

1 PAYE regulations: information

- (1) Section 684 of ITEPA 2003 (PAYE regulations) is amended as follows.
- (2) In the list in subsection (2) –
 - (a) after item 4 insert –
 - “4ZA Provision –
 - (a) for authorising or requiring a person who provides with respect to payments of or on account of PAYE income a service that is specified or of a specified description (“a relevant payment service”) to supply to Her Majesty’s Revenue and Customs information about payments with respect to which the service is provided, or any information the Commissioners may request about features of the service provided or to be provided with respect to particular payments;
 - (b) for conferring power on the Commissioners to specify by directions circumstances in which provision made by virtue of paragraph (a) or subsection (4ZB) is not to apply in relation to a payment;
 - (c) for securing that a supply of information that is authorised by regulations under paragraph (a) is not treated as breaching any obligation of confidence owed in respect of the information by the person supplying it;
 - (d) for prohibiting or restricting the disclosure, otherwise than to Her Majesty’s Revenue and Customs, of information by a person to whom it was supplied pursuant to a requirement imposed by virtue of subsection (4ZB);
 - (e) for requiring a person who provides, or is to provide, a relevant payment service to take steps (including any steps that may be specified, or further specified, in accordance with item 8A(b)) for facilitating the meeting by persons making payments of obligations imposed virtue of subsection (4ZB).”, and
 - (b) after item 8 insert –
 - “8A Provision requiring compliance with any directions the Commissioners may give –
 - (a) about the form and manner in which any information is to be provided under the regulations;
 - (b) specifying, or further specifying, steps for the purposes of item 4ZA(e);
 - (c) specifying information that a person making payments of or on account of PAYE income must provide about the method by which the payments are made.”
- (3) After subsection (3B) insert –
 - “(3C) References in items 4ZA and 8A of the above list to directions include directions making different provision for different cases.”
- (4) After subsection (4) insert –

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- “(4ZA) Item 8A in the above list does not prejudice the power of the Commissioners under subsection (1) to make provision in PAYE regulations about the matters mentioned in that item.
 - (4ZB) The persons to whom PAYE information regulations may require information to be supplied include, in the case of information about a payment, a person who provides, or is to provide, with respect to the payment a service such as is mentioned in item 4ZA(a) in the above list.
 - (4ZC) In subsection (4ZB) “PAYE information regulations” means PAYE regulations that require information to be supplied for any purpose authorised by subsections (1) and (2).”

EXPLANATORY NOTE

PAYE REGULATIONS: INFORMATION

SUMMARY

1. This clause provides HM Revenue & Customs (HMRC) with additional powers to require by regulations that certain persons who make payments that are subject to the Pay As You Earn system (PAYE) by electronic means must insert a cross-reference into the information provided to HMRC about that payment and the instruction to the payment service provider to make the payment. The regulations and directions which HMRC intends to make under them will detail who, and which payment services, are affected.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for the amendment of section 684 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Section 684 requires the Commissioners for HMRC (the Commissioners) to make regulations governing the operation of PAYE (PAYE Regulations). Section 684(2) of ITEPA contains a list of items which may be included in the regulations.
3. Subsection (2)(a) inserts into section 684(2) a new item 4ZA. This allows for PAYE Regulations to authorise or require anyone who provides a payment service to supply information to HMRC about payments of PAYE income made by means of that payment service. PAYE Regulations may also include provision authorising or requiring the provision of information about the payment service provided with respect to particular payments. The Commissioners are provided with a power to specify, by means of directions, circumstances in which the above obligations do not apply.
4. New item 4ZA also allows PAYE Regulations to provide that where anyone provides information to HMRC in accordance with one of the above authorisations the supply of that information will not be treated as breaching any obligation of confidence.
5. Subsection (2)(b) inserts new item 8A into the list in section 684(2). It allows PAYE Regulations to require compliance with any directions the Commissioners may give about the form and manner in which information must be provided under the Regulations. It also allows PAYE Regulations to require compliance with directions specifying the information that a person who makes a payment of

PAYE income must provide to HMRC about the method by which the payment is made.

6. New subsection (3C) provides that directions made under new items 4ZA and 8A in section 684(2) may make different provision for different cases.
7. Subsection (4) inserts new subsections (4ZA), (4ZB) and (4ZC) after section 684(4).
8. New subsection (4ZA) confirms that new item 8A in subsection (2) of that section, which allows PAYE Regulations to require compliance with certain directions, does not prejudice the power of the Commissioners under section 684 to make provision in PAYE Regulations dealing with the same subject matter as the directions.
9. New subsection (4ZB) provides that PAYE Regulations may provide for information required under the Regulations to be provided to persons who provide payment services covered by regulations made under new item 4ZA in section 684(2). Item 4ZA provides that PAYE Regulations may require the provider of that service to ensure that means are put in place to allow this to happen, including by directions under new item 8A in section 684(2), and prohibiting the service provider from disclosing that information other than to HMRC.
10. New subsection (4ZC) sets out the meaning of “PAYE information regulations” for the purposes of new subsection (4ZB).

BACKGROUND NOTE

11. PAYE Regulations set out the basic rules governing PAYE and tax deductions to be made from payments to employees. They also set out how employers should report certain information in connection with those payments to HMRC. Section 684 of ITEPA requires the Commissioners to make PAYE Regulations and sets out what types of provision PAYE Regulations may include.
12. The amendments provided by this clause will give HMRC additional powers that will facilitate the introduction of the Real Time Information (RTI) programme. They will allow PAYE Regulations to authorise or require certain persons who make payments that are subject to PAYE by electronic means to insert a cross reference into the information provided to HMRC about that payment and the instruction to the payment service provider to make the payment. This cross reference will enable HMRC to link and check the information submitted to HMRC against payments actually made.

The regulations and directions which HMRC intends to make under this power will detail who, and which payment services, are affected.

13. RTI will improve the operation PAYE by making the system easier to administer and more accurate. Under RTI, information about tax and other deductions will be collected and transmitted to HMRC every time an employee is paid.
14. HMRC has engaged extensively with employers and other interested parties about the design and introduction of RTI. A discussion paper 'Improving the operation of Pay As You Earn (PAYE)' was published on 27 July 2010. A second stage of consultation 'Improving the operation of Pay As You Earn (PAYE): Collecting Real Time Information' began on 3 December 2010, and a summary of responses to this consultation was published on 30 September 2011. These documents can be found on the HMRC website at: '<http://www.hmrc.gov.uk/rti/index.htm>'.
15. HMRC is currently consulting on draft amendments to the regulations dealing with PAYE, National Insurance Contributions and the Construction Industry Scheme, which will provide for the introduction of RTI. The draft regulations were released for consultation on Monday 14th November 2011 together with a technical note. They can be found on the HMRC website at: '<http://www.hmrc.gov.uk/drafts/pay-e-rti-tech-note.htm>'.
16. If you have any questions about this change, or comments on the draft legislation, please contact Paul Harris on 020 7147 2528 (email paul.harris@hmrc.gsi.gov.uk).