STATUTORY INSTRUMENTS

2010 No. 721

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. 4) Regulations 2010

Made - - - -	*9th March 2010*
Laid before Parliament	*12th March 2010*
Coming into force - -	*6th April 2010*

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

PART 1

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Social Security Contributions (Amendment No. 4) Regulations 2010.

(2) These Regulations shall come into force on 6th April 2010 immediately after the coming into force of the Finance Act 2009, Schedule 56 (Appointed Day and Consequential Provisions) Order 2010(**d**) and the Income Tax (Pay As You Earn) (Amendment) Regulations 2010(**e**).

(3) Regulations 3, 4, 5(a) and (c), 6, 7, 8(1) and 9(b) shall apply only in relation to the tax year 2010-11 and subsequent tax years.

(4) Regulations 5(b), 8(2) and 9(a) shall apply only in relation to the tax year 2011-12 and subsequent tax years.

(**a**) 1992 c.4. 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).

(**b**) 1992 c.7. 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.

(**c**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**d**) S.I. 2010/466.

(**e**) S.I. 2010/668.

Amendment of the Social Security (Contributions) Regulations 2001

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

PART 2

Collection of Class 1, 1A and 1B contributions: penalties

Penalties for failure to make payments of Class 1, 1A and 1B contributions on time

3. After regulation 67 insert—

"Penalty for failure to make payments on time: Class 1 contributions

67A. Schedule 56 to the Finance Act 2009(**b**) ("Schedule 56 FA 2009") (penalty for failure to make payments on time) shall apply in relation to the late payment of Class 1 contributions, as if—

(a) the Class 1 contributions were an amount of tax falling within item 2 of the Table in paragraph 1 of Schedule 56 FA 2009 ("the Table"),

(b) references to the PAYE Regulations were references to these Regulations, and

(c) references to "an assessment or determination" in item 24 of the Table were references to a decision made under section 8(1)(c) of the Social Security Contributions (Transfer of Functions, etc) Act 1999(**c**).

Penalty for failure to make payments on time: Class 1A and Class 1B contributions

67B. Schedule 56 to the Finance Act 2009 ("Schedule 56 FA 2009") shall apply in relation to the late payment of Class 1A and Class 1B contributions, as if—

(a) the Class 1A and Class 1B contributions were an amount of tax falling within item 3 of the table in paragraph 1 of Schedule 56 FA 2009,

(b) in the case of Class 1B contributions, the reference to "amount shown in return under section 254(1) of FA 2004" was a reference to the amount payable under section 10A of the Act(**d**), and

(c) the reference to section 254(5) of the Finance Act 2004(**e**) was a reference to these Regulations.".

Penalties for errors in Class 1A returns and decisions

4. For regulation 81(1) (penalties for failure to make returns and incorrect returns) substitute—

"(1) Schedule 24 to the Finance Act 2007(**f**) (penalties for errors) applies to the return of contributions referred to in regulation 80(1) (return by employer) as if—

(**a**) S.I. 2001/1004; relevant amending instruments are S.I. 2003/1337, 2004/770, 2007/1056 and 2009/2028.
(**b**) 2009 c.10.
(**c**) 1999 c.2.
(**d**) 1992 c.4; section 10A was inserted by section 53 of the Social Security Act 1998 (c.14) and amended by paragraph 11 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), section 77 of the Welfare Reform and Pensions Act 1999 (c.30), paragraph 3 of Schedule 1 to the National Insurance Contributions Act 2002 (c.19), paragraph 177 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) and paragraph 1 of Schedule 1 to the National Insurance Contributions and Statutory Payments Act 2004 (c.3). "The Act" is defined in regulation 1(2) of the Social Security (Contributions) Regulations 2001 as the Social Security Contributions and Benefits Act 1992. In accordance with regulation 156(3), a reference in those Regulations to a provision of that Act is to be construed, so far as necessary, as including a reference to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
(**e**) 2004 c.12.
(**f**) 2007 c.11. Schedule 24 was amended in particular by Schedule 40 to the Finance Act 2008 (c.9) and Schedule 57 to the Finance Act 2009 (c.10).

(a) Class 1A contributions were a tax; and

(b) that tax and the return of contributions in relation to it were listed in the table in paragraph 1 of that Schedule.

(1A) That Schedule also applies to decisions made under section 8(1)(c) of the Social Security Contributions (Transfer of Functions, etc) Act 1999 regarding Class 1A contributions and for that purpose a reference in the Schedule to an assessment is to be treated as if it included a reference to a decision and "under-assessment" shall be construed accordingly.

(1B) Paragraphs (6) to (9) do not apply in relation to penalties under paragraphs (1) and (1A).".

PART 3

Electronic communications

Mandatory electronic payment

5. In regulation 90H (mandatory electronic payment)—

(a) for paragraph (1) substitute —

"(1) An employer who is a large employer within the meaning of regulation 191 (large and medium sized employers) of the PAYE Regulations must pay the specified payment using an approved method of electronic communications",

(b) in the paragraph (1) inserted by paragraph (1)(a) of this regulation, for the words "191 (large and medium sized employers)" substitute "198A (large employers)", and

(c) after paragraph (4) insert—

"(5) A specified payment is not treated as received in full by HMRC on or before the date by which that specified payment is required in accordance with paragraph 10 or paragraph 11 of Schedule 4 unless it is made in a manner which secures (in a case where the specified payment is made otherwise than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the specified payment becomes available to the Commissioners for Her Majesty's Revenue and Customs.".

Default and surcharges

6. The following are omitted—

(a) regulation 90I (employer in default if specified payment not received by applicable due date),

(b) regulation 90J (default notice and appeal),

(c) regulation 90K (default surcharge), and

(d) regulation 90L (surcharge notice and appeal).

Paragraph 22 return and specified payments

7. In regulation 90M (paragraph 22 return and specified payments), for the definition of "specified payments" substitute—

""specified payments" means payments of earnings-related contributions under paragraph 10 (payments made monthly by employer) or paragraph 11 (payments made quarterly by employer) of Schedule 4.".

Mandatory use of electronic communications

8.—(1) For regulation 90N (mandatory use of electronic communications) substitute the following—

"**Mandatory use of electronic communications**

90N.—(1) An employer (as to which see regulation 90NA) must deliver a paragraph 22 return to an official computer system using an approved method of electronic communications.

(2) If the Commissioners for Her Majesty's Revenue and Customs have made a direction under regulation 205B(1) of the PAYE Regulations requiring a particular method of electronic communication to be used in the case of an employer, the employer must use that method.

(3) This regulation does not apply to a return in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force.

Employers

90NA.—(1) For the purposes of regulation 90N, the following shall not be regarded as employers—

(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 company secretary fall within sub-paragraph (a),

(d) an employer who is authorised by HMRC to deduct tax from relevant payments made to employees in accordance with regulation 34 of the PAYE Regulations (simplified deduction scheme for personal employees) and who has not received an incentive payment, and

(e) a care and support employer.

(2) In paragraph (1)(c), "company" means a body corporate or unincorporated association but does not include a partnership.

(3) In paragraph (1)(e), a "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,

(c) the employer has not received an incentive payment in respect of the last 3 tax years, and

(d) it is the employer who delivers the paragraph 22 return (and not some other person on the employer's behalf).

(4) In this regulation "incentive payment" means an incentive payment received under the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003(**a**).".

(2) In paragraph (2) of regulation 90N inserted by paragraph (1) for "205B(1)" substitute "205(2)".

(**a**) S.I. 2003/2495; amended by S.I. 2005/826; there are other amending instruments but none is relevant.

Penalties and appeals

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

(a) for paragraph (3)(b) substitute—

"(b) been subject to a penalty for failing to deliver the return and accompanying information required by regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)) in accordance with regulation 205 (mandatory use of electronic communication) of those Regulations.", and

(b) after paragraph 4(a) insert—

"(aa) the employer is not regarded as an employer for the purposes of regulation 90N,"

.

PART 4

Deduction of earnings-related contributions

Certificate of contributions paid

10. In paragraph 9(2) of Schedule 4 (deduction of earnings related contributions), omit the words "or the employee was not in the employer's employment on the last day of the tax year".

Mike Eland
Bernadette Kenny

9th March 2010 — Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the Contributions Regulations").

Part 2 of these Regulations makes amendments in relation to penalties. It applies the penalty regime contained in Schedule 56 to the Finance Act 2009 to late payments of Class1, 1A and 1B contributions with certain modifications and, as a consequence, regulations 90K and 90L, which deal with default surcharges and surcharge notices and appeals, are revoked by Part 3. Part 2 also applies the penalty regime in Schedule 24 to the Finance Act 2007 in relation to errors in a return of Class 1A contributions and failures to notify Her Majesty's Revenue and Customs ("HMRC") of an error in making a decision as to a person's liability to pay such contributions.

Part 3 of these Regulations amends the Contributions Regulations in relation to electronic communications.

Part 3 replaces the existing provisions which require large employers to make certain payments to HMRC using electronic means if HMRC has served an e-payment notice on them. The new provisions will require large employers to make those payments to HMRC by electronic means in all cases. This is as a consequence of equivalent amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE Regulations").

Part 3 also provides that it is mandatory for all employers to deliver returns and accompanying information required by paragraph 22 of Schedule 4 to the Contributions Regulations (return by employer at the end of year) ("the return") by an approved method of electronic communication subject to certain exceptions.

This corrects an error made in the previous amendment of the Contributions Regulations made by the Social Security (Contributions) (Amendment No. 4) Regulations 2009 (S.I. 2009/2028), which provided that electronic communication of the return is mandatory only when an employer is also required to deliver Forms P35 and P14 by an approved method of electronic communication. Forms P35 and P14 are the return required under regulation 73 (annual return of relevant payments liable to deduction of tax) of the PAYE Regulations.

Part 3 also make other minor corrections.

Part 4 of these Regulations amends paragraph 9(2) of Schedule 4 to the Contributions Regulations, to remove the requirement for an employer to give a certificate (Form P60) to an employee who was not in the employer's employment on the last day of the tax year.

Full Impact Assessments of the effect this instrument, apart from regulation 10, will have on the costs of business and the voluntary sector are available on the HMRC website and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

A full Impact Assessment has not been produced in relation to regulation 10 of this instrument as a negligible impact on the private or voluntary sector is foreseen.

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