information and Impact Note covering regulations 33, 39, 40(a)(i) and 42 was published on 6th December 2011 alongside the autumn statement 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 these regulations.

A Tax Information and Impact Note covering regulations 34, 35 and 37 was published on 27th February 2013 alongside a draft of these regulations 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 these regulations.

In line with government commitments a Tax Information and Impact Note covering regulation 36 has not been prepared as it gives effect to previously announced policy and it relates to routine changes to rates, limits and thresholds to a predetermined indexation formula.

An Impact Assessment covering regulation 38 was published by HMRC on 14th April 2009 which considered the impact of the proposal to extend coding out to any small debt. The Impact Assessment remains an accurate summary of the impacts that apply to this regulation and is available on the HMRC website at <http://webarchive.nationalarchives.gov.uk/20100330144254/http://www.hmrc.gov.uk/budget2009/powers-debt-2400.pdf>

A Tax Information and Impact Note covering regulation 40(a)(ii) was published on 11th December 2012 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 regulation.

Tax Information and Impact Note covering regulation 40(b) will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

A Tax Information and Impact Note covering Part 5 was published on 6th December 2011 for Schedule 38 to the Finance Act 2012 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 regulation.

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