



# Legislative changes relating to the introduction of Real Time Information

Draft legislation for comment

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Closing date for comments: 9 January 2012

# Technical note

## Background

1. Real Time Information (RTI) will improve the operation of Pay As You Earn (PAYE) by making the system easier for employers<sup>1</sup> and HMRC to administer and more accurate for individuals. Under RTI, information about tax and other deductions will be collected and transmitted to HMRC every time an employee<sup>2</sup> is paid. Employers using RTI will no longer be required to provide information to HMRC using Forms P35 and P14 after the end of the tax year, or to send Forms P45 or P46 to HMRC when employees start or leave a job.
2. 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>.
3. In readiness for the introduction of RTI, this document presents draft amendments to regulations relating to PAYE, National Insurance contributions (NICs) and the Construction Industry Scheme (CIS). These are:
  - the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) ("the PAYE Regulations");
  - the Social Security (Contributions) Regulations 2001 (SI 2001/1004) ("the NICs Regulations"); and
  - the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) ("the CIS Regulations").

HMRC welcomes comments on the draft amending regulations.

4. RTI changes will also extend to the collection of income contingent student loan repayments, where employers make deductions from the earnings of employed borrowers. HMRC collects repayments through the UK tax system on behalf of the Department for Business, Innovation and Skills (BIS), and is working closely with BIS on amendments that will be required to The Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470).

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<sup>1</sup> 'Employer' includes pension providers and secondary contributors (as defined in section 7 of the Social Security Contributions and Benefits Act 1992) throughout this document, unless a specific reference is made to the contrary.

<sup>2</sup> 'Employee' includes annuitants, those in receipt of pensions and taxable state benefits.

5. The draft amendments also include two changes that are not related to RTI:
  - closure of the Simplified PAYE Deductions Scheme to new employers; and
  - a minor clarification to Table 10 of Regulation 211, the PAYE Regulations.

### Key changes related to RTI

6. Most aspects of the way employers operate PAYE will remain unchanged. For example no changes are proposed to:
  - deductions from payments to employees;
  - the frequency of payments to HMRC of PAYE income tax, NICs, student loan repayments deducted by employers and CIS deductions; or
  - completion and maintenance of deductions working sheets or their equivalents.
7. The remainder of this section sets out the key changes being made. For simplicity, references to specific regulations refer to the PAYE Regulations unless otherwise stated. Where applicable, there are equivalent provisions for NICs and CIS.

### *Employers joining RTI*

8. Phased introduction of RTI will begin in April 2012 with a small group of employers who have agreed to take part in an initial pilot. Subject to the success of this pilot, HMRC will seek to increase the number of employers joining RTI during 2012-13.
9. The effect of new regulation 2A is that all employers will be required to submit information using RTI from 6 October 2013. In addition, HMRC will have the option to require employers to submit RTI returns before that date, by issuing a direction. HMRC envisages that employers who are not in RTI during 2012-13 will be required to join RTI from April 2013.
10. Whilst all employers will be required to submit RTI data, new regulation 67D sets out those employers who will be exempt from filing electronically. The exemptions follow the current provisions for employers whose religious beliefs are incompatible with the use of electronic communications and 'care and support' employers (individuals who employ carers to provide services to a disabled or elderly person in their home). These employers will be permitted to provide RTI on paper.

11. Regulation 67D also sets out the frequency with which such employers will be expected to submit data to HMRC, and it is proposed that this be monthly. Given the proposed link between RTI and Universal Credit (the single credit intended by the Department for Work and Pensions to replace in and out of work benefits), it is important that HMRC receive information from all employers on a regular basis. A requirement to submit RTI data monthly will mean that employees of these individuals or organisations are not disadvantaged relative to other employees who may be paid monthly.

### *Submitting data when payments are made to employees*

12. Under RTI, employers will be required to submit an RTI return to HMRC each time an employee is paid. New regulation 67B sets out the proposed approach that returns will be required on or before the date of payment. It is proposed that a single return will cover all employees paid at the same time, provided the employees are all on a single payroll. If, for example, an employer pays two groups of employees on different payrolls but at the same time, two returns would be required.
13. The data items required in each return are detailed in Schedule A1 to the PAYE Regulations. The data items must be completed for each employee covered by the return. They are intended to be aligned with the published technical specification that software developers are working to deliver, which is available on the HMRC website at:  
<http://www.hmrc.gov.uk/softwaredevelopers/rti/index.htm>.
14. New regulation 67C sets out requirements for employers to assign a reference number to each payment to an employee made using a 'specified electronic payment method'. It also requires the employer to notify this to the provider of the electronic payment service, and to include a related reference number in the RTI return relating to that payment. In addition it imposes a requirement on the service provider to recreate the same related reference number and to notify that to HMRC. These requirements are designed to ensure that, where a payment is made through a specified electronic payment method, HMRC will be able to match RTI returns to the payments employers actually make to their employees to corroborate the amounts reported.
15. Much of the detail underpinning new regulation 67C is set out in the accompanying draft direction which will be made under that regulation. The direction sets out what is a 'specified electronic payment method' and will initially cover certain payments made using the Bacs channel. It also sets out how the different reference numbers required under new regulation 67C are to be generated and, in relation to the reference number employers are to give to their service provider, how that is to be done. Guidance on these issues is available on the HMRC website at: <http://www.hmrc.gov.uk/rti/cross-reference.pdf>.

### *Joiners and leavers*

16. Currently when employees join or leave an employer, tax information is transferred and reported to HMRC using forms P45 or P46, ensuring continuity in the employee's tax position. It is proposed that administrative burdens be reduced by removing these requirements under RTI. Information about joiners and leavers will be reported to HMRC on RTI returns as a matter of course.
17. For leavers, it is proposed that employers will no longer be required to provide Form P45 (parts 1A, 2 and 3) to departing employees. Instead employers will be able to provide information to employees on a 'leaver statement', which could take a different format such as a final payslip. New regulation 36ZA confirms the data items which must be included in a leaver statement. For some employees, all of these items will already be provided automatically on their pay slip.

### *End of the tax year*

18. At the end of the tax year, employers in RTI will no longer be required to submit P14 or P35 returns as a matter of course. HMRC will retain the option to require these returns if necessary, however this would only be used as a contingency during the pilot period.
19. RTI employers will still need to provide their employees with P60 end of year certificates.

### *Enforcement and penalties*

20. The policy intention in setting the penalty regime for late filing in the year 2012-13 is to strike the correct balance between the need to effectively enforce the reporting of information and the collection of tax, against the recognition that employers will be entering into agreements with HMRC to submit RTI during the pilot.
21. For 2012-13, the final RTI submission of the tax year will be treated as equivalent to the P14/P35 end of year return, and penalties for late filing will apply as currently. Interest will also continue to apply to any late payment following the end of the tax year. The existing penalties for incorrect returns will also apply.
22. However from 2013-14 it is intended that penalties will also apply for late filing of RTI data during the year, and further legislation will be published for comment in due course.

23. New regulation 75A sets out the situations in which HMRC will be able to serve notice to an employer requiring payment. As currently, HMRC will issue a notice where an employer fails to make a payment where one is due, specifying the amount HMRC considers is due. Additionally, HMRC will seek explanation and if necessary issue a notice where an employer submits a return and a payment is made, but HMRC are not satisfied that the amount paid is correct.

## Changes not related to RTI

### *Closure of the Simplified PAYE Deductions Scheme for personal employees*

24. The Simplified PAYE Deduction Scheme (SPDS) dates back to the introduction of PAYE, and was originally intended to offer a simpler PAYE system for employers of domestic or personal employees to use. However as PAYE has changed over time, the scheme is no longer as simple as it once was. HMRC have received representations suggesting that SPDS no longer offers significant simplicity benefits compared to operating standard PAYE, and now intend to phase the scheme out. The amendment to regulation 34 of the PAYE Regulations prevents new employers joining the SPDS from 6 April 2012 onwards. It is proposed that the scheme will be closed down completely from April 2013.

25. SPDS employers fall in to two distinct groups: individuals employing nannies or other domestic staff, and care and support employers. HMRC currently offer free Basic PAYE Tools for use by employers with 9 or fewer employees, and will continue to do so. The majority of the current 14,500 SPDS employers are expected to operate this software following closure of the scheme.

26. During informal consultation with representative bodies about closing the scheme, a concern was raised that some customers may struggle with the delivery of returns via electronic communications. Those affected by this are expected to be care and support employers, so any new employers during 2012-13 will be able to use the current exemption from electronic PAYE filing to submit paper returns. From 2013-14 onwards they will be able to use the proposed option of monthly paper filing under RTI, if required. HMRC will shortly be writing to all SPDS employers to notify them of the proposed changes.

### *Clarifying reporting requirements relating to End of Year certificates*

27. The amendment to Table 10 in Regulation 211 of the PAYE Regulations corrects a minor error in respect of the requirements for employers to provide end of year certificates such as P60s. End of year certificates are provided by employers to employees after the end of the tax year, showing payments and tax deducted. These documents are not submitted to HMRC, so a correction is being made to clarify that electronic submission to HMRC is “not applicable”. However, employers are still able to provide an electronic end of year certificate to employees provided they use an approved format.

## Next steps and how to comment

28. These amending draft regulations are open for comment until 9 January 2012. HMRC also welcomes comments on the summary of impacts provided in the accompanying Taxes Impact Assessment. All comments should be emailed to: [pa.harris@hmrc.gsi.gov.uk](mailto:pa.harris@hmrc.gsi.gov.uk).
29. One element of the draft amendments to the PAYE Regulations (new regulation 67C) relies on HMRC acquiring a new power to include in those regulations provisions which require employers to give certain information about payments of wages or salaries to their banks and for the banks to pass that information to HMRC. The Government intends to include this new power in Finance Bill 2012. The clauses for inclusion in that Bill will be published in draft for comment on 6 December 2011. The new regulations will be added to the PAYE Regulations subject to Royal Assent of Finance Bill 2012, but are included in this document to ensure that readers are able to comment on the full package of draft regulations.
30. Further amendments to the PAYE Regulations and NICs Regulations will be required to fully implement RTI from 2013-14 onwards, and will be published for comment in due course.
31. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
32. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
33. The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

# Taxes Impact Assessment

## Summary of RTI Impacts

The table below presents a summary of the key expected impacts from RTI. HMRC continues to work to improve understanding of these impacts, through ongoing research and during the RTI pilot beginning in April 2012. Updated information on impacts will be published in a Tax Information and Impact Note (TIIN) in March 2012.

<p><b>Exchequer impact</b></p>	<p>RTI is not expected to affect annual levels of receipts from income tax or National Insurance contributions, or student loan repayments deducted by employers. However HMRC anticipate that regular collection and submission of information may lead to improvements in the timeliness and accuracy of payments from employers to HMRC during the tax year.</p> <p>The availability of RTI data is expected to lead to Exchequer savings from reduced fraud, error and overpayments in tax credits. The latest estimates of these savings were published in Budget 2011: £395m in 2014-15, and £355m in 2015-16.</p>
<p><b>Economic impact</b></p>	<p>RTI is not expected to have significant economic impacts on the macro economy.</p>
<p><b>Impact on individuals and households</b></p>	<p>Over time, RTI will allow PAYE to become more accurate for employees and pensioners during the year.</p> <p>During the transition there will be some changes for employees to become accustomed to, for example receiving a leaver statement or simply a pay slip when leaving employment, in place of the current Form P45. This is likely to cause some concern and disruption, particularly whilst RTI is new. Around 10 million P45s are currently issued each year. Employees may also be asked by their employer to confirm basic personal details if current payroll records are incomplete.</p> <p>Because the Department of Work and Pensions (DWP) propose to use RTI data to support the operation of Universal Credit, there will also be indirect impacts on individuals in receipt of in and out of work benefits from October 2013.</p>
<p><b>Equalities impacts</b></p>	<p>Two groups have been identified that may have difficulties with the impacts of RTI: 'care and support' employers, and those in rural locations with poor broadband services.</p> <p>Care and support employers are individuals who employ carers to provide services to a disabled or elderly person in their home. To support this group, HMRC propose to offer care and support employers the option of monthly paper filing of information. They will also be able to use HMRC's free updated Basic PAYE Tools which are available for all employers who employ 9 or fewer employees, allowing them to submit RTI via the internet. HMRC has</p>

	<p>also provided funding to the Low Incomes Tax Reform Group (LITRG), to help them assist care and support employers who employ carers with monies received from local authorities.</p> <p>Basic PAYE Tools are designed to allow employers to submit RTI using 'Dial Up' connections as well as broadband. During the pilot HMRC will continue to assess the impact on different minority groups, and seek to mitigate where possible.</p> <p><u>Opportunities to promote equality</u>  RTI is expected to make the 'leaver' and 'joiner' process smoother which should mean that those who change jobs frequently will be more likely to pay the right amount of tax at the right time. This group tends to be lower paid. RTI also supports the introduction of Universal Credit by DWP, which is designed to be a responsive, dynamic system designed to adjust credit payments (benefits) according to income.</p> <p>The introduction of RTI provides HMRC with an opportunity to support the Government initiative to expand digital inclusion (for example, by working with LITRG as described above) to include those who have not yet been part of the digital revolution. Digital inequalities tend to mirror other social inequalities such as age and race.</p>
<p><b>Impact on business including civil society organisations</b></p>	<p>In advance of the pilot, HMRC has better evidence about the business impacts of removing the reporting obligations currently in place than about those that will be introduced under RTI. As a result, estimates are available for the reduction in administrative burdens resulting from abolition of some current reporting requirements, specifically forms for joiners and leavers (P45 and P46) and end of year reconciliation process (P35 and P14, P38A). This saving is estimated as approximately £300m per year from 2014-15, the first full year in which all employers will be within the RTI system.</p> <p>These savings will be partially offset by the new requirements for employers to collect and submit information to HMRC each time employees are paid, although for employers using payroll software this is intended to be an automated process. An assessment of these costs is currently being informed by ongoing research.</p> <p>HMRC recognises that there will be transitional compliance costs for employers at the point when they begin to submit RTI. These are likely to result from the need to check and amend data held about existing employees, to update their payroll software and processes, and to train and familiarise staff with the new processes. Estimates of these costs will be informed both by ongoing research and experience during the pilot.</p> <p>The payroll software and service industry are also directly affected</p>

	by RTI, as providers of products and services that will automatically collect and submit to HMRC a large amount of the data required.
<b>Impact on HMRC or other public sector delivery organisations</b>	<p>The approved business case for the introduction of RTI has identified investment costs of £116m during the Spending Review period ending in April 2015 (excluding the depreciation of assets). These costs include the development of IT and business processes to implement RTI. HMRC recognises that additional transitional costs are also likely to be incurred, for example in handling increased customer contact from employers and employees as they familiarise themselves with the operation of RTI.</p> <p>The availability of RTI data is expected to create opportunities for HMRC to improve its enforcement and compliance activities. However neither the resource impacts of any changes in this activity nor the resulting impacts on tax receipts and expenditure have yet been quantified.</p>
<b>Other impacts</b>	<p><u>Small firms</u> RTI aims to reduce administrative burdens for all employers, including small employers (upon whom the current burden of PAYE currently falls disproportionately<sup>3</sup>). The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process.</p> <p>Small and micro employers cannot be excluded from the requirement to submit RTI, because up to date information about their employees will be required both for improvements to the operation of PAYE, and for the operation of Universal Credit. It is important that the employees of small firms should not be disadvantaged.</p> <p>Small employers are already required to submit returns to HMRC electronically, but those who do not currently use payroll software are expected to find the move to RTI most difficult. However HMRC's existing free Basic PAYE Tools software will be updated and available for all employers with 9 or fewer employees to use.</p> <p>A number of small firms are taking part in the RTI pilot and HMRC's research in to employer impacts. The resulting findings will inform the support package HMRC offers to small employers.</p>

<sup>3</sup> <http://www.hmrc.gov.uk/pdfs/bathv1.pdf>