

2009 No. 2028

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 4)
Regulations 2009**

<i>Made</i> - - - -	<i>22nd July 2009</i>
<i>Laid before Parliament</i>	<i>23rd July 2009</i>
<i>Coming into force</i> - -	<i>13th August 2009</i>

The Commissioners for Her Majesty's Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by paragraph 6(1) and (2) of Schedule 1 to the Social Security Contributions and Benefits Act 1992(b) and paragraph 6(1) and (2) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c) and now exercisable by them:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 4) Regulations 2009.

(2) These Regulations come into force on 13th August 2009, immediately after the coming into force of the Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2009.

(3) The amendments made by regulation 3 shall have effect in relation to deferred payment agreements made on or after 13th August 2009.

(4) The amendments made by regulations 4 to 8 shall have effect in relation to the tax year 2009-10 and subsequent tax years.

Amendment of the Social Security (Contributions) Regulations 2001

2. The Social Security (Contributions) Regulations 2001(d) are amended as follows.

3. In regulation 90K (default surcharge) after paragraph (7) insert—

(a) The functions of the Commissioners of 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 a reference to the Commissioners of Inland Revenue, however expressed, shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) 1992 c. 4. The relevant amendments are made by paragraph 77(8) of Schedule 7 to the Social Security Act 1998 (c.14), paragraph 35 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and paragraph 185 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1).

(c) 1992 c.7. The relevant amendments are made by paragraph 58(8) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I.1998/1506), paragraph 34 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 204 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003.

(d) S.I. 2001/1004; relevant amending instruments are S.I. 2004/770 and S.I. 2007/1056.

“(8) Section 108 of the Finance Act 2009^(a) (suspension of penalties during currency of agreement for deferred payment) applies to a surcharge payable under this regulation with the following modifications—

- (a) in subsections (1)(a), (1)(b) and (4)(a) omit the words “of tax”,
- (b) for subsection (5) substitute the following—

“(5) The references to an amount and penalty referred to in subsections (1) and (2) are—

<i>Amount</i>	<i>Penalty</i>
Specified payments within the meaning of regulation 90M of the Social Security (Contributions) Regulations 2001	Surcharge under regulation 90K of the Social Security (Contributions) Regulations 2001”

, and

- (c) omit subsections (7), (8), (9), and (11).”.

4. For the heading to regulation 90M (specified information and specified payments) substitute “Paragraph 22 return and specified payments”.

5. In regulation 90M—

- (a) for the definition of “specified information” substitute—
 - ““paragraph 22 return” means the return and accompanying information required by paragraph 22 of Schedule 4 (return by employer at the end of the year);” and
- (b) in the definition of “specified payments” after “paragraph 10” insert “of Schedule 4”.

6. In regulation 90N (mandatory use of electronic communications)—

- (a) for paragraph (1) substitute—
 - “(1) Where an employer is required to deliver a relevant annual return by an approved method of electronic communications to Her Majesty’s Revenue and Customs under regulation 205 of the PAYE Regulations^(b) (mandatory use of electronic communication for delivering relevant annual returns), the employer must also deliver the paragraph 22 return required in relation to that tax year to an official computer system using an approved method of electronic communications.”,
- (b) omit paragraph (2),
- (c) in paragraph (3) for “205(2)” substitute “205B(1)”^(c), and
- (d) after paragraph (4) insert—
 - “(5) The expression “relevant annual return” has the meaning given in regulation 206A of the PAYE Regulations.”^(d).

7. In regulation 90O (standards of accuracy and completeness) for “Specified information”, in each place where it occurs, substitute “Any paragraph 22 return”.

8. In regulation 90P (penalties and appeals)—

- (a) in paragraph (1) for “specified information” substitute “a paragraph 22 return”,
- (b) for paragraph (2) substitute the following—
 - “(2) Table 2 sets out the penalties for employers for the tax year ending 5th April 2010, depending on the number of employees for whom particulars should have been included with the paragraph 22 return.

(a) 2009 c.10.
 (b) S.I. 2003/2682. Regulation 205 was substituted by S.I. 2009/2029. Regulation 1(2) 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) Regulation 205B was inserted by S.I. 2009/2029.
 (d) Regulation 206A was inserted by S.I. 2009/2029.

Table 2**Penalties: tax year ending 5th April 2010**

<i>1 Number of employees for whom particulars should have been included with the return</i>	<i>2 Penalty</i>
1-5	0
6-49	£100
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500
600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000

(2A) Table 3 sets out the penalties for employers for the tax years ending 5th April 2011 and subsequent years, depending on the number of employees for whom particulars should have been included with the paragraph 22 return.

Table 3**Penalties: tax year ending 5th April 2011 and subsequent years**

<i>1 Number of employees for whom particulars should have been included with the return</i>	<i>2 Penalty</i>
1-5	£100
6-49	£300
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500
600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000"

(c) in paragraph (3)—

(i) in sub-paragraph (a) for “specified information” substitute “paragraph 22 return”, and

(ii) for sub-paragraph (b) substitute—

“(b) been subject to a penalty for failing to comply with regulation 205 of the PAYE Regulations (mandatory use of electronic communication for delivering relevant annual returns) in relation to the same tax year.”.

*Dave Hartnett
Bernadette Kenny*

22nd July 2009

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I.2001/1004; “the Contributions Regulations”) to provide for mandatory electronic communication of the return and accompanying information required by paragraph 22 of Schedule 4 (return by employer at the end of year) to the Contributions Regulations (“the return”). It is already mandatory for employers employing 50 or more employees to deliver these returns by an approved method of mandatory electronic communications, this is now extended to all employers.

These Regulations also amend the Contributions Regulations to provide that section 108 (suspension of penalties during currency of agreement for deferred payment) of the Finance Act 2009 applies with modifications to surcharges under regulation 90K (default surcharge) of the Contribution Regulations.

Regulation 1 provides for citation and that the Regulations commence on 13th August 2009 and that regulation 3 has effect in relation to deferred payment agreements made on or after that date and regulation 4 to 8 have effect for the tax year 2009-10 and subsequent years.

Regulation 3 inserts a new paragraph 8 in regulation 90K of the Contributions Regulations, so as to apply section 108 of the Finance Act 2009 to surcharges under regulation 90K for electronic payments made late. That section provides for the suspension of penalties during the currency of a deferred payment agreement.

Regulations 4 and 5 amend and clarify the definitions contained in regulation 90M (specified information and specified payments) of the Contribution Regulations.

Regulation 6 amends paragraph (1) of regulation 90N (mandatory use of electronic communications) to provide that where an employer is required to deliver a relevant annual return by an approved method of electronic communications to Her Majesty’s Revenue and Customs under regulation 205 (mandatory use of electronic communication for delivering relevant annual returns) of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682; the PAYE Regulations), the employer must deliver the return in relation to that tax year to an official computer system using an approved method of electronic communications. Regulations 5 also make consequential amendments in respect of recent amendments made to the PAYE Regulations by the Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2009 (S.I. 2009/2029; “the PAYE Regulations”).

Regulation 6 makes consequential amendments to regulations 90O (standards of accuracy and completeness) of the Contributions Regulations required because of the changes made to regulation 90M.

Regulation 7 amends paragraphs (1) and (2) of regulation 90P (penalties and appeals), substitutes Table 2 and inserts a new paragraph (2A) and a Table 3, to set out the amount of penalty which is payable when the employer fails to deliver the return or any part of it. The amount depends on the number of employees in respect of whom particulars should have been included in the return. It also amends paragraph (3) to provide that an employer is not liable to a penalty if the employer had been subject to a penalty for failing to comply with regulation 205 of the PAYE Regulations (mandatory use of electronic communication for delivering relevant annual returns) in relation to the same year.

These Regulations also make minor corrections.

A full impact Assessment has not been produced in relation to regulation 3 of this instrument as no impact on the private or voluntary sectors is foreseen.

A full Impact Assessment of the effect that regulations 4 to 8 of this instrument will have on the costs of business and the voluntary sector is available on the HMRC website and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

STATUTORY INSTRUMENTS

2009 No. 2028

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. 4)
Regulations 2009

£4.00