
STATUTORY INSTRUMENTS

2003 No. 2682

The Income Tax (Pay As You Earn) Regulations 2003

PART 4

PAYMENTS, RETURNS AND INFORMATION

CHAPTER 1

PAYMENT OF TAX AND ASSOCIATED RETURNS

Payment and recovery of tax by employer

Periodic payments to and recoveries from the Revenue

68.—(1) This regulation applies to determine how much an employer must pay or can recover for a tax period.

(2) If A exceeds B, the employer must pay the excess to the Inland Revenue.

(3) But if B exceeds A, the employer may recover the excess either—

- (a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later tax period in the tax year, or
- (b) from the Board of Inland Revenue.

(4) In this Regulation—

A is—

- (a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus
- (b) the total amount of tax for which the employer was liable to account in respect of notional payments made by the employer in that period under regulation 62(5) (notional payments);

B is the total amount which the employer was liable to repay in the tax period.

(5) Paragraphs (2) and (3) are subject to regulation 71 (modification in case of trade disputes).

(6) Paragraph (2) is also subject to regulation 78(11) (entitlement to set off excess payments).

Due date and receipts for payment of tax

69.—(1) An employer must pay amounts due under regulation 68(2)—

- (a) within 17 days after the end of the tax period, where payment is made by an approved method of electronic communications, or
- (b) within 14 days after the end of the tax period, in any other case.

(2) The Inland Revenue must give a receipt to the employer for the total amount paid under regulation 68(2) if asked.

(3) But no separate receipt for tax only need be given if a receipt is given for the total amount of tax and any earnings-related contributions (as defined by regulation 1(2) of the Social Security (Contributions) Regulations 2001)(1) paid at the same time.

Quarterly tax periods

70.—(1) This regulation applies, so that the tax period is a tax quarter, if an employer—

(a) has reasonable grounds for believing that the average monthly amount will be less than £1,500, and

(b) chooses to pay tax quarterly.

(2) “The average monthly amount” is the average, for tax months falling within the current tax year, of the amounts found by the formula—

$$\{P + N - L + S\} \div \{C - SP + CD\}.$$

(3) In paragraph (2)—

P is the amount which would be payable to the Inland Revenue under regulation 68 disregarding any WTC adjustment;

N is the amount which would be payable to the Inland Revenue under the SSCBA and the SSC Regulations disregarding—

(a) any amount of secondary Class 1 contributions in respect of which liability has been transferred to the employed earner by an election made jointly by the employed earner and the secondary contributor for the purposes of paragraph 3B(1) of Schedule 1 to the SSCBA (transfer of liability to be borne by earner)(2); and

(b) any WTC adjustment;

L is the amount which would be payable to the Inland Revenue under regulation 39(1) of the Student Loans Regulations (payment of repayments deducted to the Inland Revenue) disregarding—

(a) the reduction referred to in paragraph (3) of that regulation, and

(b) any WTC adjustment;

S is the amount which would be payable by the employer to the Inland Revenue under sections 559 and 559A of ICTA(3) (deduction on account of tax etc from payments to certain sub-contractors) and regulation 8 of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(4), disregarding any WTC adjustment;

C is the amount which the employer would be required to pay to employees by way of tax credit under the WTC Regulations;

SP is the amount which would be payable by the employer to employees by way of statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay under the SSCBA; and

CD is—

(1) S.I.2001/1004.

(2) Paragraph 3B was inserted in Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19), and in Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) by section 81(2) of the Child Support, Pensions and Social Security Act 2000.

(3) Section 559 was amended by section 139 of, and paragraph 1 of Schedule 27 to, the Finance Act 1995 (c. 4), section 55(2) of the Finance Act 1998 (c. 36), Part 3(1) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 58 of Schedule 6 to ITEPA and by S.I. 1989/2405 (N.I. 19); section 559A was inserted by section 40(1) of the Finance Act 2002.

(4) S.I. 1993/743.

- (a) if the employer is a company, the amount which others would deduct from payments to it, in its position as a sub-contractor, under section 559 of ICTA (deduction on account of tax etc from payments to certain sub-contractors);
 - (b) in any other case, nil.
- (4) In this regulation—
- “employed earner” has the same meaning as in the SSCBA;
- “SSCBA” means the Social Security Contributions and Benefits Act 1992⁽⁵⁾ or, in Northern Ireland, the Social Security Contribution and Benefits (Northern Ireland) Act 1992⁽⁶⁾;
- “SSC Regulations” means the Social Security (Contributions) Regulations 2001⁽⁷⁾;
- “Student Loans Regulations” means the Education (Student Loans) (Repayment) Regulations 2000⁽⁸⁾ or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000⁽⁹⁾;
- “WTC adjustment” means an adjustment to the amount in question under regulation 7(2) of the WTC Regulations (funding of payment of working tax credit);
- “WTC Regulations” means the Working Tax Credit (Payment by Employers) Regulations 2002⁽¹⁰⁾.

Modification of regulation 68 in case of trade dispute

71.—(1) This regulation modifies the amount payable or recoverable by an employer under regulation 68 in cases where regulation 64 (trade disputes) applies—

- (a) by providing for the amount which would otherwise be payable by the employer for a tax period to be reduced by an amount of repayments (“R”) that cannot be made to employees in the tax period, and
 - (b) by providing—
 - (i) for amounts which would otherwise be payable in later tax periods to be increased, or
 - (ii) for amounts which would otherwise be recoverable in later tax periods to be reduced, by a total of R.
- (2) This regulation applies for consecutive tax periods—
- (a) starting with the first tax period at the end of which there is an amount calculated as due to be repaid but which is required to be withheld by regulation 64(5) (tax to be withheld during strike action), and
 - (b) ending with the next tax period at the end of which no amount is required to be withheld by that regulation.
- (3) Column 3 of Table 3 shows the amount payable under regulation 68(2) in the cases set out in column 2 for the first and subsequent tax periods.

⁽⁵⁾ 1992 c. 4.

⁽⁶⁾ 1992 c. 7.

⁽⁷⁾ S.I. 2001/1004.

⁽⁸⁾ S.I. 2000/944.

⁽⁹⁾ S.R. (N.I.) 2000 No. 121.

⁽¹⁰⁾ S.I. 2002/2172.

Table 3

Modified amount payable under regulation 68

<i>1. Tax period</i>	<i>2. Case</i>	<i>3. Amount payable</i>
First tax period	if B equals or exceeds A	nil
First tax period	any other case	A – B, reduced by P (or by so much of P as reduces the amount payable to nil)
Subsequent tax periods	if B equals or exceeds (A + Q)	nil
Subsequent tax periods	any other case	(A + Q) – B, reduced by P (or by so much of P as reduces the amount payable to nil).

(4) The amount (if any) recoverable under regulation 68(3) must be reduced to the extent that it includes amounts—

- (a) for which reduction was made under paragraph (3) in an earlier tax period, or
- (b) which are otherwise being recovered.

(5) In this regulation—

A is—

- (a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus
- (b) the total amount of tax for which the employer was liable to account in respect of notional payments made by the employer in that period under regulation 62(5) (notional payments);

B is the total amount which the employer is liable to repay in the tax period, not including any amounts—

- (a) for which a reduction was made under paragraph (3) in an earlier tax period; or
- (b) which are being recovered under paragraph (4);

P is the total of amounts calculated as due to be repaid in the tax period but required to be withheld during that tax period by regulation 64(5);

Q is the total of amounts—

- (a) which, because of regulation 64(5)(b), are set off against tax due to be deducted in the tax period, and
- (b) which also, under paragraph (3), have reduced the amount payable in an earlier tax period.

Recovery from employee of tax not deducted by employer

72.—(1) This regulation applies if—

- (a) it appears to the Inland Revenue that the deductible amount exceeds the amount actually deducted, and
- (b) condition A or B is met.

(2) In this regulation—

“the deductible amount” is the amount which an employer was liable to deduct from relevant payments made to an employee in a tax period;

“the amount actually deducted” is the amount actually deducted by the employer from relevant payments made to that employee during that tax period;

“the excess” means the amount by which the deductible amount exceeds the amount actually deducted.

(3) Condition A is that the employer satisfies the Inland Revenue—

- (a) that the employer took reasonable care to comply with these Regulations, and
- (b) that the failure to deduct the excess was due to an error made in good faith.

(4) Condition B is that the Inland Revenue are of the opinion that the employee has received relevant payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(5) The Inland Revenue may direct that the employer is not liable to pay the excess to the Inland Revenue.

(6) If a direction is made, the excess must not be added under regulation 185(5) or 188(3)(a) (adjustments to total net tax deducted for self-assessments and other assessments) in relation to the employee.

(7) If condition B is met, tax payable by an employee as a result of a direction carries interest, as if it were unpaid tax due from an employer, in accordance with regulation 82 (interest on tax overdue).

(8) The tax payable carries interest from the reckonable date until whichever is the earlier of—

- (a) the date on which payment is made, or
- (b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of TMA(11).

Annual returns of relevant payments and tax

Annual return of relevant payments liable to deduction of tax (Forms P35 and P14)

73.—(1) Before 20th May following the end of a tax year, an employer must deliver to the Inland Revenue a return containing the following information.

(2) The information is—

- (a) the tax year to which the return relates,
- (b) the total amount of the relevant payments made by the employer during the tax year to all employees in respect of whom the employer was required at any time during that year to prepare or maintain deductions working sheets, and
- (c) the total net tax deducted in relation to those payments.

(3) The return must be supported by the following information in respect of each of the employees mentioned in paragraph (2)(b).

(4) The supporting information is—

- (a) the employee’s name,
- (b) the employee’s address, if known,
- (c) either—

(11) Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 8).

- (i) the employee's national insurance number, or
 - (ii) if that number is not known, the employee's date of birth, if known, and sex,
- (d) the employee's code,
- (e) the tax year to which the return relates,
- (f) the total amount of the relevant payments made by the employer to the employee during that tax year, and
- (g) the total net tax deducted in relation to those payments.
- (5) Paragraphs (2)(c) and (4)(g) are subject to regulation 64(7) (trade disputes).
- (6) If an employee was taken into employment after the beginning of the tax year, the employer must also provide the total amounts of—
 - (a) any amounts required by regulation 43(9), 52(11), 53(3) or 61(3) to be treated as relevant payments made by the employer to the employee during the tax year,
 - (b) any amounts treated as tax deducted by the employer by any of those regulations,
 - (c) the sum of the figures given under sub-paragraph (a) of this paragraph and paragraph (4)(f),
 - (d) the sum of the figures given under sub-paragraph (b) of this paragraph and paragraph (4)(g).
- (7) The return must include—
 - (a) a statement and declaration containing a list of all deductions working sheets which the employer was required to prepare or maintain at any time during that tax year; and
 - (b) a certificate showing—
 - (i) the total net tax deducted or the total net tax repaid in the case of each employee, and
 - (ii) the total net tax deducted or repaid in respect of all the employees, during that tax year.
- (8) The statement and declaration and the certificate must be—
 - (a) signed by the employer, or
 - (b) if the employer is a body corporate, signed either by the secretary or by a director.
- (9) Paragraph (8) is subject to regulation 211(5) (authentication in approved manner if return sent electronically).
- (10) Section 98A of TMA(12) (special penalties in case of certain returns) applies to paragraph (1).

Annual return of relevant payments not liable to deduction of tax (Form P38A)

74.—(1) Before 20th May following the end of a tax year, an employer must deliver a return to the Inland Revenue in respect of every relevant employee.

- (2) The return must contain the following information—
 - (a) the employee's name,
 - (b) the employee's address, if known,
 - (c) the employee's national insurance number, if known,
 - (d) the employee's job title or description,
 - (e) the tax year to which the return relates,

(12) Section 98A was inserted by section 165(1) of the Finance Act 1989 (c. 26) and amended by paragraph 138 of Schedule 6 to ITEPA.

- (f) the dates during which the employee was employed in the tax year, and
- (g) the total amount of the relevant payments made by the employer to the employee during the tax year.
- (3) A “relevant employee” is one—
 - (a) to whom relevant payments exceeding the PAYE threshold were made at any time during the tax year,
 - (b) who was employed for more than a week, or
 - (c) who was paid more than £100 during the tax year.
- (4) But the following are not relevant employees—
 - (a) an employee included on a return under regulation 73 (Forms P35 and P14),
 - (b) an employee who has indicated that statement A or statement B (or both) apply on Form P46 (see regulation 46), and to whom the employer has not made relevant payments exceeding the PAYE threshold at any time during that tax year.

Additional return in case of trade dispute

75.—(1) An employer must immediately deliver an additional return to the Inland Revenue on each occasion that—

- (a) the employer has not made any repayment of tax withheld under regulation 64(5) (trade disputes) within 42 days after the end of the employee’s strike action, and
 - (b) a return has been made under regulation 73 which, in accordance with regulation 64(7) (b), treats that tax as if it were repaid.
- (2) The return must contain the following information—
- (a) the tax year to which it relates,
 - (b) such information as the Board of Inland Revenue may require for identifying each of the employees in question, and
 - (c) the amount of tax not repaid to each of those employees.
- (3) The return must be accompanied by a statement containing the following information—
- (a) a list of all employees in respect of whom the additional return is made,
 - (b) the amount of tax not repaid to each of those employees,
 - (c) the total tax not repaid by the employer to those employees for that tax year.

Failure to account for deductible tax

Certificate if tax in regulation 73 return is unpaid

76.—(1) Paragraph (2) applies if an employer—

- (a) delivers a return under regulation 73 showing an amount of total net tax deducted by the employer for a tax year, and
 - (b) does not pay that amount to the Inland Revenue before 20th April following the end of the tax year.
- (2) The Inland Revenue may prepare a certificate showing how much of that amount remains unpaid.
- (3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Return and certificate if tax may be unpaid

77.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.

(2) Condition A is that—

- (a) an employer has not paid any tax under regulation 68 for that tax period, and
- (b) the Inland Revenue are unaware of the amount (if any) which the employer is liable to pay.

(3) Condition B is that—

- (a) an employer has paid an amount of tax under regulation 68 for that period, but
- (b) the Inland Revenue are not satisfied that it is the full amount which the employer is liable to pay for that period.

(4) The Inland Revenue may give notice to the employer requiring the employer within 14 days of the issue of the notice to deliver a return showing the amount of tax which the employer is liable to pay under regulation 68 in respect of the tax period.

(5) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were one tax period.

(6) On receiving a return made by the employer under paragraph (4), the Inland Revenue may prepare a certificate showing the amount of tax which the employer is liable to pay for the tax period and how much (if any) of that amount remains unpaid.

(7) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Notice and certificate if tax may be unpaid

78.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.

(2) Condition A is that—

- (a) an employer has not paid any tax under regulation 68 for that tax period, and
- (b) the Inland Revenue have reason to believe that the employer is liable to pay an amount of tax.

(3) Condition B is that—

- (a) an employer has paid an amount of tax under regulation 68 for that tax period, but
- (b) the Inland Revenue are not satisfied, after seeking the employer's explanation, that it is the full amount which the employer is liable to pay for that period.

(4) The Inland Revenue, on consideration of the employer's record of past payments, may—

- (a) specify, to the best of their judgment, the amount of tax which they consider the employer is liable to pay, and
- (b) serve notice on the employer requiring payment of that amount within 7 days of the issue of the notice ("the notice period").

(5) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were the latest tax period specified in the notice.

(6) If, during the notice period, the employer—

- (a) claims that any payment made in respect of the tax period specified in the notice is the full amount the employer is liable to pay, but
- (b) does not satisfy the Inland Revenue that this is the case,

the employer may require the Inland Revenue to inspect the employer's PAYE records as if the employer had been required to produce those records in accordance with regulation 97 (inspection of employer's PAYE records).

(7) If there is an inspection by virtue of paragraph (6), regulation 97 applies to that inspection and the notice given by the Inland Revenue under paragraph (4) must be disregarded.

(8) If the amount of tax specified in the notice, or any part of it, is not paid during the notice period—

- (a) the amount unpaid is treated as an amount of tax which the employer was liable to pay for that tax period under regulation 68, and
- (b) the Inland Revenue may prepare a certificate showing how much of that tax remains unpaid.

(9) But paragraph (8) does not apply if during the notice period—

- (a) the employer pays the full amount of tax which the employer is liable to pay under regulation 68 for that tax period, or
- (b) the employer satisfies the Inland Revenue that no amount, or no further amount, is due for that tax period.

(10) Paragraph (11) applies if the employer pays an amount certified under this regulation which exceeds the amount the employer would have been liable to pay in respect of that tax period apart from this regulation.

(11) The employer is entitled to set off the excess against any amount which the employer is liable to pay under regulation 68 for any subsequent tax period in the tax year.

(12) Paragraph (13) applies if the employer—

- (a) delivers the return required by regulation 73(1) after the end of the tax year, and
- (b) pays the total net tax which the employer is liable to pay.

(13) Any excess of tax paid, and not otherwise recovered by set-off in accordance with this regulation, must be repaid.

(14) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Certificate after inspection of PAYE records

79.—(1) This regulation applies if there is an inspection of an employer's PAYE records under regulation 97.

(2) The Inland Revenue may, by reference to the information obtained from the inspection, prepare a certificate showing—

- (a) the amount of tax which it appears that the employer is liable to pay for the tax years or tax periods covered by the inspection; and
- (b) any amount of that tax which remains unpaid.

(3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Determination of unpaid tax and appeal against determination

80.—(1) This regulation applies if it appears to the Inland Revenue that there may be tax payable for a tax year under regulation 68 by an employer which has neither been—

- (a) paid to the Inland Revenue, nor
- (b) certified by the Inland Revenue under regulation 76, 77, 78 or 79.

(2) The Inland Revenue may determine the amount of that tax to the best of their judgment, and serve notice of their determination on the employer.

(3) A determination under this regulation must not include tax in respect of which a direction under regulation 72(5) has been made; and directions under that regulation do not apply to tax determined under this regulation.

(4) A determination under this regulation may—

- (a) cover the tax payable by the employer under regulation 68 for any one or more tax periods in a tax year, and
- (b) extend to the whole of that tax, or to such part of it as is payable in respect of—
 - (i) a class or classes of employees specified in the notice of determination (without naming the individual employees), or
 - (ii) one or more named employees specified in the notice.

(5) A determination under this regulation is subject to Parts 4, 5 (other than section 55) and 6 of TMA (assessment, appeals, collection and recovery) as if—

- (a) the determination were an assessment, and
- (b) the amount of tax determined were income tax charged on the employer,

and those Parts of that Act apply accordingly with any necessary modifications.

(6) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA⁽¹³⁾ (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination under this regulation is the place where the determination was made.

Employee liability if tax unpaid after regulation 80 determination

81.—(1) This regulation applies if—

- (a) any part of the tax determined under regulation 80 is not paid within 30 days from the date on which the determination became final and conclusive, and
- (b) condition A or B is met in relation to an employee.

(2) Condition A is that the Inland Revenue are of the opinion that the employee in respect of whose relevant payments the determination was made has received those payments knowing that the employer has wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(3) Condition B is that the unpaid tax represents an amount for which the employer was required to account under regulation 62(5) (notional payments) in relation to a notional payment to the employee.

(4) The Inland Revenue may direct that the employer is not liable to pay the amount of tax which appears to them should have been but was not—

- (a) deducted on making those relevant payments, or
- (b) accounted for under regulation 62(5).

(5) If a direction is made, the amount of tax must not be added under regulation 185(5) or 188(3) (a) (adjustments for self-assessments and other assessments) in relation to the employee.

(6) Tax payable by an employee as a result of a direction carries interest, as if it were unpaid tax due from an employer, in accordance with regulation 82 (interest on tax overdue).

(7) The tax payable carries interest from the reckonable date until whichever is the earlier of—

⁽¹³⁾ Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

- (a) the date on which payment is made, or
- (b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of TMA(14).

Interest

Interest on tax overdue

82.—(1) This regulation applies if an employer has not paid to the Inland Revenue the total net tax payable in respect of a tax year by the reckonable date.

(2) Any unpaid tax carries interest at the prescribed rate from the reckonable date until payment (“the interest period”).

(3) Paragraph (2) applies even if the reckonable date is a non-business day as defined by section 92 of the Bills of Exchange Act 1882(15).

(4) But paragraph (2) does not apply to any tax which the employer does not have to pay as a result of a direction made under regulation 72(5) or 81(4).

(5) Any change made to the prescribed rate during the interest period applies to the unpaid tax from the date of the change.

(6) The “total net tax payable” in respect of a tax year is—

- (a) the total of any amounts payable by the employer under regulation 68 for tax periods in the tax year, less
- (b) the total of any amounts recoverable from the Board of Inland Revenue under regulation 68(3)(b) for those tax periods.

(7) The “prescribed rate” means the rate applicable under section 178 of the Finance Act 1989(16) for the purposes of section 86 of TMA.

(8) The “reckonable date” means—

- (a) 17 days after the end of the tax year, if payment is made using an approved method of electronic communications, or
- (b) 14 days after the end of the tax year, in any other case.

Interest on tax overpaid

83.—(1) This regulation applies if tax is repaid to an employer after the end of the tax year in respect of which the tax was paid.

(2) The tax repaid carries interest at the prescribed rate from the later of—

- (a) 14 days after the end of the tax year, and
- (b) the date on which the payment of tax for that tax year was made,

until the order for the repayment is issued (“the interest period”).

(3) Any change made to the prescribed rate during the interest period applies to the tax repaid from the date of the change.

(14) Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 8).

(15) 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

(16) 1989 c. 26, to which there are amendments not relevant to these Regulations.

(4) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA(17).

Recovery

Recovery of tax and interest

84.—(1) In this regulation, “the unpaid amount” means any amount of tax or interest which—

- (a) an employer is liable to pay under regulation 76(2), 77(6), 78(8), 79(2)(b) or 82(2);
- (b) an employee is liable to pay under regulation 72(7) or regulation 81(6).

(2) Part 6 of TMA (collection and recovery) applies to the recovery of the unpaid amount as if it were income tax charged on the employer or employee (as the case may be) but with the modification indicated in paragraph (3).

(3) Summary proceedings for the recovery of the unpaid amount may be brought in England and Wales or Northern Ireland at any time before the end of the period which applies for the purposes of the regulation in question, as shown in Table 4.

Table 4

Period for summary proceedings for the recovery of unpaid amount

<i>1. Regulation</i>	<i>2. Period</i>
Regulation 76(2)	(a) (a) 12 months after the date by which the statement specified in regulation 73(7) must be delivered, or (b) if that statement is delivered after that date, 12 months after its delivery.
Regulations 77(6), 78(8) and 82(2)	(a) (a) 12 months after the date on which the unpaid amount became payable, or (b) if a return has been required under regulation 77, 12 months after the date of the delivery of that return to the Inland Revenue.
Regulation 79(2)(b)	12 months after the date of the certificate.
Regulations 72(7) and 81(6)	12 months after the date on which the unpaid amount became payable.

(4) Proceedings against an employer may be brought for the recovery of the unpaid amount without distinguishing the amounts which the employer is liable to pay in respect of each employee and without specifying the employees in question.

(17) Section 824 was amended by paragraph 7 of Schedule 13 to the Finance Act 1988 (c. 39), sections 110(5), 111(4), 158(2) and 179(1) of, and Parts 4, 8 and 10 of Schedule 17 to, the Finance Act 1989 (c. 26), paragraph 14(52) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 41 of Schedule 19 to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), section 90 of the Finance Act 2001 (c. 9) and paragraph 104 of Schedule 6 to ITEPA.

(5) The unpaid amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA(18) (magistrates' courts, county courts and inferior courts in Scotland).

(6) But paragraphs (4) and (5) do not prevent the bringing of separate proceedings for the recovery of each of the amounts which the employer is liable to pay for any tax period in respect of each of the employees.

CHAPTER 2

OTHER RETURNS AND INFORMATION

Returns involving PAYE income other than payments

Employers: annual return of other earnings (Forms P11D and P9D)

85.—(1) Before 7th July following the end of a tax year, the employer must provide the Inland Revenue—

- (a) with the information listed in regulation 86 for each employee, and
- (b) with the additional information listed in regulation 87 for each employee whose employment is subject to the benefits code.

(2) At the same time and in the same manner as the employer provides that information, the employer must also provide a declaration stating that—

- (a) all information required to be provided has been provided, and
- (b) the information is complete and accurate to the best of the employer's knowledge and belief.

(3) For the purposes of this regulation an employment is “subject to the benefits code” if, for the purposes of the benefits code in ITEPA, it is a taxable employment under Part 2 of ITEPA (as defined by section 66(3) of ITEPA) which is not an excluded employment under section 216(1) of ITEPA (lower-paid employment and certain types of company director).

Information employer must provide for each employee

86.—(1) Particulars of the following information must be provided in the case of each employee—

- (a) any earnings which the employee receives from the employer or related third party otherwise than in money, including the amount of those earnings;
- (b) any payments made on behalf of the employee by the employer or related third party and not repaid, including the amounts;
- (c) any non-cash voucher provided by the employer or related third party by reason of which the employee is treated by section 87(1) of ITEPA (benefit of non-cash voucher treated as earnings) as receiving earnings in that tax year, including the amount of those earnings;
- (d) any use of a credit-token provided by the employer or related third party by reason of which the employee is treated by section 94(1) of ITEPA (benefit of credit-token treated as earnings) as receiving earnings in that tax year, including the amount of those earnings;

(18) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998 (c. 36); section 66 was amended by section 57(2) of the Finance Act 1984, section 89(1) of the Finance Act 2001 (c. 9), S.I. 1980/397 (N.I. 3) and S.I. 1991/724; section 67 was amended by section 58 of the Finance Act 1976 (c. 40), section 156 of the Finance Act 1995 (c. 4) and section 89(1) of the Finance Act 2001.

- (e) the due amount in respect of any notional payment where that amount is treated by section 222 of ITEPA⁽¹⁹⁾ (payments on account of tax where deduction not possible) as earnings of the employee received in that tax year;
 - (f) any living accommodation which has been provided for the employee or a member of the employee's family or household by the employer or related third party, including the amount that is treated as earnings for that tax year by section 102 of ITEPA (benefit of living accommodation treated as earnings);
 - (g) any earnings consisting of the amount by which the value of the exemption under subsection (2) of section 287 of ITEPA (limit on exemption of removal expenses and removal benefits) exceeds the limit specified in subsection (1) of that section and having effect in relation to the employee.
- (2) Particulars of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies are required—
- (a) only under paragraph (1)(g), and
 - (b) only to the extent that they exceed the limit in section 287(1) of ITEPA which applies to the change of residence of the employee in question.
- (3) In the case of any earnings relating to business entertainment, as defined by section 577 of ICTA⁽²⁰⁾, the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion as mentioned in section 577(1)(a) of that Act in any tax computation relating to the trade, business, profession or vocation of the employer.
- (4) "Related third party" means a person making payments or providing benefits to an employee, if the making or provision of the payments or benefits by that person has been arranged, guaranteed or in any way facilitated by the employer.

Information employer must also provide for benefits code employees

87.—(1) Particulars of the following information must also be provided in the case of each employee whose employment is subject to the benefits code—

- (a) any payments made by the employer or related third party to the employee by reason of the employment in respect of expenses;
 - (b) any sums put by the employer or related third party at the disposal of the employee by reason of the employment and paid away by the employee;
 - (c) any benefits provided by the employer or related third party for the employee such as give rise to any amount treated by Chapters 6 to 10 of Part 3, and section 223, of ITEPA⁽²¹⁾ (cars and vans, loans, shares, other benefits and payments on account of director's tax) as earnings of the employee received in that tax year, including the amount of those earnings.
- (2) Particulars are not required under paragraph (1) of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies (as to which see regulation 86(2)).
- (3) In the case of any earnings relating to business entertainment, as defined by section 577 of ICTA, the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion as mentioned in section 577(1)(a) of that Act in any tax computation relating to the trade, business, profession or vocation of the employer.

⁽¹⁹⁾ Section 222 was amended by section 144 of the Finance Act 2003 (c. 14).

⁽²⁰⁾ Section 577 was amended by Part 4 of Schedule 14 to the Finance Act 1988 (c. 39), paragraph 1 of Schedule 7 and Part 3(4) of Schedule 27 to the Finance Act 1998 (c. 36), paragraph 51 of Schedule 2 to the Capital Allowances Act 2001 (c. 2), section 73 of the Finance Act 2001 (c. 9) and paragraph 62 of Schedule 6 to ITEPA.

⁽²¹⁾ Relevant amendments were made to Chapters 8 and 9 of Part 3 of ITEPA by paragraphs 22 and 23 of Schedule 22 to the Finance Act 2003 (c. 14).

(4) “Related third party” has the meaning given in regulation 86(4).

(5) Regulation 85(3) (meaning of employment “subject to benefits code”) applies for the purposes of this regulation.

Annual return of other earnings: amounts

88.—(1) Paragraph (2) applies if an employer is required by regulations 85 to 87 to provide an amount which is or is treated as earnings.

(2) The employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer’s possession or otherwise available to the employer, are authorised or required by Part 3 of ITEPA (earnings and benefits etc treated as earnings).

Annual return of other earnings: exclusion for notional payments

89. The employer is not required to provide particulars in the return under regulation 85 of any notional payment which is a relevant payment made by the employer to the employee (as particulars of it may be required under regulation 73 or 74 (annual returns of relevant payments)).

Quarterly return if a car becomes available or unavailable (Form P46 (Car))

90.—(1) This regulation applies if—

- (a) section 120 of ITEPA (benefit of car treated as earnings) treats the benefit of a car as giving rise to an amount as earnings of an employee received in a tax year, and
- (b) one or more of the following occurs in a tax quarter—
 - (i) the car becomes available;
 - (ii) the car becomes unavailable;
 - (iii) the car is available and the employee’s employment becomes subject to the benefits code (as defined by regulation 85(3)).

(2) The employer must provide the Inland Revenue with the following information in respect of the employee not later than 28 days after the end of the tax quarter.

(3) The information is—

- (a) the employee’s name,
- (b) the employee’s national insurance number, if known,
- (c) details of the car in question,
- (d) the interim sum determined at step 4 of section 121(1) of ITEPA (method of calculating cash equivalent of benefit of a car),
- (e) any capital sum contributed by the employee to expenditure on the provision of the car or on any qualifying accessory which is taken into account in so determining the interim sum in respect of the car,
- (f) any amount which, as a condition of the car being available for the employee’s private use, the employee is required to pay in the tax year concerned for that use (whether by way of deduction from relevant payments or otherwise),
- (g) whether any fuel is provided for private use.

(4) In this regulation—

“available” and “unavailable” are to be read in accordance with sections 116(1) and 143(2) of ITEPA (meaning of when car is available and unavailable to employee);

“qualifying accessory” has the meaning given in section 125 of ITEPA (meaning of accessory etc).

Termination awards: information to be provided

91.—(1) Before 7th July following the end of the tax year, an employer must, in respect of each employee who received a termination award, provide the Inland Revenue with the information specified in paragraph (3) relating to that award.

(2) “Termination award” means an award consisting of payments combined with other benefits, or consisting solely of other benefits—

- (a) which were awarded in that tax year in connection with the termination of the employee’s employment with the employer, or any change in the duties of or earnings from that employment,
- (b) which when provided (whether in that or a subsequent tax year) would constitute payments and other benefits received to which Chapter 3 of Part 6 of ITEPA applies (payments and benefits on termination of employment etc), and
- (c) the total amount of which is estimated by the employer to exceed £30,000, when aggregated with other payments and other benefits provided or to be provided (whether in that or a subsequent tax year) in respect of the same person as mentioned in section 404(1) of ITEPA (aggregation of payments in respect of other related employments).

(3) The information to be provided is—

- (a) the total amount of the payments and other benefits awarded;
- (b) the total amount of the payments made in that tax year in connection with the award;
- (c) details of the non-cash benefits provided in that tax year in connection with the award, other than benefits previously contained in a return for that tax year under regulation 85, and the total amount of their amounts calculated in accordance with section 415(2) of ITEPA (valuation of benefits);
- (d) the estimated total number of the tax years in which payments and non-cash benefits are to be provided in connection with the award and, if the duration of any of those payments and non-cash benefits is capable of being reduced in certain circumstances, details of those circumstances;
- (e) the estimated total amount of the payments to be made in subsequent tax years in connection with the award;
- (f) a description of each of the other benefits to be provided in subsequent tax years in connection with the award, and the terms of their provision.

(4) In calculating the cash equivalents of non-cash benefits for the purposes of this regulation, the employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer’s possession or otherwise available to the employer, are authorised or required by any of the provisions of the benefits code as applied by section 415 of ITEPA.

(5) In calculating the total amount of payments and other benefits for the purposes of paragraphs (2)(c) and (3)(a), the employer—

- (a) must have regard to the provisions of Chapter 3 of Part 6 of ITEPA,
- (b) must take into account the matters referred to in paragraph (3)(d),(e) and (f), and
- (c) in valuing the amount of non-cash benefits for future tax years in connection with the award, must assume that the provisions of ITEPA relating to those benefits will remain unchanged with respect to those years.

(6) Information required to be provided by an employer in accordance with paragraphs (1) and (3) may be provided after the termination award is made but before the end of the tax year in which it is made.

(7) If information is provided in accordance with paragraph (6), paragraph (3)(b) and (c) have effect, so far as concerns the providing of information relating to the tax year, as if they required the amounts and benefits there specified to be estimated by the employer as accurately as possible.

(8) This regulation is subject to regulation 93 (return if more than one employer).

(9) In this regulation and regulations 92, 93 and 96 (further provisions about termination awards)

—
“employee” includes a former employee; and

“employer” includes a former employer.

Termination awards: return if award changes

92.—(1) Paragraph (3) applies if—

(a) information has not been provided by the employer under regulation 91(1) solely because either—

(i) the total amount of payments and other benefits awarded in the tax year in respect of the employee is estimated in accordance with regulation 91(2)(c) not to exceed £30,000, or

(ii) the award made in the tax year consisted of payments only, and

(b) there is a change in the award in a subsequent tax year.

(2) “Change in the award” means—

(a) that there is a change in—

(i) the amount of the payments awarded, or

(ii) the nature and amounts of the other benefits awarded,

so that the total amount of those payments and other benefits is estimated in accordance with regulation 91(2)(c) to exceed £30,000; or

(b) that the nature of the award is changed so that it consists—

(i) of payments combined with other benefits, or

(ii) solely of other benefits,

estimated in accordance with regulation 91(2)(c) to exceed £30,000.

(3) The employer must, before 7th July following the tax year in which the change in the award occurred, provide the Inland Revenue with the information specified in regulation 91(3) with respect to those payments and other benefits.

(4) Paragraph (5) applies if, after the employer has provided information in accordance with regulation 91(1) or paragraph (3) above, there is a material change—

(a) in the amount of the payments awarded, or

(b) in the nature and amounts of the other benefits awarded,

in relation to the employee.

(5) The employer must, before 7th July following the end of the tax year in which the material change occurred, give details of the material change to the Inland Revenue.

(6) For the avoidance of doubt, an employer is not required to provide details under this regulation of a change which arises solely because of amendments to the provisions of ITEPA which relate to non-cash benefits.

(7) This regulation is subject to regulation 93 (return if more than one employer).

Termination awards: return if more than one employer

93.—(1) This regulation applies if the payments and other benefits aggregated in accordance with regulation 91(2)(c) include amounts in respect of different employments with more than one employer.

(2) The person who must provide information to the Inland Revenue under regulation 91 or 92, or to the employee under regulation 96, is the employer providing the greatest amount of payments and other benefits so aggregated.

Information to be given to employees

Employers: information to employees of other earnings (Forms P11D and P9D)

94.—(1) Before 7th July following the end of a tax year, the employer must give a statement to every current employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for that tax year.

(2) The statement must contain the particulars provided under regulations 86 and 87 in so far as they relate to the employee.

(3) If a person who was a current employee ceases to be an employee at any time before 7th July following the end of the tax year, the statement is given to the employee if it is sent or delivered to, or left at, that person's usual or last known address.

(4) A former employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for a tax year may by notice require the employer to give the statement specified in paragraph (2) to that former employee—

- (a) before 7th July following the end of the tax year, or
- (b) within 30 days of receiving the notice,

whichever is the later.

(5) The notice may be given to the employer at any time up to 3 years after the end of the tax year.

(6) A former employee who has received a statement from the employer under paragraph (4) in respect of a tax year may not require a further statement from the employer under that paragraph in respect of the same tax year.

(7) In this regulation—

“current employee” means a person who was an employee on 5th April in the tax year to which the particulars provided under regulation 85(1) relate;

“former employee” means a person who was an employee during a part of the tax year to which the particulars provided under regulation 85(1) relate, but who was no longer an employee on 5th April in that tax year.

Third parties: information to employees of other earnings

95.—(1) This regulation applies if a person (“the third party”) has, in a tax year—

- (a) made any unrelated payments to, or on behalf of, another person's employee, or
- (b) provided any unrelated benefits to, or in respect of, another person's employee.

(2) Before 7th July following the end of the tax year, the third party must give the employee a statement containing such of the particulars specified by regulations 86 and 87 as relate to the unrelated payments or unrelated benefits.

- (3) A benefit or payment is “unrelated” if—
 - (a) the employee’s employer is not required to provide particulars about it under regulation 85(1), and
 - (b) the third party would have been required to provide particulars about it under regulation 85(1) had the third party been the employee’s employer.

Termination awards: information to employees

96.—(1) This regulation applies if an employer is required to provide the information specified in regulation 91(3) to the Inland Revenue by—

- (a) regulation 91(1) (termination award), or
- (b) regulation 92(3) (change in termination award).

(2) The employer must also give a copy of that information to the employee before 7th July following the end of the tax year.

(3) A copy of the information is given to the employee if it is sent or delivered to, or left at, the employee’s usual or last known address.

(4) As to the person who is the employer in cases where there is more than one employer, see regulation 93.

CHAPTER 3

PAYE RECORDS

Inspection of employer’s PAYE records

97.—(1) Whenever required do so by an authorised officer of the Board, an employer must produce to that officer all PAYE records, or such PAYE records as may be specified by the officer, for inspection at the prescribed place and at such time as that officer may reasonably require.

(2) “PAYE records” means the following documents and records—

- (a) all wages sheets, deductions working sheets, documents completed under regulation 46 (Form P46) (other than those which the employer has sent to the Inland Revenue), and other documents and records relating to—
 - (i) the calculation of the PAYE income of the employees,
 - (ii) relevant payments to the employees, or
 - (iii) the deduction of tax from, or accounting for tax in respect of, such payments, and
- (b) all documents and records relating to any information which an employer is required to provide to the Inland Revenue under regulation 85 (Forms P11D and P9D).

(3) “The prescribed place” means such place in the United Kingdom as the employer and the authorised officer may agree upon, or in the absence of agreement—

- (a) the place in the United Kingdom at which the PAYE records are normally kept, or
- (b) if there is no such place, the employer’s principal place of business in the United Kingdom.

(4) The authorised officer may—

- (a) take copies of, or make extracts from, any document produced for inspection in accordance with paragraph (1);
- (b) remove any document so produced if it appears to the officer to be necessary to do so, at a reasonable time and for a reasonable period.

(5) If any document is removed in accordance with paragraph (4)(b), the authorised officer must provide—

- (a) a receipt for the document, and
- (b) a copy of the document, free of charge, to the person by whom it was produced or caused to be produced, within 7 days of that person requesting a copy, if the document is reasonably required for the proper conduct of a business.

(6) If a lien is claimed on a document produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) is not to be regarded as breaking the lien.

(7) If records are maintained by computer, the person required to make them available for inspection must provide the authorised officer with all facilities necessary for obtaining information from them.

(8) For the purposes of this regulation, an employer must keep, for not less than 3 years after the end of the tax year to which they relate, all PAYE records which are not required to be sent to the Inland Revenue by other provisions of these Regulations.