
STATUTORY INSTRUMENTS

2012 No. 821

**The Social Security (Contributions)
(Amendment No. 3) Regulations 2012**

PART 2

Real Time Information

CHAPTER 1

Amendments to the 2001 Regulations

Collection and recovery of earnings-related contributions and Class 1B contributions

3. After regulation 67(2) (collection and recovery of earnings-related contributions and Class 1B contributions) insert—

“(3) Schedules 4A (real time returns) and 4B (additional information about payments) apply to and for the purposes of earnings-related contributions.”.

Mandatory electronic payment

4. In regulation 90H(2) (mandatory electronic payment), before “68” insert “67G or”.

Interpretation of Schedule 4

5. In paragraph 1 of Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations 2003: interpretation)—

(a) in sub-paragraph (2) insert the following in the appropriate places—

““non-Real Time Information employer” means an employer other than one within sub-paragraph (4);”;

““Real Time Information employer” has the meaning given in sub-paragraph (4);”,
and

(b) after sub-paragraph (3) insert—

“(4) The following are Real Time Information employers for the purposes of this Schedule—

(a) an employer who has entered into an agreement with HMRC to comply with the provisions of this Schedule which are expressed as relating to Real Time Information employers;

(b) an employer within sub-paragraph (5);

(c) on and after 6th April 2013, employers to whom paragraph 21D (exceptions to paragraph 21A) applies; and

(d) on and after 6th October 2013, all employers.

(5) An employer is within this paragraph if the employer has been given a general or specific direction by the Commissioners for Her Majesty's Revenue and Customs before 6th October 2013 to deliver to HMRC returns under paragraph 21A of this Schedule (real time returns of information about payments of general earnings).”.

Payment of earnings-related contributions monthly by employer

6. In paragraph 10 of Schedule 4 (payment of earnings-related contributions monthly by employer)—

- (a) in sub-paragraph (2), after “tax month” insert “(and, where required, reported under paragraph 21A or 21D)”; and
- (b) after sub-paragraph (3) insert—
 - “(3A) The amount specified in sub-paragraph (2) must be adjusted to take account of errors corrected under paragraph 21E(5), other than in cases where paragraph 21E(4) applies.”.

Payments of earnings-related contributions quarterly by employer

7. In paragraph 11 of Schedule 4 (payment of earnings related contributions quarterly by employer)—

- (a) in sub-paragraph (2), after “tax quarter” insert “(and, where required, reported under paragraph 21A or 21D)”; and
- (b) after sub-paragraph (3) insert—
 - “(3A) The amount specified in sub-paragraph (2) must be adjusted to take account of errors corrected under paragraph 21E(5), other than in cases where paragraph 21E(4) applies.”; and
- (c) in sub-paragraph (4), in the definition of “P”, before “68” insert “67G or”.

Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under paragraph 21E(6)

8. After paragraph 11 of Schedule 4 insert—

“Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under paragraph 21E(6)

11ZA.—(1) This paragraph applies if, during any tax period, an employer makes a return under paragraph 21E(6) (returns under paragraph 21A and 21D: amendments) other than by virtue of paragraph 21E(4).

(2) The amount specified in paragraph 10(2) or, as the case may be, 11(2) for the final tax period in the year covered by the return is to be adjusted to take account of the information in the return.

(3) If the value of the adjustment required by paragraph (2) is a negative amount, the employer may recover that amount—

- (a) by setting it off against the amount the employer is liable to pay under paragraph 10(2) or, as the case may be, 11(2) for the tax period the return is made in; or
- (b) from the Commissioners for Her Majesty's Revenue and Customs.

(4) But paragraph (3) does not apply in relation to primary Class 1 contributions in a case where those contributions were deducted in error and the excess deduction has not been refunded to the employee.”.

Employer failing to pay earnings-related contributions

9. In paragraph 14(1) of Schedule 4 (employer failing to pay earnings-related contributions), for “the employer” in the first place it appears substitute “a non-Real Time Information employer”.

Specified amount of earnings-related contributions payable by the employer

10. In paragraph 15 of Schedule 4 (specified amount of earnings-related contributions payable by the employer), after paragraph (1A) insert—

“(1B) In arriving at an amount under paragraph (1), HMRC may also take into account any returns made by the employer under this Schedule in the tax period in question or earlier tax periods.”.

Returns

11. After paragraph 21 of Schedule 4 (application of paragraphs 10, 12, 16, 17, 18, 19 and 20) insert—

“Real time returns of information about payments of general earnings

21A.—(1) On or before making any payment of general earnings to an employee a Real Time Information employer must deliver to HMRC the information specified in Schedule 4A (real time returns) in accordance with this paragraph unless the employer is not required to maintain a deductions working sheet for any employees.

(2) The information must be included in a return.

(3) Subject to paragraph (4), if payments of general earnings are made to more than one employee at the same time, the return under sub-paragraph (2) must include the information required by Schedule 4A in respect of each employee to whom a payment of general earnings is made at that time.

(4) If payments of general earnings are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications 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).

(6) Section 98A of the Taxes Management Act 1970(1) (special penalties in case of certain returns) applies to returns within sub-paragraph (7).

(7) A return is within this sub-paragraph if it is one of the following—

(a) a return which relates to payments of general earnings made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return; or

(b) a return which contains information about the final payment of general earnings made to any employee in the tax year 2012-13 where—

(1) 1970 c.9. Section 98A was inserted by section 165(1) of the Finance Act 1989 (c.26). It was amended, so far as relevant, by paragraph 138 of Schedule 6 to ITEPA and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c.11).

- (i) the payment is made after the employee's final normal pay day in the tax year, or
- (ii) the employee is paid at irregular intervals.

(8) Schedule 24 to the Finance Act 2007⁽²⁾ (penalties for errors), as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (2).

Modification of the requirements of paragraph 21A: notional payments

21B.—(1) This regulation applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax, is a notional payment within the meaning given by section 710(2) of ITEPA 2003 (including a notional payment arising by virtue of a retrospective tax provision).

(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—

- (a) the time at which the employer delivers the information required by regulation 67B of the PAYE Regulations⁽³⁾ (real time returns of information about relevant payments) in respect of the payment;
- (b) the time at which the employer makes a deduction from earnings in respect of the payment in accordance with paragraph 7 (calculation of deduction); or
- (c) 14 days after the end of the tax month the payment is made in,

whichever is earliest.

Relationship between paragraph 21A and aggregation of earnings

21C.—(1) Where an employee's earnings are aggregated, a Real Time Information employer or, as the case may be, Real Time Information employers must make such arrangements as are necessary to ensure that the information specified in paragraph (2) in respect of all the aggregated earnings is included in the information given in respect of one of the employee's employments only.

(2) The information specified in this paragraph is the information specified in paragraphs 7 and 10(b) and (d) of Schedule 4A (real time returns).

Exceptions to paragraph 21A

21D.—(1) This paragraph applies to—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications;
- (b) a partnership, if all the partners fall within sub-paragraph (a);
- (c) a company, if all the directors and the company secretary fall within sub-paragraph (a);
- (d) a care and support employer.

(2) 2007 c.11.

(3) "The PAYE Regulations" is defined by regulation 1(2) of S.I. 2001/1004 as meaning the Income Tax (Pay as You Earn) Regulations 2003 (S.I. 2003/2682).

(2) A Real Time Information employer to whom this paragraph applies may proceed in accordance with this paragraph instead of paragraph 21A.

(3) A Real Time Information employer must deliver to HMRC the information specified in Schedule 4A in respect of each employee to whom a payment of general earnings is made in a tax month unless the employer is not required to maintain a deductions working sheet for any employees and, for the purposes of this paragraph, references in Schedule 4A to a payment of general earnings shall be read as if they were references to all the payments made to the employee in the tax month.

(4) The information must be included in a return in such a form as HMRC may approve or prescribe.

(5) The return required under sub-paragraph (4) must be delivered within 14 days after the end of the tax month the return relates to.

(6) If payments of general earnings have been made to more than one employee in the tax month, the return under sub-paragraph (4) must include the information required by Schedule 4A in respect of each employee to whom a payment of general earnings has been made.

(7) Section 98A of the Taxes Management Act 1970 applies to returns within sub-paragraph (8).

(8) A return is within this sub-paragraph if it is one of the following—

- (a) a return which contains information about the payment of general earnings made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return; or
- (b) a return which contains information about the final payment of general earnings made to any employee in the tax year 2012-13 where—
 - (i) the payment is made after the employee's final normal pay day in the tax year, or
 - (ii) the employee is paid at irregular intervals.

(9) Schedule 24 to the Finance Act 2007, as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (4).

(10) In sub-paragraph (1)(c), “company” means a body corporate or unincorporated association but does not include a partnership.

(11) In sub-paragraph (1)(d), “care and support employer” means an individual (“the employer”) who employs a person to provide domestic or personal services at or from the employer's home where—

- (a) the services are provided to the employer or a member of the employer's family;
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm; and
- (c) it is the employer who delivers the return (and not some other person on the employer's behalf).

Returns under paragraphs 21A and 21D: amendments

21E.—(1) This paragraph applies where an employer discovers an error in a return made under paragraph 21A (real time returns of information about payments of general earnings) or 21D (exceptions to paragraph 21A) and sub-paragraph (2), (3) or (4) applies.

(2) This sub-paragraph applies where the error relates to the information given in the return in respect of an employee under paragraphs 7, 10(b), 10(d), 13, 14, 15, 16 or 18 of Schedule 4A (real time returns).

(3) This sub-paragraph applies where the error was the omission of details of a payment of general earnings to an employee.

(4) This sub-paragraph applies where retrospective earnings increase the total amount of the general earnings paid to the employee for any tax year in which the employer was a Real Time Information employer.

(5) The employer must provide the correct information in the first return made after the discovery of the error under paragraph 21A or 21D for the tax year in question.

(6) But if the information given has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this sub-paragraph.

(7) A return under sub-paragraph (6)—

(a) must include the following—

- (i) the information specified in paragraphs 2 and 12 of Schedule 4A,
- (ii) the year to which the return relates,
- (iii) the value of the adjustment, if any, to the information given under each of the paragraphs of Schedule 4A referred to in sub-paragraph (2) in the final return under paragraph 21A or 21D containing information in respect of the employee in the tax year in question,
- (iv) if an adjustment is made to the information given under paragraph 7 or 10(b) or (d) of Schedule 4A, the information specified in paragraph 6 of that Schedule,
- (v) if an adjustment is made to the information given under paragraph 10(d) of Schedule 4A that decreases the amount reported under that paragraph, an indication of whether the employer has refunded the primary Class 1 contributions paid in error to the employee, and
- (vi) if an adjustment is made to the information given under paragraph 16 of Schedule 4A, the information specified in paragraph 17 of that Schedule if it has not already been provided;

(b) must be made as soon as reasonably practicable after the discovery of the error; and

(c) must be made using an approved method of electronic communications.

(8) In the application of sub-paragraphs (6) and (7) to cases within sub-paragraph (3), if no information was given in any returns under paragraph 21A or 21D in respect of the employee in the tax year, the value of any adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(9) Sub-paragraph (7)(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.

Additional information about payments

21F.—(1) A Real Time Information employer must inform HMRC of each of the amounts specified in Schedule 4B (additional information about payments) for each tax period unless sub-paragraph (4) or (5) applies.

- (2) The information must be given in a return.
- (3) The return must be delivered within 14 days after the end of the tax period.
- (4) This sub-paragraph applies if—
 - (a) all of the amounts are zero; and
 - (b) the employer has not made a return under sub-paragraph (2) in the tax year.
- (5) This paragraph applies if none of the amounts has changed in the tax period.
- (6) If an employer makes an error in a return under this paragraph, the employer must provide the correct information in the first return made under sub-paragraph (2) after the discovery of the error.
- (7) But if the information given has not been corrected before 20th April following the end of the year in question, the employer must provide the correct information for the year in question in a return under this sub-paragraph.
- (8) A return under sub-paragraph (2) or (7)—
 - (a) must state—
 - (i) the year to which the return relates,
 - (ii) the employer’s HMRC office number,
 - (iii) the employer’s PAYE reference, and
 - (iv) the employer’s accounts office reference;
 - (b) is to be made using an approved method of electronic communications.
- (9) A return under sub-paragraph (2) may include the information required by paragraph 12 of Schedule 4A (real time returns) if it is the final return the employer expects to make under sub-paragraph (2) for the year, in which case it need not be notified in accordance with paragraph 12 of Schedule 4A.
- (10) For the purposes of sub-paragraph (8)(b), 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).
- (11) The requirement to use an approved method of electronic communications does not apply if the employer is one to whom paragraph 21D (exceptions to paragraph 21A) applies but in those circumstances the return must be in such a form as HMRC may approve or prescribe.
- (12) Schedule 24 to the Finance Act 2007 (penalties for errors), as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (2) or (7).”.

Return by employer at end of year

12. In paragraph 22 of Schedule 4 (return by employer at end of year), before sub-paragraph (1) insert—

- “(A1) This regulation applies to—
- (a) non-Real Time Information employers;
 - (b) Real Time Information employers in relation to years in which they were, for the whole of the year, non-Real Time information employers; and
 - (c) Real Time Information employers to whom HMRC has given a notice requiring a return under regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax (Forms P35 and P14) in respect of a tax year.”.

Return by employer of recovery under the Statutory Sick Pay Percentage Threshold Order

13. In paragraph 25(1) of Schedule 4 (return by employer of recovery under the Statutory Sick Pay Percentage Threshold Order), for “an employer” substitute “a non-Real Time Information employer”.

New Schedules

14. After Schedule 4 insert Schedules 4A and 4B as set out in the Schedule to these Regulations.

CHAPTER 2

Transitional provisions

15. Regulation 54 of the 2012 Regulations (information about payments to employees) applies as if paragraph (2) of that regulation included a requirement to provide the information specified in paragraphs 6, 7 and 10 and, if applicable, paragraphs 5, 8 and 9 of Schedule 4A to the 2001 Regulations, as inserted by these Regulations.

16. A notification under regulation 56 of the 2012 Regulations (postponement of first return under regulation 67B or 67D of the 2003 Regulations) applies to returns under paragraphs 21A and 21D of Schedule 4 to the 2001 Regulations, as inserted by these Regulations, as if they were returns under regulations 67B (real time returns of information about relevant payments) and 67D (exceptions to regulation 67B) of the 2003 Regulations.