

“3A. the employee’s date of birth	yes	no	no
3B. the employee’s sex	yes	no	no”

4. In regulation 42(7) (procedure if employer receives form P45)—

- (a) in sub-paragraph (g), omit “, if known”; and
- (b) after sub-paragraph (g), insert—
“(ga) the employee’s sex,”.

5. In regulation 43(9)(c) (Form P45 for current tax year), for “(retirement statement)” substitute “(Form P46(Pen))”.

6. In regulation 47 (procedure in Form P46 cases: Statement A applies)—

- (a) in paragraph (2), for “the PAYE threshold” substitute “the lower earnings limit”;
- (b) for paragraph (2)(a) substitute—
“(a) send the Form P46 to [HMRC],”;
- (c) after paragraph (2) insert—
“(2A) To comply with paragraph (2)(a)—
(a) the employer must send the Form P46 to [HMRC] even if the employee has not provided all of the information required by regulation 46, and
(b) the employer must provide any of the information required by regulation 46(1B) that the employee has not provided.”; and
- (d) after paragraph (3) add—
“(4) In this regulation, “lower earnings limit” means the lower earnings limit for Class 1 contributions for the purposes of section 5(1) of the Social Security Contributions and Benefits Act 1992(a).”.

7. In regulation 48 (procedure in Form P46 cases: Statement B applies)—

- (a) in paragraph (2), for “the PAYE threshold” substitute “the lower earnings limit”;
- (b) for paragraph (2)(a) substitute—
“(a) send the P46 to [HMRC],”;
- (c) after paragraph (2) insert—
“(2A) To comply with paragraph (2)(a)—
(a) the employer must send the Form P46 to [HMRC] even if the employee has not provided all of the information required by regulation 46, and
(b) the employer must provide any of the information required by regulation 46(1B) that the employee has not provided.”; and
- (d) after paragraph (3) add—
“(4) In this regulation, “lower earnings limit” means the lower earnings limit for Class 1 contributions for the purposes of section 5(1) of the Social Security Contributions and Benefits Act 1992.”.

8. In regulation 49 (procedure in Form P46 cases: Statement C applies)—

- (a) for paragraph (2)(a) substitute—
“(a) send the Form P46 to [HMRC],”;
- (b) after paragraph (2) insert—
“(2A) To comply with paragraph (2)(a)—

(a) 1992 c.4; section 5(1) provides that the lower earnings limit is the amount specified for every tax year by regulations, the most recent of these being S.I. 2007/118.

- (a) the employer must send the Form P46 to [HMRC] even if the employee has not provided all of the information required by regulation 46, and
- (b) the employer must provide any of the information required by regulation 46(1B) that the employee has not provided.”.

9. In regulation 52 (late presentation of Form P45: employer’s duties)—

- (a) in paragraph (2)—
 - (i) in sub-paragraph (g), omit “, if known”,
 - (ii) after sub-paragraph (g), insert—
 - “(ga) the employee’s sex,”; and
- (b) in paragraph (11), for “(retirement statement)” substitute “(Form P46(Pen))”.

10. In regulation 53(3) (Form P46 cases: subsequent procedure on issue of employee’s code), for “(retirement statement)” substitute “(Form P46(Pen))”.

11. For the heading to Chapter 3 of Part 3 substitute—

“NEW PENSIONERS: FORMS P45 AND P46(PEN)”.

12. In regulation 55 (PAYE pension income paid by former employer)—

- (a) in each of paragraphs (3), (4) and (5), for “retirement statement” substitute “Form P46(Pen)”;
- (b) [in sub-paragraph (b) of paragraph (3), for “a copy” substitute “a copy of the information”];
- (c) in paragraph (4)—
 - (i) in sub-paragraph (b), omit “, if known”,
 - (ii) after sub-paragraph (b), insert—
 - “(ba) the pensioner’s date of birth,
 - (bb) the pensioner’s sex,”,
 - (iii) in sub-paragraph (i), for “and the frequency of the payments” substitute “annually”.

13. In regulation 56(2) (PAYE pension income paid by other pension payer)—

- (a) delete the “and” that follows sub-paragraph (b);
- (b) add at the end—
 - “(d) the pensioner’s date of birth, and
 - (e) the pensioner’s sex.”.

14. In regulation 57 (information to be provided in Form P46 if code not known: non UK residents)—

- (a) for the heading substitute—

“Information to be provided in Form P46(Pen) if code not known: non UK residents”;

- (b) in paragraph (2), for “Form P46” substitute “Form P46(Pen)”.

15. In regulation 58 (information (P46) and procedure if code not known: UK residents)—

- (a) for the heading substitute—

“Information (Form P46(Pen)) and procedure if code not known: UK residents”;

- (b) in paragraph (3), for “Form P46” substitute “Form P46(Pen)”.

16. In regulation 59(2) (UK resident pensioner’s code treated as issued by Inland Revenue) for “Form P46” substitute “Form P46(Pen)”.

17. In regulation 61(3)(b) (subsequent procedure on issue of UK resident pensioner’s code), for “(retirement statement)” substitute “(P46(Pen))”.

18. In regulation 186 (recovery: adjustment of employee’s code), in each of paragraphs (3)(b)(ii) and (4)(b), for “1st October” substitute “1st November”.

19. For regulation 207(1) (specified information) substitute—

“(1) In this Chapter, “specified information” means—

- (a) Part 1 of Form P45;
- (b) Part 3 of Form P45;
- (c) Form P46;
- (d) Form P46(Pen);
- (e) the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).”.

20. For regulation 210 (penalties and appeals) substitute—

“Penalty for failing to deliver specified information

210.—(1) A specified employer who fails to deliver specified information or any part of it in accordance with regulation 205 is liable to a penalty.

(2) The penalty must be determined in accordance with regulation 210A where the specified information concerned is the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).

(3) The penalty must be determined in accordance with regulation 210B in all other cases.

(4) Regulation 210C applies irrespective of how the penalty falls to be determined.

Penalty: regulation 73 return and accompanying information (Forms P35 and P14)

210A.—(1) Table 9 sets out the penalty for the tax years ending 5th April 2005 to 5th April 2009, depending on the number of employees for whom particulars should have been included with the specified information.

Table 9

Penalties: tax years ending 5th April 2005 to 5th April 2009

<i>1. Number of employees for whom particulars should have been included with the specified information</i>	<i>2. Penalty</i>
1 – 49	nil
50 – 249	nil for tax year ending 5th April 2005, £600 for subsequent years
250 – 399	£900
400 – 499	£1,200
500 – 599	£1,500
600 – 699	£1,800
700 – 799	£2,100
800 – 899	£2,400
900 – 999	£2,700
1000 or more	£3,000

Penalty: Form P45 (Part 1 or Part 3), P46 or P46(Pen)

210B.—(1) This regulation applies for the tax quarter ending on 5th April 2010 and the tax year ending on 5th April 2011 (the “relevant period”).

(2) Table 9A sets out the penalties for the relevant period depending on the number of items of specified information the employer has failed to deliver in each tax quarter falling within that period.

Table 9A

Penalties: tax quarter ending 5th April 2010 and tax year ending 5th April 2011

<i>1. Number of items of specified information the employer has failed to deliver in the tax quarter</i>	<i>2. Penalty</i>
1 – 5	Nil
6 – 49	£100
50 – 149	£300
150 – 299	£600
300 – 399	£900
400 - 499	£1,200
500 – 599	£1,500
600 - 699	£1,800
700 – 799	£2,100
800 – 899	£2,400
900 – 999	£2,700
1000 or more	£3,000

(3) Each of the types of specified information mentioned in sub-paragraphs (a) to (d) of regulation 207(1) counts as a separate item of specified information for this purpose.

(4) An item of specified information counts even if it relates to the same employee as one or more other items.

Appeals and interest

210C.—(1) An employer is not liable to a penalty if the employer had a reasonable excuse for failing to comply with regulation 205 which had not ceased at the time the specified information was delivered.

(2) A notice of appeal against a determination under section 100 of TMA(a) of a penalty can only be on the grounds that—

- (a) the employer is not a specified employer, subject to paragraph (3),
- (b) the employer did comply with regulation 205,
- (c) the amount of the penalty is incorrect, or
- (d) paragraph (1) applies.

(3) An employer may not appeal on the grounds that the employer is not a specified employer if the employer has already appealed under regulation 208(2) (appeal against e-filing notice).

(4) Section 103A of TMA(b) (interest on penalties) applies to this penalty.”

21. In regulation 211(4) (how information must or may be delivered by employers), in Table 10—

(a) 1970 c.9; section 100 was substituted by section 167 of the Finance Act 1989 (c.26), and there have been amendments which are not relevant.

(b) Section 103A was inserted by paragraph 33 of Schedule 19 to the Finance Act 1994 (c.9) and amended by section 115(8) of the Finance Act 1995 (c.4) and paragraph 40 of Schedule 19 to the Finance Act 1998 (c.36).

(a) for the entry relating to regulation 55(3)(a) substitute—

“55(3)(a) information on retirement P46(Pen) yes yes”

(b) in column 3 of each of the entries relating to regulations 57(2) and 58(3), for “P46” substitute “Form P46(Pen)”.

22. In regulation 212—

(a) for the heading substitute—

“Modifications for electronic version of Form P46(Pen)”;

(b) in paragraph (1), for “the statement required by regulation 55(3)(a) (pensioner’s retirement statement: Form P160)” substitute “Form P46(Pen)”; and

(c) in paragraph (2)—

(i) for “retirement statement” substitute “Form P46(Pen)”,

(ii) in each of sub-paragraphs (i) and (l), omit “if known.”.

23. In regulation 213(3) (how information may be delivered by Inland Revenue), in Table 11, add at the end—

“199(1)	e-payment notice	MP(L)(Band 1)	yes
206(1)	e-filing notice	MP(L)(Band 1)	yes”

24. In regulation 215—

(a) for the heading substitute—

“Meaning of Form P45, P46 and P46(Pen)”;

(b) for the definition of “Form P46” substitute—

““Form P46” means the form provided or approved for use in accordance with regulation 46 (form P46 where employer does not receive P45 and code not known);”;
and

(c) after that definition add—

““Form P46(Pen)” means the form provided or approved for use in accordance with regulation 55(3)(a), 57(2) or 58(3).”.

Name

Name

[date]

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

**COMMENTARY ON THE DRAFT INCOME TAX (PAY AS YOU EARN)
(AMENDMENT) (NO. 0) REGULATIONS 2007**

(This note will not form part of the Regulations)

In July 2005, the Government asked Lord Carter to undertake a review HM Revenue and Customs' (HMRC) online services. Lord Carter published his report in March 2006 and recommended that HMRC should phase in requirements to submit company tax returns, VAT returns and PAYE in-year forms online. His report is available online at <http://www.hmrc.gov.uk/budget2006/carter-review.pdf> and in the House libraries.

The Finance Bill 2007 contains the legislative framework to implement Lord Carter's recommendations. In particular it extends the current power in section 135 of the Finance Act (FA) 2002, to make regulations requiring electronic filing, to all taxes and duties for which HMRC is responsible.

These regulations will be made under section 113(1) of the Taxes Management Act 1970, sections 132 and 133 FA 1999, section 684 of the Income Tax (Earnings and Pensions) Act 2003, and sections 135 and 136 FA 2002 (as amended by Finance Bill 2007).

The requirement to file PAYE in-year forms online will be introduced in phases from 2009. These draft regulations cover the first phase (covering large and medium sized employers). Further draft regulations, covering the requirements for small employers, will be published later.

A full Regulatory Impact Assessment on these changes, together with other information about Lord Carter's recommendations, is available on the HMRC website at www.hmrc.gov.uk

This commentary provides an analysis of the draft regulations.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the PAYE Regulations”).

These Regulations extend the requirement that electronic communications must be used for the delivery of information. Employers who are already required to file form P35 or P14 electronically will also be required, by these Regulations to use electronic communications to file form P45 Part1, form P45 Part 3, form P46 and form P46(Pen). These Regulations also provide for penalties if electronic communications are not used for the delivery of these forms.

These Regulations also make amendments relating to the contents of form P45 Part 1 and Part 3 and to form P46 procedures for new employees: matters that are dealt with in Chapter 2 of Part 3 of the PAYE Regulations (new employees (other than pensioners): forms P45 and P46); and to the forms and procedures for new pensioners: matters that are dealt with in Chapter 3 of Part 3 of the PAYE Regulations (new pensioners: forms P45 and P46). These changes have been designed with employer representatives and are intended to make the procedures work better for employers.

These Regulations also make minor amendments to regulation 186 of the PAYE Regulations (recovery: adjustment of employee's code) and to regulation 213 of those Regulations (how information may be delivered).

Contact

For any comments you wish to make on the technical detail of the draft regulations please contact Martin Durkin at HMRC, telephone: 0191 2257055 or email Martin.Durkin@hmrc.gsi.gov.uk