

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 4)
REGULATIONS 2014

2014 No. 2397

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the principal Regulations") in relation to penalties for employers who are reporting National Insurance Contributions (NICs) on or before making a payment ("reporting in real time") and which fail to file a return by the relevant filing date.
- 2.2 This instrument is consequential upon the Finance Act 2009, Schedule 55 (Penalties for failure to make returns) (Appointed Days and Consequential Provision) Order 2014 (S.I. 2014/2395 (C. 105) ("the Appointed Day Order") which appoints the days from which late filing penalties under Schedule 55 to the Finance Act 2009 (c. 10) will apply if a return is not made by the relevant filing date.
- 2.3 This instrument also makes consequential changes following the abolition of the Statutory Sick Pay Percentage Threshold Scheme (PTS) by the Statutory Sick Pay Percentage Threshold (Revocations, Transitional and Saving Provisions)(Great Britain and Northern Ireland) Order 2014 (S.I. 2014/897). As the requirement on employers to report amounts recovered under this scheme will become otiose it is being removed as is the connected requirement on employers to report details of Statutory Sick Pay (SSP).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

- 4.1 This instrument makes a number of amendments to Schedules 4, 4A and 4B to the principal Regulations.

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- 4.2 The Appointed Day Order appoints 6th October as the day from which late filing penalties in Schedule 55 to the Finance Act 2009 will apply to large Real Time Information employers ("employers") that is employers who have at least 50 employees on 6 October 2014) and 6th March as the date from

which late filing penalties will apply to small employers (that is employers who employ no more than 49 employees as at 6 October 2014) and new employers.

- 4.3 The Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2014 (2014/2396) amend the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the PAYE Regulations”) by inserting new regulations 67I to 67K. Those regulations set the quantum of the penalty by reference to the number of employees in the period to which the return relates. Those Regulations also set the duration of the initial period (in paragraph 6C(3) and (4) of Schedule 55 to the Finance Act 2009). The initial period applies to the first return by a new employer. Those Regulations also disapply the unpenalised default in two circumstances. The first is a transitional arrangement and applies for the period 6 March to 5 April 2015 and only where the employer is a small employer. The second is where an employer operates an annual Pay As You Earn Scheme.
- 4.4 This instrument applies Schedule 55 to the Finance Act 2009 and new regulations 67I to 67K of the PAYE Regulations to returns under paragraph 21A and paragraph 21D of the principal Regulations except where that return is associated with a return under regulation 67B or regulation 67D of the PAYE Regulations. A return under the principal Regulations is associated with a return under the PAYE Regulations if the returns are required to be delivered at the same time.

Statutory Sick Pay Percentage Threshold Scheme

- 4.5 The Statutory Sick Pay Percentage Threshold (Revocations, Transitional and Savings Provisions) (Great Britain and Northern Ireland) Order 2014 (SI (S.I. 2014/897) abolishes the PTS in relation to any day of incapacity of work falling on or after 6 April 2014. It also provides that employers have until 6 April 2016 to make any claims for days of incapacity falling before 6 April 2014.
- 4.6 This instrument removes all requirements on employers to return particulars of any recovery made under the PTS in relation to any day of incapacity of work falling on or after 6 April 2014. This statutory instrument also removes the requirement on employers to report information on SSP. These reporting requirements are no longer required as a result of the revocation of this scheme.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

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- 7.1 The Finance Act 2009 introduced generic penalties where returns are delivered to HMRC after the relevant filing date. These penalties have been applied to various taxes, and by the Appointed Day Order are applied to returns under regulation 67B and regulation 67D of the PAYE Regulations 2003 in respect of payments made by employers to their employees.
- 7.2 In April 2012 HMRC began to pilot the delivery of information to HMRC for PAYE and NICs in real time with volunteer employers and software developers. Once reporting in real time, employers are required to report information about payments to employees on or before making the payments. In April 2013 the requirement to report in real time was introduced for all employers. However, HMRC recognised that employers needed time to adapt to the requirement to report more frequently. As a consequence HMRC delayed the introduction of late filing penalties to ensure employers had more time to adjust to the new system.
- 7.3 Most employers have now been reporting information about payments to employees in real time for over a year and most report on time. Therefore to encourage the remaining employers to make a return by the relevant filing date the Appointed Day Order applies the penalties in Schedule 55 to the Finance Act 2009 to failure to make a return under the PAYE Regulations.
- 7.4 However, HMRC's experience in introducing the delivery of information in real time has shown that where possible introducing changes in stages as is preferable as it allows for systems to be updated and for enhanced guidance and customer support to be provided as needed.
- 7.5 Therefore the Appointed Day Order applies the penalties to large employers from 6 October 2014. It applies the penalties to small employers (those who have no more than 49 employees at 6 October 2014) and those who become an employer after 6 October 2014 from 6 March 2015.
- 7.6 Applying these penalties to small employers from a later date gives these employers longer to prepare for the Real Time Information filing obligations. In addition a proportion of small employers were previously using a reporting easement and have only started reporting on or before making the payment from April 2014. It is apparent that many employers with 9 or fewer employees are still not using the late reporting codes on their returns. This additional time will enable HMRC to raise awareness without those employers incurring a penalty.
- 7.7 Applying these penalties to small employers from 6 March 2015 means that if an employer fails to file the final return for the tax year 2014/15, that employer will be liable to a penalty similar to the 'end of year' charged for a failure to submit a return for tax years to 2013-14.

Statutory Sick Pay Percentage Threshold Scheme

7.8 In November 2011 a review of sickness absence “Health at Work- An Independent Review of Sickness Absence” was published. The Department for Work and Pensions (DWP) are implementing the recommendations in this review to abolish the PTS. In consequence of this, DWP are also abolishing a requirement set out in regulation 13 of the Statutory Sick Pay (General) Regulations 1982 (1982 Regulations) which requires employers to maintain records of employees relating to sickness absence and payment of SSP by virtue of regulation 13 of the 1982 Regulations.

7.9 The changes this instrument makes are solely as a consequence of the abolition of the PTS.

- ***Consolidation***

7.10 This instrument amends the principal Regulations HMRC has no current plans to consolidate those Regulations.

8. Consultation outcome

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8.1 HMRC has consulted widely on the impact of employers reporting PAYE in real time. Analysis of the evidence indicates that the majority of employers are able to file ‘on or before’ and that they believe they will experience, over time, a reduction in their administrative costs when the changes to end-of-year processes are taken into account.

8.2 Consultation on the penalty elements of this instrument which sets out the in-year penalty provisions took place during the period 29 November 2013 to 24 January 2014.

8.3 Following customer feedback to the consultation, HMRC announced in February 2014 that late filing penalties would not be introduced until October 2014 <http://www.mynewsdesk.com/uk/hm-revenue-customs-hmrc/pressreleases/hmrc-unveils-new-timetable-for-rti-penalties-960361>. HMRC have now further extended that introduction date for small employers.

Statutory Sick Pay Percentage Threshold Scheme

8.4 The changes are consequential to the abolition of the PTS. As a result no consultation has taken place specifically in relation to this instrument.

9. Guidance

9.1 Employers will be advised by an electronic Generic Notification Service message of the date from which penalties will apply to them. Guidance has been published on HMRC’s website for employers filing in real time and this will be updated to reflect the staged introduction of in year late filing penalties.

9.2 Guidance on the abolition of the PTS will be available on GOV.UK.

10. Impact

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- 10.1 The impact on business, charities or voluntary bodies is that all Real Time Information employers will be charged penalties when they fail to deliver returns by the relevant filing date.
- 10.2 The impact on the public sector is that these penalties will also be charged on Real Time Information employers in the public sector.
- 10.3 A Tax Information and Impact Note covering regulation 3(4) and (5) was published on 20 March 2013 and is available on the HMRC website at http://www.hmrc.gov.uk/the_library/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

Statutory Sick Pay Percentage Threshold Scheme

- 10.4 The instrument removes all the current reporting requirements on business, charities and voluntary bodies in relation to sick pay. However, HMRC will still be able to require employers to produce records to show that SSP has been paid in accordance with the 1982 Regulations.
- 10.5 The instrument has no impact on the public sector.
- 10.6 A Tax Information and Impact Note has not been prepared for this change as it contains no substantive changes to tax policy.

11. Regulating small business

Real Time Information

- 11.1 The legislation applies to small businesses.
- 11.2 To minimise the impact of the requirements on firms employing up to 49 people, these employers have been given longer to prepare for the Real Time Information filing obligations.
- 11.3 Real Time Information employers with no more than 49 employees will not be charged penalties for failing to provide their Real Time Information returns by the relevant filing date until 6 March 2015, whereas Real Time Information employers with at least 50 employers will be liable to the penalties from 6 October 2014.

Statutory Sick Pay Percentage Threshold Scheme

- 11.4 The legislation applies to small businesses.
- 11.5 As explained above to minimise the impact of the requirements on firms employing up to 20 people, the legal obligation on employers to keep records in relation to SSP is also being revoked by the DWP. The new health and work service will support small businesses in more effectively managing employee sickness absence.
- 11.6 The measures outlined in the previous paragraph will help ensure that the impact on small businesses following the abolition of the PTS will be minimised both in terms of financial impact and administrative burdens

12. Monitoring & review

Real Time Information

- 12.1 The success criteria will be measured by improved filing statistics by employers.

Statutory Sick Pay Percentage Threshold Scheme

- 12.2 The Department for Work and Pensions is responsible for evaluating and monitoring the impact of the abolition of the PTS.

13. Contact

Real Time Information

Adrian Morton at HMRC, Tel: 03000 586 434 or e-mail:
adrian.morton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Statutory Sick Pay Percentage Threshold Scheme

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