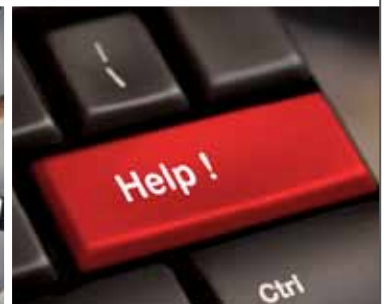
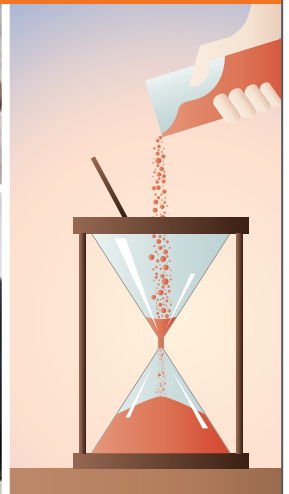




The Chartered Institute of Payroll Professionals
Bi-Monthly Newsletter

October 2013



cipp.org.uk

cipp

the **chartered institute**
of **payroll professionals**

leading the profession

Welcome



Welcome to the October edition of the bi-monthly newsletter from the CIPP's Policy & Research Team. Our aim is to give you a round-up of the news and views impacting the payroll sector in recent weeks. We say payroll but of course as anyone in this profession knows, there are so many other areas that filter into the day to day payroll function. So our newsletter is never a short read but we hope that because all items are indexed, categorised and in date order (the most recent entry being at the bottom) that this makes it easier for you to navigate to your areas of particular interest.

I think we can officially say that summer is now over; well it certainly is north of the border. Halloween and Guy Fawkes Night will be with us before we know it and they are always associated with wrapping up in the moth balled home knits from last Christmas. We won't mention that word again until the next edition of this newsletter, by which time we are likely to be well into the 12 days of well no doubt running the payroll early.

Avid readers of our newsletter will be getting used to the plethora of updates on reporting PAYE in real time and automatic enrolment. This edition is no exception as the RTI wrinkles continue to be ironed out. HMRC has just published a detailed analysis of the findings from a number of disputed PAYE charges; an interesting 6 page read which identifies that HMRC's systems are working as they should be and that reconciliation issues are coming from the employer or software side. Further promises of updated guidance are to follow.

HMRC's 'on or before' analysis survey has now closed and I don't envy the team who are examining the thousands of responses. Hopefully we will be able to share a summary of their findings in our next newsletter. If you haven't yet had a chance to share your views and experiences, see page 60 as The Chartered Institute of Taxation (CIOT) published a supplementary survey which should still be open and will also feed into HMRC's review.

The first year of automatic enrolment has been scrutinised by many. Opt-out rates are lower than the government anticipated but of course this could all change as the smaller businesses start staging. The predicted capacity crunch in 2014 for SMEs continues to capture headlines in the media as the pension industry and advisers are predicted to struggle with future demand. The consistent message out there that we absolutely agree with is to know your staging date and get planning - if you haven't already of course.

And there is of course a variety of other news pieces to keep you awake. The policy team has been busy creating consultation surveys and we have published responses to the Low Pay Commission report on the National Minimum Wage, How to improve HMRC's collection of debt through coding out and some informal research for the Collection of Student Loans forum.

Never a dull moment in payroll and as the nights are drawing in you may not be so disheartened to put your feet up in front of the fire with a cup of cocoa, (or other warming beverage of your choice) and read our latest offering.

Diana Bruce MCIPPdip
Senior Policy Liaison Officer, CIPP

Contents



BETTER REGULATION	8
The Office of Tax Simplification	8
OTS interim report on employee benefits and expenses	8
The CIPP and the AAT joint survey on the OTS interim report on employee benefits and expenses	9
CHILD MAINTENANCE REFORM	10
Child Maintenance Scheme rollout progresses	10
CITIZEN NEWS	11
UK Border Agency	11
Passport returns pilot launched for applicants reapplying for tier 2 intra-company transfer visas	11
Changes to the Immigration Rules from 1 October 2013	11
CONSTRUCTION INDUSTRY	13
Top ten tips for claiming a CIS repayment	13
EMPLOYMENT LAW & GUIDANCE	14
Court fees	14
Employment tribunal fees introduced	14
Employment tribunal fees could be looked at again	14
Fee Remission in Courts and Tribunals	14
General Employment Law & Guidance News	15
Drive to get more disabled people into mainstream jobs	15
Apprenticeships funding reform in England	16
ACAS publish guidance on settlement agreements	16
Amendment made to limit on compensatory award for unfair dismissal	16
ACAS helpline online	17
Subject access code of practice published by ICO	17
Miscalculation of holiday pay leads to increase in pension liabilities	17
Cloud storage data to be automatically encrypted by google	18
Agency workers still not receiving equal pay according to TUC research	18
TUPE	19
Changes to TUPE regulations likely to come into force in January 2014	19
Government publish response to TUPE consultation	19
Zero hours contracts	20
Zero hours contracts four times higher than estimates	20
Can an individual working under a zero hours contract be an employee?	20
The ONS to survey businesses on zero-hours contracts	21
Labour pledges to ban zero hours contracts	21
EMPLOYMENT TRIBUNALS	22
Landmark judgement dramatically changes process for cross-site redundancies	22
Carrying over of additional holiday leave whilst on sick leave	23
Transferee employers and contract clauses	23
Settlement does not require formal contract	24
Death in service benefit payable even though employee dismissed	24
Calculating holiday pay entitlement	24
Confidential information – liability of new employer	25
Representation at disciplinary hearings	26
Volunteer still qualifies for National Minimum Wage	26

Contents



TUPE: Service Provision Changeover	27
Does a finding of gross misconduct make dismissal automatically fair?	28
CJEU – Maternity and Paternity Leave	29
Redundancy and suitable alternative employment	29
EXPENSES AND BENEFITS	30
Advisory Fuel Rates	30
Advisory Fuel Rates for Company Cars from 1 September 2013	30
General Expenses & Benefits News	30
HMRC clarify RTI reporting guidance for PAYE schemes only open to enable P11D submission	30
The CIPP and the AAT joint survey on the OTS interim report on benefits in kind	31
Tax-Free Childcare	31
Tax-Free Childcare consultation published	31
CIPP survey – Tax-Free Childcare: consultation on design and operation	31
Tax-Free Childcare consultation – government short survey	32
HMRC	33
General HMRC News	33
HMRC response to consultation on how to help those who need extra help	33
HMRC offer free webinars for employers	33
New safeguards for debt collection visits	33
Tax rebate scam results in five arrests	34
HMRC's April to June 2013 performance	34
HMRC can now access businesses card payment information	35
HMRC's Your Charter	35
Stakeholder weekly updates	36
HMRC stakeholder update – number 27	36
● Real Time Information	36
● New Online End of Year Expenses and Benefits Service	36
● PAYE: P11D(b) Return of Class 1A National Insurance Contributions – 3rd Interim Penalty for outstanding 2011-12 returns	36
HMRC stakeholder update – number 28	36
● Real Time Information	36
● PAYE for Employers	36
● New Helpline Telephone Numbers	37
● Toolkits update	37
HMRC stakeholder update – number 29	37
● Real Time Information	37
● Online End of Year Expenses and Benefits Service	37
● Consultation – summary of responses	37
HMRC stakeholder update – number 30	37
● Construction Industry Scheme - repayment claims for companies	37
● Self-certification of employee share schemes and online filing of share scheme forms	37
● Employer Further Guide to PAYE and NICs - CWG2	38
● Consultation: Tax-Free Childcare	38
HMRC stakeholder update – number 31	38
● Real Time Information	38
● HMRC announces new arrangements for verifying visits to customers	38
HMRC stakeholder update – number 32	39
● Real Time Information	39
● Forms R68(i) – Gift Aid repayment claims	39

Contents



● HMRC Basic Guide for Software Developers	39
HMRC stakeholder update – number 33	39
● Real Time Information	39
● HMRC Advisory Fuel Rates updated	39
● New 0300 numbers for Stamp Taxes Helplines	39
● Requests for confirmation of employment history	39
● Change to legislation for agricultural vehicles	39
HMRC stakeholder update - number 34	40
● Real Time Information	40
● End of the Regional Employer National Insurance Contributions (NICs) Holiday Scheme for New Businesses	40
● End of Year Return	40
● Employee shareholder – new employment status	40
● Alternative Dispute Resolution (ADR)	40
Toolkits - update	40
● New HMRC videos about tools and agent services	40
HMRC stakeholder update - number 36	41
● Reporting PAYE in real time - temporary relaxation extended	41
● Employees reaching State Pension	41
● ‘What’s new’ page survey	41
● Contractor loan schemes	41
● Employment-Related Shares & Securities	41
● Requirement to report PAYE in real time from April 2014: Direction for employers	41
● Checklist for Limited Company Subcontractors claiming back CIS deductions	41
● Withholding repayment claims in avoidance cases	41
NATIONAL INSURANCE	42
Consultation on simplifying national insurance process for self-employed	42
End of the Regional Employer NICs Holiday for New Businesses scheme	42
NATIONAL MINIMUM WAGE (NMW)	43
National Minimum Wage rates from 1 October 2013	43
National Minimum wage rogues to be publicly named and shamed	43
National Minimum Wage poster	43
CIPP response to Low Pay Commission report on the National Minimum Wage	44
PAY AS YOU EARN	45
Employee Share Schemes	45
Employment-related shares & securities bulletin – number 9	45
Employment-related shares & securities bulletin – number 10	45
Employee Ownership	45
Employee shareholder status in force from 1 September 2013	45
Employee shareholder status guidance	45
Expat News	46
Statutory Residence Test – revised guidance note	46
Revised form P85 - Leaving the UK - getting your tax right	46
General PAYE News	46
Changes to manual guidance ESC A19	46
Libdem taxation policy	47
CIPP response to consultation ‘How to improve HMRC’s collection of debt: coding out’	47
HMRC Employer Bulletin - Issue 45	48

Contents



Real Time Information (RTI)	48
Report summarising the findings from HMRC'S RTI pilot.	48
Research undertaken to help HMRC prepare for RTI	49
Harvest casuals – RTI reporting	49
RTI reporting of hours worked	50
Revisions to HMRC'S RTI pilot document - update	50
Reconciling PAYE charges	50
Tax code issues	51
Reconciliation issues	51
Annual amount of occupational pension field	51
Annual amount of occupational pension field - update	52
HMRC on or before reporting survey	52
RTI issue affecting student loan borrowers	52
Letters to employers who have not started reporting PAYE in real time	53
RTI letters for missing deadline	54
Universal credit early progress report from the National Audit Office	54
EXAM or ELECT scheme employers	55
HMRC confirm RTI extension for smaller businesses	56
CIOT 'on or before' supplementary survey	57
PAYROLL GIVING	57
Payroll Giving overhaul announced	57
Workplace Giving UK offer CIPP members a special introductory offer on The Big Charity Whip Round	58
PENSIONS	59
Automatic Enrolment	59
Pensions Regulator survey shows many schemes not keeping required records	59
1.7 million lose out on automatic enrolment due to thresholds set too high	59
Opt-out rate 9 per cent for first 6 months of automatic enrolment	60
First employer issued with automatic enrolment failure notice	60
Free automatic enrolment know-how events	60
Automatic enrolment employer awareness research	61
Small firms choose advisers for automatic enrolment help	62
Automatic enrolment: What workers want to know	63
Automatic enrolment is working, but are pension contributions adequate?	63
Intermediaries rise to automatic enrolment challenge	64
Achieving the 21st century pensions settlement: Beyond automatic enrolment	65
General Pensions News	65
Pension industry stakeholder forum – scheme transfers	65
HMRC pensions industry business update – issue 6	66
Government response to consultation on simplified disclosure regime	66
HMRC Pension schemes newsletter – number 58	66
New QROPS forms APSS 262 and APSS 263	67
Same sex marriages and occupational pension schemes	67
The Pensions Advisory Service launch web chat tool	68
One million fewer facing inadequate retirement incomes	69
OFT secures agreement with TPR to tackle reform of pension schemes	69
The Pensions Regulator codes of practice on maintaining contributions	69
Local Government Pensions	70
The reformed Teachers' Pension Scheme	70
Local Government Pension Scheme 2014 – government response to consultation	70

Contents



POWERS, DETERRENTS AND SAFEGUARDS	71
Alternative Dispute Resolution (ADR)	71
Alternative Dispute Resolution for SMEs and individuals	71
Alternative Dispute Resolution pilot for large and complex cases	71
Tax Avoidance	71
Consultation on raising the stakes on tax avoidance	71
HMRC review of tax avoidance disclosure regimes	72
HMRC briefing on tackling tax avoidance	72
Compensating adjustments rules for tax avoidance and evasion	73
HMRC policy on withholding repayment claims in avoidance cases	73
STATUTORY DEDUCTIONS	74
Student Loans	74
Collection of Student Loans forum – Your views wanted	74
Collection of Student Loans forum – response to ‘your views’	74
TAX AGENTS AND ADVISERS	75
Tax agent strategy and agent online self serve (AOSS)	75
HMRC agent update – issue 37	75
HMRC’S relationship with tax agents	75
Single compliance process – update for tax agents	76
Update on the Tax Agent Strategy	76

Better Regulation

The Office of Tax Simplification

OTS interim report on employee benefits and expenses

8 August 2013

The Office for Tax Simplification (OTS) has been reviewing the tax rules around employee benefits and expense and an interim report has now been published.

It is of no surprise that the [report](#) has concluded that 'the complex system for reporting and taxing employee benefits and expenses is ripe for a complete overhaul'.

The report identifies some 'big picture' issues for further study such as 'payrolling' of benefits, abolishing the £8,500 'higher paid' threshold, and smoothing the differences between tax and national insurance rules.

The OTS proposes to focus on four core areas in the coming months:

- HMRC's administration of the system including the P11D form;
- travel and subsistence;
- accommodation; and
- termination payments.

Alongside this, the report makes 43 suggestions for quick simplifications. These include streamlining the cycle to work scheme, aligning tax and NIC treatment of mileage rates over 45p, changes to the HMRC forms and publishing a list of items that automatically qualify for a 'dispensation' (meaning no benefit will arise for employees).

The review by the tax simplification team – which is looking to simplify benefits and expenses for 4 million employees and 300,000 employers – is at the halfway stage, and the OTS has gathered feedback from hundreds of people at over 50 events around the country to find out the issues with the current system.

John Whiting, Tax Director of the Office of Tax Simplification said:

"It is clear that the current system for reporting expenses and benefits is simply not working well for employers or employees and also, in many cases, HMRC. Time and again – through our workshops and in submissions – people have told us that the rules around travel and subsistence, accommodation or HMRC admin, are causing them problems and costing them time."

"One of our key objectives is making sure the system reflects today's working environment: evidence suggests that it is outdated in a number of areas. There are some big questions we need to examine, but in the meantime we have also identified some small quick wins which we think would help."

"We are now looking to develop workable ideas that will make things easier for everyone with the aim of significantly reducing the 4.5 million P11Ds completed annually, and will be putting those proposals forward in our final report to the Chancellor before the next Budget."

Final details of the next stage of the review will be agreed with Treasury Ministers over the summer and final recommendations will be reported ahead of Budget 2014. The OTS remains open to views from anybody, which can be submitted through the mailbox: ots-employee.benefits@ots.gsi.gov.uk

The CIPP and the AAT joint survey on the OTS interim report on employee benefits and expenses

30 August 2013

Have your say in shaping the future of the benefits in kind system.

The [Office of Tax Simplification](#) (OTS) has published a review of employee benefits and expenses: [interim](#) report. This report is intended to be a summary of findings from the OTS research into this substantial subject.

The report identifies some of the main issues and would like feedback on the OTS's "Big Picture" issues contained within the report, and also on the "quick wins" identified. The report outlines that these are not final recommendations or solutions but are there to highlight at this stage.

The Chartered Institute of Payroll Professionals (CIPP) and the Association of Accounting Technicians (AAT) are working jointly to obtain the views from the payroll profession and the accountancy profession. We would therefore appreciate it if you could spare 20 minutes of your time (excluding any reading) to complete this [survey](#).

There is a short timescale for collecting the results as both organisations would like to provide feedback to the OTS to aid any discussions in the next couple of months. The [survey](#) has, where possible, explained the thought process around the questions, but we would recommend respondents take the time to review the [interim](#) report prior to completing the survey. The survey will close at the end of business, Tuesday 10 September 2013.



Child Maintenance Reform

Child Maintenance Scheme rollout progresses

31 July 2013

The Child Maintenance Service has progressed to the next stage of the 2012 Statutory Child Maintenance scheme.

The 2012 scheme opened in December 2012 using a pathfinder approach in which the Child Maintenance Service only accepted new applications from people with four or more children, where the children are from the same two parents. This approach has allowed the systems to be tested with a limited number of applicants and made it easier to address any issues.

The government is happy with progress so far and the 2012 scheme is now open to new applications from people with two or more children, where the children are from the same two parents.

See page 19 of [CIPP Policy News Journal 2012-2013](#) for previous news



Citizen News

UK Border Agency

Passport returns pilot launched for applicants reapplying for tier 2 intra-company transfer visas

22 July 2013

A new pilot allowing top business migrants to continue travelling whilst waiting for their visa to be processed has been launched.

Applicants re-applying for a visa under the Intra-Company Transfer (ICT) route will now receive their passport back within seven to ten days, after applying for their visa but before it has been approved. It forms part of the Home Office focus to make the visa application easier for businesses and their employees. Recent figures show that reforms to the immigration system have not deterred the brightest and the best from coming to the UK as visas for skilled migrants increased by five per cent in the year up to March 2013.

Immigration Minister Mark Harper said:

"This pilot is another example of the steps this government is taking to simplify and improve the visa process while maintaining the security of our border. The UK is a destination for global talent and we will continue working with businesses to drive forward more improvements. Our immigration reforms are working, with net migration at its lowest level for a decade. Figures show we have cut out abuse while encouraging migrants who contribute to economic growth to come to the UK."

The pilot will mean that applicants will be able to travel freely during the visa application process, providing that their existing visas have not yet expired and they have leave to remain in the UK.

The government has recently introduced a number of other improvements to the ICT route including increasing the maximum length of stay for senior staff earning over £152,100 from five to nine years and reducing the amount of documentation required for the visas. Currently the pilot is available for Tier 2 ICT visa holders who are reapplying for their visa in the UK. If the pilot is successful there are plans to introduce it across other routes.

For more information please click [here](#)

Changes to the Immigration Rules from 1 October 2013

10 September 2013

The government has announced a number of changes to the Immigration Rules which will mean greater flexibility for businesses and workers.

A written ministerial [statement](#) was laid in Parliament on 6 September 2013 outlining a number of changes to the Immigration Rules. The changes, which come into effect on 1 October 2013, include:

- removing the English language requirement for intra-company transferees;
- making it easier for graduate entrepreneurs to switch into Tier 2;
- waiving share ownership restrictions for some senior staff; and
- allowing some students to work as interns under the Tier 5 government authorised exchange scheme.

Tourist and business visitors will benefit from the following changes:

- Allowing tourists and business visitors to do some study where it is not the main purpose of their visit.
- Expanding the activities a business visitor can do in the UK.
- Removing the prospective student route.

Further changes include:

- expanding checks to ensure applicants for work and student visas are genuine, and that they intend to meet the conditions of leave they apply for;



- introducing powers to refuse Tier 4 extension applications where the applicant cannot speak English;
- introducing a scheme which allows some locally engaged staff in Afghanistan to relocate to the UK;
- setting new youth mobility scheme quotas for 2014;
- enabling those who demonstrate exceptional promise in the arts to apply under Tier 1;
- changes to the way we handle settlement applications for refugees who have committed crimes, and adding the power to curtail leave for persistent or serious offenders;
- introducing temporary Immigration Rules so participants and personnel can come to the UK during the 2014 Commonwealth Games;
- minor changes and clarifications to the Immigration Rules, including those relating to family life.

From 28 October there will also be changes to the way applicants for indefinite leave to remain are required to demonstrate their knowledge of the English language and of life in the UK.

For full details of the changes please see the Statement of Changes to the Immigration rules (HC 628) and the explanatory memorandum on the UK Border Agency's [website](#).

Construction Industry

Top ten tips for claiming a CIS repayment

30 July 2013

HMRC has published a list of the top ten tips for claiming a CIS repayment.

It includes advice such as:

- If the company was incorporated during the year, please ensure that its claim for repayment is only for deductions taken from the company's payments and not any for periods before incorporation.
- Check that the CIS deductions taken from the company's subcontractors are correct and have been reported correctly on the monthly returns.
- Check that the company has no outstanding returns (CIS300) in its capacity as a contractor within CIS.

The full list of all [ten top tips](#) is available on HMRC's website.



Employment Law & Guidance

Court fees

Employment tribunal fees introduced

29 July 2013

Monday 29 July sees one of the biggest shake-ups of employment law in years. A raft of [UK employment law changes](#) relevant to all organisations will be introduced, and it is crucial that employers know exactly what is changing.

Employment Tribunal fees

From Monday 29 July claimants will have to pay a fee to lodge a claim in the Employment Tribunal or an appeal in the Employment Appeal Tribunal. Simple claims such as unlawful deductions from wages will attract a fee of £160 for issue and £230 for the hearing. More complex claims such as unfair dismissal and discrimination will attract fees of £250 for issue and £950 for the hearing. If the claimant doesn't send in the issue fee or an application for remission, the claim will be rejected. If the claimant fails to pay the hearing fee, the claim can be dismissed. There is no repayment if the claim settles.

While fees for claims are payable in advance, the Tribunal will have the power to order an unsuccessful party to reimburse the fees of a successful party.

Employment Tribunal rules of procedure

Changes to the Employment Tribunal rules of procedure will come into force, replacing the current practices and procedures.

Unfair dismissal compensation cap

A new unfair dismissal compensation cap will also take effect and the cap will be the lower of £74,200 or one year's gross pay for claims where the effective date of termination is on or after 29 July 2013.

Employment tribunal fees could be looked at again

30 July 2013

Employment Tribunal fees were only introduced yesterday, however there is already massive controversy which has culminated in the Justice Minister, Helen Grant, hinting at the possibility of Employment Tribunal fees being dropped.

Under the new structure claimants will have to pay a fee on issue of the claim and before the hearing. Simple claims such as unlawful deductions from wages will attract a fee of £160 for issue and £230 for the hearing. More complex claims such as unfair dismissal and discrimination will attract fees of £250 for issue and £950 for the hearing. However, last night Grant admitted the fees could be "looked at again" if they prove to be unjust and unfair. "It's important to remember too that these are new fees we have committed, that we will monitor the impact very, very carefully on women and other individuals with protected characteristics to ensure that justice and fairness is done. And if it is not done of course we will look at it again," said Grant.

Employers' organisations the CBI and the Federation of Small Businesses have welcomed the fees, however, Unison, one of the country's largest unions, has been given permission to seek a judicial review of the introduction Employment Tribunal fees. The TUC have also criticised the fees and said the reforms will deter victims of abuse at work to suffer in silence.

According to the Ministry of Justice, there were 186,300 claims accepted by Employment Tribunals in the year to March 2012. Of those, 31% were for unfair dismissal, breach of contract and redundancy. About 27% of the 186,300 claims were withdrawn, but employers in those cases still had to pay legal fees when preparing a defence.

Fee Remission in Courts and Tribunals

11 September 2013

The government intends to introduce a single fees and remission system across all courts and tribunals.

Daniel Barnett's [employment law bulletin](#) has published the details.

The MOJ has published its [response](#) to its recent consultation on fee remissions for the courts and tribunals.

In order to qualify for fee remission, an applicant will need to be in receipt of certain state benefits or have a low gross household monthly income (the gross monthly income test replacing the previous gross annual income and net monthly income tests).

And, in addition, a new disposable capital test is being introduced. Those under 61 with a disposable household capital of between £3,000 and £8,000 will be required to spend up to one third of their disposable capital on fees (irrespective of income). Those with £8,000 or more will be required to spend up to half their disposable capital on fees. The over 61s will not be required to pay any fee if their disposable capital is less than £16,000 and they meet the low-income test.

The consultation response states that applicants will not be required to provide proof of disposable capital, albeit the Delivery Managers (as they are called) have the power to request evidence. Evidence is still required for establishing net monthly income, but the evidence requirements are being simplified.

Finally, the time period for applying for retrospective remissions is being reduced from six months to three months.

The changes are expected to take place, by statutory instrument, sometime in October 2013.

General Employment Law & Guidance News

Drive to get more disabled people into mainstream jobs

17 July 2013

Disabled people will get more support to gain the skills and experience they need to get a job under changes to the government's specialist disability employment scheme.

Disabled people on traineeships, supported internships, work trials and work academies will for the first time get additional help through the Access to Work scheme – which provides funding towards the extra costs disabled people face in work, such as travel costs, specially adapted equipment or support workers.

Minister for Disabled People Esther McVey said:

"Young disabled people tell me how difficult it can be to get a job without experience – and they want the same choice of training opportunities as everyone else to help them into work.

We're opening up Access to Work to do just that – so that more young disabled people can get a foothold in the jobs market, get their careers on track and achieve their full potential."

Recent changes also mean that businesses with up to 49 employees will save up to £2,300 per employee who uses the fund by no longer paying a contribution towards the extra costs faced by disabled people in work.

Disabled jobseekers who want to set up their own business through the New Enterprise Allowance are also eligible for Access to Work funding. Access to Work has previously been called 'the government's best kept secret' so to raise awareness of the changes, the government will continue its marketing campaign – targeted at young disabled people and people with mental health conditions.

Last year the programme helped 30,000 disabled people keep or get employment. Research also shows that around half (45 per cent) of Access to Work customers would be out of work if they did not receive support through the scheme.



Apprenticeships funding reform in England

26 July 2013

The Department of Business, Innovation & Skills and the Department for Education has published a further consultation document on Apprenticeships, this time, looking specifically at funding reform for Apprenticeships in England.

This consultation [Funding Reform for Apprenticeships in England](#) seeks your views on 3 ways of delivering funding reforms put forward by Doug Richard:

- a new online system for apprenticeships with payments to employers made directly from the system
- utilising the PAYE system
- reforming the existing provider funding infrastructure

This consultation will close on 1 October.

ACAS publish guidance on settlement agreements

1 August 2013

Settlement Agreements came in to force on the 29 July 2013 and Acas has published new guidance on the subject alongside the introduction of a new Code of Conduct on Settlement Agreements.

Failure to follow a [Code of Practice](#) will not, in itself, make a person or organisation liable to proceedings, nor will it lead to an adjustment in any compensation award made by an employment tribunal. However, employment tribunals will take the Code into account when called upon to consider relevant cases.

Full details of Settlement Agreements are included within the [Settlement Agreement booklet](#) however some key points to note:

- Settlement agreements are legally binding contracts that waive an individual's rights to make a claim covered by the agreement to an employment tribunal or court.
- The agreement must be in writing.
- They usually include some form of payment to the employee and may often include a reference.
- They are voluntary.
- They can be offered at any stage of an employment relationship.

Settlement agreements are legally binding contracts which can be used to end an employment relationship on agreed terms. They can also be used to resolve an on-going workplace dispute, for example, a dispute over holiday pay. These agreements can be proposed by either an employer or an employee, although it will normally be the employer.

Once a valid settlement agreement has been signed, the employee will be unable to make

Amendment made to limit on compensatory award for unfair dismissal

6 August 2013

The Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013 has been published which amends the limit on the compensatory award for unfair dismissal claims.

The [Order](#) amends the limit on the compensatory award for unfair dismissal claims by introducing an additional, alternative limit. In an unfair dismissal claim the limit on the compensatory award shall be the lower of a set amount (which is currently £74,200) and the product of 52 multiplied by a week's pay of the employee concerned.

The transitional provision contained in this Order means that the additional, alternative limit

ACAS helpline online

6 August 2013

Acas has recently launched a new online helpline. It is an automated system which is designed to learn from the questions asked of it.

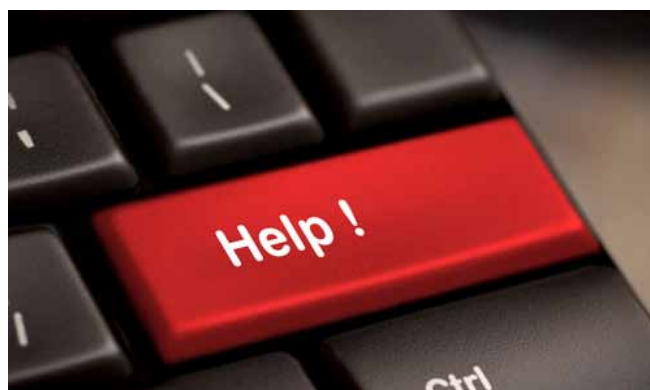
As more people use the online helpline it will get better at providing the most relevant answer to a query. Acas has said that they will be tracking any un-answered questions and, in each case, considering whether to add them to the system.

Some of the top questions asked include:

- What are the different types of dismissal?
- How can an employee raise a grievance?
- How can an employer change the terms of a contract where an employee does not agree to the change being made?

Follow the link below to try the Helpline

[Acas Helpline Online](#)



Subject access code of practice published by ICO

13 August 2013

Under the Data Protection Act, anyone has the right to find out what information an organisation holds about them by making a subject access request.

Payroll and HR departments tend to be the main areas in a business where sensitive employee data is held. If you are responsible for controlling data within your organisation, it may be useful to know that the Information Commissioner's Office (ICO) has published new guidance to help employers respond to requests from individuals who want to know how their information is used.

The [Subject access code of practice](#) explains the rights of individuals to access their personal data and clarifies what a business must do in this regard to comply with your duties as a data controller.

Miscalculation of holiday pay leads to increase in pension liabilities

23 August 2013

The story of John Lewis increasing its pension liabilities by £7m due to not calculating holiday pay correctly is an expensive lesson to learn.

[Professional Pensions](#) has reported the story that has seen John Lewis increase its pension liabilities by £7m after uncovering mistakes in the way it had calculated holiday pay.

Also reported in the [news](#) was that not adhering to the Working Time Regulations could cost £40m to put right.

The payroll error was discovered during a review that found the partnership had failed to correctly make holiday payments relating to premiums for partners working on Sundays or bank holidays.

According to the report John Lewis has updated its pay systems to ensure future holiday payments are correct - the change is expected to add 0.5% to its annual pay costs.

Cloud storage data to be automatically encrypted by google

28 August 2013

Businesses that use Google cloud computing to store data can be reassured by the news that information will now be encrypted by default.

Cloud Times has reported that after almost a week of Google's announcement that it will start to encrypt by default its Cloud Storage application, it is now being implemented. It initially encrypted the server-side of its new and active data even before they are stored in the cloud, then it will be followed by processing of old data that are previously stored in the system.



All other company data that uses Google will automatically be encrypted once files are uploaded in the **Google Cloud Storage**. The data is encrypted with a 128-bit Advanced Encryption Standard algorithm, then the object's unique key is attached and encrypted again to the object's owner. These data once stored in the cloud will be automatically and periodically updated in terms of auditing and access controls.

Employment law experts **Pinsent Masons**, have written an interesting article discussing some of the DPA (Data Protection Act) considerations for data controllers when dealing with personal information stored in the cloud.

Agency workers still not receiving equal pay according to TUC research

5 September 2013

The TUC believes it has evidence that the UK government has failed to provide adequate protection for agency workers and that the right to equal pay is being widely flouted.

The **TUC** has lodged a formal complaint with the European Commission against the UK government for failing to implement the Temporary Agency Workers Directive properly, leading to tens of thousands of agency workers being paid less than permanent staff despite doing the same job.

The complaint says that the UK government's flawed implementation of the EU Directive has allowed the abuse of the so-called 'Swedish derogation' - where employment agencies routinely pay agency workers far less than permanent staff doing the same job.

The TUC has gathered evidence from workplaces where agency staff are paid up to £135 a week less than permanent staff, despite working in the same place and doing the same job.

Under the UK's regulations, agency workers are entitled to the same pay and conditions as permanent staff doing the same job after 12 weeks. However, a Swedish derogation contract exempts the agency from having to pay the worker the same rate of pay, as long as the agency directly employs individuals and guarantees to pay them for at least four weeks during the times they can't find them work.

In Sweden, where these contracts originate, workers still receive equal pay once in post and 90 per cent of normal pay between assignments. However in the UK workers have no equal pay rights and are paid half as much as they received in their last assignment, or minimum wage rates, between assignments. Agencies can also cut their hours, so receive as little as one hour of paid work a week.

Evidence gathered by the TUC shows that Swedish derogation contracts are used regularly in call centres, food production, logistics firms (lorry drivers working out of retail warehouses), and parts of manufacturing.

The Temporary Agency Workers Directive was implemented in the UK in 2011 as part of Europe-wide legislation to give equal treatment to agency workers. At the time, business lobby groups warned that the legislation would lead to heavy job losses. But as with the minimum wage, their predictions proved to be completely wrong, and the number of agency workers has increased despite the recession. Agency working in the UK has increased by 15 per cent since the recession, faster than any other form of employment.

The Directive said that countries must prevent the misuse of Swedish derogation contracts. The TUC believes it has evidence that the UK government has failed to provide adequate protection for agency workers and that the right to equal pay is being widely flouted. Swedish derogation contracts should therefore be banned, says the TUC.

The number of workers on Swedish derogation contracts has grown rapidly since 2011. Around one in six agency workers are now on these contracts, according to a report from the Recruitment and Employment Confederation (REC).

However the [REC responded publicly](#) to the TUC's complaint on payment between assignments contracts.

REC head of policy Kate Shoemith said:

"It is wholly misleading of the TUC to describe pay between assignments (PBA) or Swedish Derogation contracts as a loophole as they are part of the Agency Workers Regulations (AWR) that were assembled following consultation with the unions.

Most workers are now much better off as a result of AWR as they receive equal pay after 12 weeks. Or they can sign up to become a permanent employee of their recruitment agency where they are paid when not on assignments and have access to benefits that they would not have been eligible to before such as protection from unfair dismissal, maternity leave and statutory redundancy pay by signing a PBA contract.

The UK economy has made a positive start on the long road to recovery and to disrupt this excellent progress by picking at regulations that the unions played a key role in constructing could put workers' jobs at risk."

TUPE

Changes to TUPE regulations likely to come into force in January 2014

3 September 2013

According to a spokesman for the Department for Business, Innovation & Skills (BIS), changes to the TUPE regulations are likely to come into force in January 2014 instead of October 2013 as originally planned.

[Personnel Today](#) reported in their news that the government is planning to publish its response to the [consultation](#) on proposed changes to the TUPE (Transfer of Undertakings (Protection of Employment)) Regulations in early September 2013.



Proposed TUPE amendments include:

- a repeal of the provisions on service provision changes, for example outsourcing and retendering
- a repeal of the requirement for the transferor to provide employee liability information
- limiting the future applicability of terms and conditions derived from collective agreements to one year from transfer.

BIS said it was still finalising the timescale for the TUPE changes but that it plans to lay the draft regulations before Parliament in December 2013, with the intention that they come into force in January 2014

Government publish response to TUPE consultation

6 September 2013

In 2011 the government announced its intention to improve how the TUPE (Transfer of Undertakings (Protection of Employment)) Regulations work. Through a call for evidence and a consultation the government has now set out a reforming package of amendments.

In the government's [response](#) they state that their reforms to the TUPE Regulations will remove unfair legal risks that businesses currently face when carrying out a transfer.

The response outlines a package of reforms that will improve how the TUPE Regulations work. Including the commitment to improve TUPE guidance, the government will amend regulations:

- to allow renegotiation of terms derived from collective agreements one year after the transfer, provided that overall the change is no less favourable to the employee
- to provide expressly for a static approach to the transfer of terms derived from collective agreements
- so that changes in the location of the workforce following a transfer can be within the scope of economic, technical or organisational reasons entailing changes in the workforce, thereby preventing genuine 'place of work redundancies' from being automatically unfair

- to reflect the approach set out in the case law, namely that for there to be a TUPE service provision change, the activities carried on after the change in service provision must be “fundamentally or essentially the same” as those carried on before it
- to make it clear in statute that consultation which begins pre-transfer can count for the purposes of complying with the collective redundancy rules, provided that the transferor and transferee can agree and where the transferee has carried out meaningful consultation
- to improve the TUPE process for micro businesses by allowing such businesses to inform and consult directly affected employees when there is no recognised independent union, nor any existing appropriate representatives
- to retain the rules about employee liability information and extend the time before the transfer when it must be given to the transferee to 28 days.

The consultation [response](#) also outlines where the government was persuaded by the strength of the submissions not to change the TUPE Regulations. The government will not:

- repeal the service provision change rules
- allow a transferor to rely on a transferee’s economic, technical or organisational reasons to dismiss an employee prior to a transfer
- amend Regulation 4(9) (a substantial change in working conditions to the material detriment of an employee).

Draft regulations are not included in the response and a date of implementation is also not mentioned. However, as we reported recently (see the link below), BIS has apparently said that January 2014 is likely.

Zero hours contracts

Zero hours contracts four times higher than estimates

8 August 2013

Research conducted by the [CIPD](#) reveals that the number of people on zero hours contracts is potentially 1 million, four times the official estimate.

The latest figures from the Chartered Institute of Professional Development (CIPD) found that 3 to 4 per cent of the country’s workforce are on zero hours contracts. This suggests that the Office for National Statistics’ calculation of 1 per cent – or 250,000 zero hours workers – is an underestimate.

The survey of 1,000 employers found that one-fifth employed at least one person on a zero hours contract, although the majority of those organisations used zero hours contracts for less than 10 per cent of their workforce.

Employers in the voluntary sector (34 per cent) and the public sector (24 per cent) were more likely to use zero hours contracts than private sector companies (17 per cent).

The figures revealed that zero hours contracts were most common in the hotel, catering and leisure industry (48 per cent), education (35 per cent) and healthcare (27 per cent).

Can an individual working under a zero hours contract be an employee?

9 August 2013

With zero hours contracts hitting the headlines this week, there is some confusion over what zero hours contracts hours actually are.

Sarah Ashberry from [Pinsent Masons](#) employment law specialists, describes a zero hours contract as a contract for a worker, not an employee. The arrangement being that the employer does not have to offer any work to the worker, so it is on an ‘as and when’ basis and the worker is expected to work when required.

Sarah goes on to say, *“That is, of course, why these are controversial because it would seem to be quite an unequal arrangement – it puts the control in the hands of the employer and they can flex the arrangement to suit themselves which is often ideal for the employer and perhaps less ideal for the worker because they have a state of uncertainty and they don’t always know how many hours per week they will be required - of course, a lot of people quite like working in that way. Sometimes zero hours contracts actually become something else - they become an employment contract.”*

Sarah [explains](#) that a zero hours contract can become an employment contract so an individual working under a zero hours contract can become an employee and this can happen in two ways. It can happen deliberately where both parties, the worker and the employer, regard themselves as in more of a part-time work situation, a part-time employment contract, and they have what is called "mutuality of obligation". The employer is bound to offer work and the employee is equally bound to turn up for that work and accept it. So that is fine and people might refer to it as a zero hours contract but in fact they have got a contract of employment but everyone is happy with that situation and everyone knows what it is.

What can also happen, quite frequently, is that something can mutate into an employment contract with neither party, but particularly the employer, wanting that to happen and it can really happen by the back door and it has happened because the working pattern has developed without the written documentation being updated and in fact without anyone noticing. So while the employer might think they have got an "as and when" zero hours contract in fact what they have got is an employment contract and they are employing somebody with full employment rights.

Pinsent Masons do recommend that employers regularly audit atypical working arrangements because what can be appropriate and apt when you enter into the arrangement often isn't six or twelve months down the line because things might well have moved on.

[Pinsent Masons Employment Law Bulletin](#) also includes some interesting discussion around the 'pros and cons' of zero hours contracts for both the employee and the employer.

The ONS to survey businesses on zero-hours contracts

29 August 2013

From autumn 2013, one of The Office for National Statistics's (ONS) monthly business surveys will include some questions on zero-hours contracts in order to obtain robust data directly from employers.

These questions will be asked on a quarterly basis with the first results expected to be published in early 2014.

To ensure that users' needs are met, ONS will undertake a short consultation exercise in September 2013 to clarify the data requirements.

The current estimate is based on an ad hoc analysis of employee responses collected in the regular Labour Force Survey (LFS). While the LFS is the largest household survey of any kind conducted in the UK, this question depends on employees knowing and correctly reporting their terms of employment.

[ONS press release](#)

Labour pledges to ban zero hours contracts

11 September 2013

Speaking to delegates at the TUC Congress in Bournemouth, Ed Miliband has promised a ban on zero hours contracts.

Union news [reported](#) that the Labour leader said:

"The worst of these practices owe more to the Victorian era than they do to the kind of workplace we should have in the 21st century. It's wrong. And the next Labour government will put things right.

We'll ban zero hours contracts which require workers to work exclusively for one business.

We'll stop zero hours contracts which require workers to be on call all day without any guarantee of work. And we'll end zero hours contracts where workers are working regular hours but are denied a regular contract.

And that means security, not insecurity at work...."

Read the full story from [Union news](#).

Employment Tribunals

Landmark judgement dramatically changes process for cross-site redundancies

5 July 2013

The Employment Appeal Tribunal (EAT) has issued its [decision](#) in *USDAW v Woolworths*. This decision will dramatically change how employers carry out cross-site redundancies, confirming that—subject to any appeal or new legislation—employers must collectively consult when 20 or more employees are proposed to be dismissed by reason of redundancy within a period of 90 days or less, regardless of where the employees are located.



In the UK, employers have a general duty to consult with employees individually before deciding to terminate their employment on the grounds of redundancy. In addition, employers have the duty to collectively consult with either trade union representatives or elected employee representatives if the employer wishes to dismiss a certain number of employees. This is set out in section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), which states that the obligation to collectively consult is triggered by an employer proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less.

The duty to collectively consult comes from a European directive. The directive in question—Council Directive 98/59/EC (the Directive)—sets out that the duty to collectively consult is triggered when the number of redundancies is “*over a period of 90 days, at least 20 [dismissals on the grounds of redundancy] . . . in the establishments in question.*”

Crucially, there is a difference between the Directive and TULRCA, as the Directive refers to 20 dismissals in the “establishments in question”, whereas TULRCA refers to 20 dismissals “at one establishment”.

When Woolworths went into administration in November 2008 and ceased to trade in January 2009, employees were dismissed by the administrators without consultation. The Union of Shop, Distributive and Allied Workers (USDAW) brought claims on behalf of the employees, stating that they were entitled to the protective award.

The Employment Tribunal ordered that the majority of employees should receive 60 days’ pay by way of protective award but found that 3,233 employees were not due the award. The reason for this was that some employees were employed in stores that had fewer than 20 employees, and, according to commonly accepted practice, the tribunal held that each store was a separate establishment and as such, the duty to collectively consult was not triggered at these stores.

USDAW appealed the decision to the EAT on the basis that the “one establishment” test adopted by the Employment Tribunal was inconsistent with the Directive.

The EAT held that there should be some interpretation of TULRCA to yield the outcome that the obligation to collectively consult arises when 20 or more employees are to be dismissed—irrespective of their location.

Subject to any appeal or new legislation, the requirement for collective redundancy consultation will be triggered in the future when an employer proposes to make redundant 20 or more employees within a 90-day period, even if they are employed across multiple establishments. It will not be open to the employer to avoid collective consultation by ensuring that fewer than 20 employees are made redundant at a number of different locations.

View the decision [here](#).

Carrying over of additional holiday leave whilst on sick leave

24 July 2013

The Employment Appeal Tribunal (EAT) have recently considered the question, can additional annual leave be carried forward in the absence of an agreement between the parties?

Thank you to [Daniel Barnett's Employment Law Bulletin](#) for the following summary of the EAT ruling on [Sood Enterprises v Healy](#) where it has been confirmed that additional holiday leave cannot be automatically carried forward.

Mr Healy was off work sick for a year and a half when he resigned. The EAT held that unlike 'ordinary' annual leave, provided for by Regulation 13 Working Time Regulations 1998, additional annual leave, provided for by Regulations 13A Working Time Regulations, cannot be carried over unless there is an agreement in place between the parties, which there was not.

In other words, when an individual is on long-term sick leave, only four weeks' annual leave carries over automatically - and not the additional 1.6 weeks granted by UK law which exceeds the European minimum of four weeks' annual leave.

Transferee employers and contract clauses

25 July 2013

The European Court has delivered its judgement concerning the binding nature, to a transferee employer, of clauses within contracts that require an employer to follow determinations of a third party.

Thank you to [Daniel Barnett's Employment Law Mailing](#) for providing the following summary.

In [Alemo-Herron v Parkwood Leisure Ltd](#) the European Court has delivered its long awaited judgment in the litigation concerning whether clauses in employment contracts which oblige an employer to follow determinations of a third party (such as a national negotiating body) in setting pay are binding on a transferee employer.

In British law, the answer was originally that such clauses are dynamic in nature, thus transferring to the new employer under TUPE even if the new employer has no say in the national bargaining arrangements. In the case of [Werhof](#) [2006] ECR I-2397 the European Court held, however, that such clauses are static in nature, thus obliging the new employer to follow only the current collective agreement affecting pay and conditions and not future determinations by a third party when the employer is not a party to the negotiations.

In this case, a public sector to private sector transfer (the contracting out of Lewisham Council's leisure services), it was argued that the dynamic interpretation was permissible under British law even if not permitted under European law, under the principle that a Member State may, in its domestic law, grant rights more favourable than contained in European law.

The European Court disagreed.

This was because a dynamic clause referring to collective agreements undermines the balance between the interests of the transferee in its capacity as employer, on the one hand, and those of the employees, on the other. Under Article 16 of the Charter of Fundamental Rights of the European Union, an employer must have the right to conduct a business and assert its interests effectively in a contractual process to which it is party. This allows it to negotiate the process of determining changes in the working conditions of its employees with a view to its future economic activity.

A dynamic interpretation was therefore inconsistent with the Charter. As such, Member States are not permitted to allow dynamic clauses referring to collective agreements negotiated and adopted after the date of transfer where the transferee does not have the opportunity of participating in the negotiating process by which such a collective agreement was concluded.

Settlement does not require formal contract

30 July 2013

Is an exchange of letters, without a detailed agreement, sufficient to settle a claim? It was in [Newbury v Sun Microsystems](#), concluded the High Court.

[Daniel Barnett](#) reports:

Sun's solicitors wrote to Mr Newbury, offering to compromise his claim for £601,464.98, paid within 14 days. Mr Newbury's solicitors replied, accepting these terms, but that they would 'forward a draft agreement for your approval'.

The parties attempts to agree that draft floundered.

Mr Newbury then argued that a binding agreement had already been reached.

Analysing the wording of the letters, Mr Justice Lewis agreed. The offer was detailed enough to be capable of acceptance and it had been accepted.

This case highlights the importance of clarity in the closing phase of negotiation. Parties wishing to agree a figure, but negotiate on other matters, must be careful. As Mr Justice Lewis commented, the phrase 'Subject to contract' may be significant.



Death in service benefit payable even though employee dismissed

8 August 2013

In this case [Fox v British Airways Plc](#), a former employee died within days of being dismissed. He had been entitled to the right to death-in-service benefit whilst in employment.

The Employment Tribunal, rejecting an argument that the loss was real loss of substance to the deceased, and considering it was in reality a benefit to the dependents, held that a sum of around £350 akin to the conventional award for loss of statutory rights should be awarded. The deceased's father appealed against the assessment of quantum.

Gary Fox died aged only 44. 20 days before he had had surgery which it was hoped would make him fit again for work. But he had been dismissed from work – because, it was said, he was not physically capable of it, only 5 days earlier than that. If he had still been in work when he died, he would have been entitled contractually to a death in service benefit of three times his annual salary (over £85,000). Because he was dismissed he had nothing.

On the assumption that the dismissal was unfair, or discriminatory in breach of the Disability Discrimination Act 1995 could he claim to have lost that sum? Employment Judge Hyams at Watford Employment Tribunal thought not. He said that a much smaller sum, around £350, was payable. The effect of his reasoning was that if an employee is dismissed with effect from (say) the 21st of the month, and he dies at one minute to midnight on that day, his loss is to be measured in thousands of pounds, but if he survives one minute into the next day it is at most a few hundred. The principal issue for this Court on the appeal is whether the Judge was right.

Calculating holiday pay entitlement

13 August 2013

In a recent case a Tribunal was asked whether employers are required to base their calculation of holiday pay on employees' actual remuneration - including overtime, or only their basic salary.

The Employment Tribunal confirmed that holiday pay entitlement must be based on actual remuneration for contractually required tasks, noting that overtime and shift premia must be included in the calculation.

This case will be of particular interest to employers in the retail sector where overtime, shift premium and other such payments are commonplace.

Pinsent Masons takes a closer look at the case in their [HR Briefing](#).

At a Glance

In the recent case of *Neal v Freightliner Limited*, an Employment Tribunal (ET) was asked to consider whether employers are required to base their calculation of holiday pay on employees' actual remuneration (including overtime pay) or their basic salary alone. The ET confirmed that holiday pay entitlement must be based on actual remuneration for contractually required tasks, noting that overtime and shift premia must be included in the calculation.

Background

This judgment follows on from the recent Supreme Court decision in *British Airways plc v Williams and Others* in which it was held that employees should be paid their "normal remuneration" during their four weeks' statutory annual leave. The principle is that employees should be put in a financial position comparable with periods of work. In the BA case it was held that the pilots' holiday pay should be calculated by assessing average payments made over a representative reference period, including flying pay supplements.

In the wake of this decision there had been some uncertainty as to the wider application of this principle, as the BA case was dealt with under the Civil Aviation (Working Time) Regulations. However, the decision in *Neal v Freightliner Limited* leaves little doubt that the scope of this principle has been extended beyond the airline industry and we are seeing a considerable number of claims for holiday pay to include payments for overtime, shift premia and other allowances.

The Employment Tribunals have also released statistics which show that claims under the Working Time Regulations (WTR) doubled in the first quarter of 2013 and accounted for a third of all claims submitted!

Confidential information – liability of new employer

14 August 2013

Is copying your employer's Sage database and using it in the employment of a competitor actionable as a breach of confidence?

Yes, if the information it contains is actually used, according to the Patents County Court in [Pintorex Limited v Keyvanfar](#).

[Daniel Barnett's Employment Law Bulletin](#) summarises the case:

Mr Keyvanfar copied the Claimant's database and loaded it onto a laptop owned by his new employer, Parax Office Limited ('Parax'). Mr Keyvanfar then used the pricing information it contained to approach two of the Claimant's clients, and undercut the Claimant's prices.

Parax was held to be liable for the breaches of confidence by Mr Keyvanfar, including those pre-dating Mr Keyvanfar's employment, on the basis that he was acting to further Parax's interests as Parax's agent, and that Parax had sufficient knowledge of what was going on to be jointly liable.

The Third Defendant, the sole Director of Parax, could also have been jointly liable for the breaches had he had a 'common design' to commit them, or 'dishonestly' ignored what was going on, but it was held he did not know and so could not be jointly liable.

Latest LinkedIn case sets legal precedent

23 August 2013

In a recent case an employer claimed damages for breach of contract and for a permanent injunction restraining ex-employees from using confidential information obtained during their employment.

The three employees in this case [Whitmar Publications Ltd v Gamage](#) set up a business to compete with their employer some four months before resigning from their positions.

Whitmar contended that Gamage et al had misused Whitmar's confidential information. As well as mirroring circulation figures and some products, the defendants used the LinkedIn groups established under Whitmar to promote their new business. They also refused to provide Whitmar with the user name, password and all other access details for the LinkedIn groups. Business card details were also copied and contacts used for the competing business.

Breach of contract

Whitmar claimed that the former employees were in breach of their contracts of employment and of their obligations as employees and that the defendants were under an implied duty of good faith and fidelity, which continued until the end of their employment. It was also claimed that as two of the defendants were senior employees, they each owed fiduciary duties to Whitmar even though their letters of engagement did not specify this.

The court was of the opinion that the critical distinction between the duty of good faith and fidelity owed by an employee and the fiduciary duties, is that an employee is not in the position of a fiduciary, such as a director. It is commonplace in law that a director owes fiduciary duties to the company of which he or she is a director, and is under a duty to act in good faith in what he or she considers being in the best interests of the company. An employee does not have such wide-reaching obligations.

Springboard relief

The court said Whitmar had a very good chance of succeeding at trial so he was granted 'springboard relief'. This is a form of injunction which stops a new business, set up by former employees, from using confidential information obtained by the employees from their employer. This type of relief is commonly sought where former employees have not signed any specific agreements in their contracts of employment preventing them from taking confidential information, using client information or competing with their former employer.

Control of the LinkedIn groups was subsequently handed back to Whitmar.

CIPP comment

This is the first injunction of this type granted for the misuse of LinkedIn information which seems surprising given that social media networking is now common practice in business. This is yet another case that highlights the importance of employers ensuring they not only have appropriate policies in place at work regarding the use of social media, but that contracts have sufficient terms included to protect businesses.

Representation at disciplinary hearings

26 August 2013

In a recent appeal case the court found that regardless of any employer objection, employees are allowed to choose any trade union rep to act as their companion in disciplinary hearings.

The Employee Relations Act 1999 ("the Act") states that all staff who are required or invited to attend a disciplinary or grievance hearing should be given the right to be accompanied at the formal meetings. The Act provides a list of companions who may be permitted, including other colleagues within the company, and trade union representatives (even if that trade union is not recognised by the employer).

In some circumstances, the employer may not be happy with the choice of companion. The ACAS code provides guidance in such circumstances, setting out detail on who would be considered a reasonable companion, thereby suggesting that the employer is entitled to refuse to allow certain proposed companions if it does not consider them to be 'reasonable'. In this recently reported case, the EAT confirmed that this is not the case.

Read the employment law update from [Pinsent Masons](#) where they take a look at this case [Toal and another v GB Oils Ltd](#) and explain what the outcome means for employers.

Volunteer still qualifies for National Minimum Wage

6 September 2013

An intern at Sony has been awarded £4,600 after complaining that he should have earned the minimum wage whilst working for the company.

Workplace Law reports:

Chris Jarvis revealed that he worked from 9.30am until 6pm for three months at Sony Computer Entertainment in Cambridge during 2012, commuting three hours a day from his home in Milton Keynes.

He said that he only expected to be paid his travel expenses, but when payment of those expenses were "delayed", Mr Jarvis felt he should be paid as he was working the hours of an employee.

According to reports, Mr Jarvis reported the firm to HM Revenue and Customs and sued for the unpaid wages. Yesterday, it was claimed that a

few weeks before a scheduled Tribunal, the case was settled out of Court and Sony paid Mr Jarvis £4,600.

It was revealed that Sony argued that Mr Jarvis was a volunteer so did not need to be paid, but Jasmie Patel, Specialist Employment solicitor at Leigh Day, who helped Mr Jarvis with his case, said:

"If someone is working set hours and is adding value to the company so that if they were not doing the task someone else would have to be paid to do it, then it is more likely they will be defined as a worker in law, entitled to be paid."

"Voluntary workers can only be employed unpaid by a charity, a voluntary organisation, an associated fund-raising body or a statutory body. You can be a volunteer worker at a commercial company, but you still qualify for the minimum wage."

"On a legal level, under the National Minimum Wage Act 1998, interns who meet the definition of a "worker" are entitled to be paid at least the national minimum wage."

"A key question when determining whether someone is a worker is whether the intern is obliged to perform work or services for the company and whether the organisation is obliged to provide it – i.e. a mutuality of obligations."

"If the intern is doing work which is of value to the company this may also be a good indication that the intern is actually a worker and should be paid."

"These cases are very case specific but where there is a mutuality of obligations, someone is really providing value to the company and the internship is for quite a long period - say six months - there will probably be a higher chance that they will be a worker and therefore should be being paid."

According to Government regulations, employers do not have to pay the minimum wage if an internship only involves observing an employee and no work is carried out by the intern.

TUPE: Service Provision Changeover

13 September 2013

Can a single employee be an 'organised grouping' whose 'principal purpose' is the activity to transfer under a TUPE service provision changeover?

Yes, holds the Employment Appeal Tribunal (EAT) in [Rynda v Rhijnsburger](#).

Following the government's recent decision not to remove the service provision change provisions, this case provides clarity (see previous CIPP news below).

[Daniel Barnett's](#) employment law bulletin has published the details.

The issue before the employment tribunal had been whether the Claimant had sufficient continuity of service to claim unfair dismissal. That depended upon her establishing an earlier TUPE transfer. Finding for the Claimant, the tribunal decided that the conditions in regulation 3 of TUPE 2006 had been satisfied and the EAT agreed.

Following a series of transfers, the Claimant's employment transferred to Rynda. Considering regulation 3, the tribunal held that the Claimant had been assigned to an organised grouping of employees (albeit that she was the sole employee in that grouping), that her 'principal purpose' was to carry out the activities to be transferred 'immediately before the transfer' and that it was not a temporary arrangement. Citing [Seawell Ltd v Ceva Freight UK Ltd](#) and [Eddie Stobart Ltd v Moreman](#), the EAT agreed with the tribunal that the Claimant's assignment to this activity had been a conscious decision of her employer and was not a matter of "happenstance".

Does a finding of gross misconduct make dismissal automatically fair?

17 September 2013

In the case of [Brito-Babapulle v Ealing Hospital NHS Trust](#) the court's decision confirms that a finding of gross misconduct will not inevitably make dismissal a reasonable response and therefore fair.

[Pinsent Masons](#) takes a look at this case in detail and explains what the outcome means for employers.

Background

A dismissal will be deemed fair if the employer can show that the reason (or principal reason) for the dismissal was one of five potentially fair reasons, and the tribunal finds that the employer acted reasonably in all the circumstances in treating that reason as a sufficient reason for dismissal.

One of the statutory five potentially fair reasons for dismissal is conduct, and the term "gross misconduct" is applied to the most serious types of misconduct, such as theft or violence, which are likely to warrant summary dismissal.

To establish that a dismissal on the grounds of conduct was fair, the employer must be able to show that at the time of dismissal it believed the employee to be guilty of the misconduct alleged; that it had reasonable grounds for that belief; and that in forming that belief it had carried out as much investigation as was reasonable in the circumstances.

Once the employer has established the reason for the dismissal, the tribunal must decide whether the employer's decision to dismiss the employee for that reason fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted.

In a recent case, the EAT considered the issue of whether a finding of gross misconduct makes a dismissal for that reason inevitably reasonable and fair - and held that it does not.

Brito-Babapulle v Ealing Hospital NHS Trust

Ms Brito-Babapulle (B) worked as a consultant for Ealing Hospital NHS Trust (the Trust) under a contract that permitted her to have private patients as well as NHS patients. Whilst certificated sick and receiving sick pay from her NHS employer she worked with her private patients. She was summarily dismissed for doing so. B brought a claim for unfair dismissal which the ET dismissed. The ET found that the Trust had undertaken a reasonable investigation and genuinely believed on reasonable grounds that B was guilty of the gross misconduct identified. The ET then concluded that "once gross misconduct is found, dismissal must always fall within the range of reasonable responses" and that the dismissal was therefore fair. B appealed to the EAT.

Decision

The EAT upheld B's appeal. The ET had been wrong to jump from a finding of gross misconduct to a conclusion that the dismissal was reasonable and therefore fair. The ET should have considered whether, though the misconduct was gross and dismissal almost inevitable, mitigating factors might mean that dismissal was not, in fact, reasonable. The ET should have considered whether factors such as long service, the consequences of dismissal and having a previously unblemished record may be relevant to the question of fairness. The EAT therefore remitted the case back to tribunal to consider this point.

What does this mean for employers?

This decision confirms that a finding of gross misconduct will not inevitably make dismissal a reasonable response and therefore fair - mitigating factors personal to the individual employee would still be relevant when deciding on an appropriate sanction.

However, the lay members of the EAT did emphasise that claiming sick pay whilst working elsewhere would, in general, be regarded very seriously by employers and that any substantiated case would almost inevitably lead to dismissal. What this decision makes clear is that this will not be an inevitable conclusion.

CJEU – Maternity and Paternity Leave

23 September 2013

Can a member state make provision to exclude an employed father of a child from entitlement to maternity leave and maternity benefit where the mother is not employed?

Yes, says the CJEU in [Montull v INSS](#).

[Daniel Barnett's](#) employment law bulletin reports:

The Spanish national court referred a question to the European Court to ascertain whether Mr Montull was entitled to maternity leave and to receive maternity benefit in respect of the birth of his son. Spanish law provides for the suspension of the mother's contract of employment for a period of 16 weeks which includes a compulsory period of maternity leave of 6 weeks. The mother can return to work after this period and choose to allocate the remaining 10 weeks' leave to the father. Where both parents work the father is entitled to the leave.

In this case the father was employed but the mother was not employed. On the basis that the mother was not employed she did not enjoy any primary right to maternity leave and, therefore, there was no right to leave that could be transferred to the father of the child.



Redundancy and suitable alternative employment

25 September 2013

The Court of Appeal addressed the test for whether an employee was being reasonable in refusing what would appear to be a suitable alternative to redundancy and, in doing so, whether they forfeited the right to redundancy pay.

[Daniel Barnett's](#) employment law bulletin reports:

The Court of Appeal in the case of [Devon Primary Care Trust v Redman](#) addressed the test for whether an employee was being reasonable in refusing what would appear to be a suitable alternative to redundancy and, in doing so, whether they forfeited the right to redundancy pay.

It stated the test is not to "import" the band of reasonable responses test applied in unfair dismissal cases, but is instead consider "whether this particular employee in this particular situation acted reasonably in refusing the offer of employment".

Although this case reinforced a test that has been around a while, it will be of concern to employers where there is an incentive to redundancy over redeployment, such as NHS, local government, or where there is long service.

This decision seems to support the trend for employees having fairly subjective grounds for refusing alternative employment which will make restructures (particularly in the NHS and local government) more expensive and challenging than perhaps first thought.

Expenses and Benefits

Advisory Fuel Rates

Advisory Fuel Rates for Company Cars from 1 September 2013

29 August 2013

HMRC have issued details of the latest [Advisory Fuel Rates](#) for Company Cars. The rates can apply to all journeys made on or after 1st September 2013 until further notice. (June rates shown in brackets where there has been a change).

For one month from the date of change, employers may use either the previous or new current rates, as they choose. Employers may therefore make or require supplementary payments if they so wish, but are under no obligation to do either.

Employers are advised to review the latest available data in February, May, August and November each year.

Engine size	Petrol	LPG
1400cc or less	15p	10p
1401cc to 2000cc	18p (17p)	11p (12p)
Over 2000cc	26p (25p)	16p (18p)

Engine size	Diesel
1600cc or less	12p
1601cc to 2000cc	15p (14p)
Over 2000cc	18p

Hybrid cars are treated as petrol cars for this purpose.

[Follow this link for details on how the rates are calculated](#)

General Expenses & Benefits News

HMRC clarify RTI reporting guidance for PAYE schemes only open to enable P11D submission

29 July 2013

There has been uncertainty recently regarding the reporting requirements of those PAYE schemes where there are no payments made to employees but need to remain open so that forms P11D can be submitted.

HMRC has now clarified that these schemes should continue to remain open under RTI. Employers do not need to send an FPS if no payments are made to employees or directors. However, the employer must submit an EPS to indicate that 'no employees were paid in this tax month'.

An EPS can be submitted to anticipate up to 6 months ahead. At the year end, employers must submit an EPS to indicate that this is their 'Final submission for the tax year' and answer the end of year declarations and questions.

If there is an existing PAYE scheme and payments are made to employees or directors, then employers must submit an FPS to report the details of all employees paid, no matter how much they are paid. This includes those earning below the Lower Earnings Limit (LEL), or those paid just once a year.

You can view the full guidance on [non-standard PAYE schemes](#) on HMRC's website.

The CIPP and the AAT joint survey on the OTS interim report on benefits in kind

30 August 2013

Have your say in shaping the future of the benefits in kind system.

The [Office of Tax Simplification \(OTS\)](#) has published a review of employee benefits and expenses: [interim](#) report. This report is intended to be a summary of findings from the OTS research into this substantial subject.

The report identifies some of the main issues and would like feedback on the OTS's "Big Picture" issues contained within the report, and also on the "quick wins" identified. The report outlines that these are not final recommendations or solutions but are there to highlight at this stage.

The Chartered Institute of Payroll Professionals (CIPP) and the Association of Accounting Technicians (AAT) are working jointly to obtain the views from the payroll profession and the accountancy profession. We would therefore appreciate it if you could spare 20 minutes of your time (excluding any reading) to complete this [survey](#).

There is a short timescale for collecting the results as both organisations would like to provide feedback to the OTS to aid any discussions in the next couple of months. The [survey](#) has, where possible, explained the thought process around the questions, but we would recommend respondents take the time to review the [interim report](#) prior to completing the survey. The survey will close at the end of business, Tuesday 10 September 2013.

Thank you in advance for your time and input.

Tax-Free Childcare

Tax-Free Childcare consultation published

5 August 2013

Further to our News report back in March, the government has now published a consultation document seeking views on their plans to introduce Tax-Free Childcare for working families.

At [Budget 2013](#) the government announced that it will introduce a new Tax-Free Childcare scheme for working families which will provide 20 per cent of working families' childcare costs, up to £1,200 for each child.

This [consultation](#) invites interested parties to comment on the detailed design and operation of Tax-Free Childcare. It sets out the eligibility criteria, the approach to managing voucher accounts for each child, the role of the market, and the key information and validation processes. It discusses the design of different aspects of these policies, and poses questions in those areas where stakeholders are likely to have knowledge or insight. The responses will feed into the final design of Tax-Free Childcare.

The CIPP's policy team will be working with relevant stakeholders to discuss the detail of the new system and to explore how the transition from Employer-Supported Childcare to Tax-Free Childcare can work best for employers. The Policy team will also be producing a survey in the coming weeks to gather member views on how the rules of the new scheme might apply. The consultation will run until 14 October.

CIPP survey – Tax-Free Childcare: consultation on design and operation

12 September 2013

The CIPP policy team has put together a survey to gauge your responses to some of the questions from the Tax-Free Childcare - consultation on design and operation.

This is a meaty consultation document which is aimed at a wide range of stakeholders, the majority of whom will have more interest in its outcome than an employer or payroll professional who is considering their payroll administration. It covers 63 pages and includes six chapters with a total of 38 questions.

The employer and payroll professional is guided to Chapter 2 on voucher accounts (has 5 questions), Chapter 3 on eligibility for tax-free childcare (has 7 questions) and chapter 4 on information and validation (has 13 questions).

All stakeholders are encouraged to read as much as possible of the consultation document and whilst the Policy team have only selected questions for the [survey](#) that we believe will impact, albeit remotely, on employers, we would urge any member who currently operates an Employer Supported Childcare scheme or who intends to contribute to this [survey](#), to read the entire document [Tax-Free Childcare: consultation on design and operation](#).

Additionally if you would like to respond to any of the consultation questions that we have not included, space has been added to the end of our [survey](#) to allow you to include further comments.

HMRC have also put together a summary of the proposed design of the new scheme with a short series of questions specifically aimed at parents, if you are aware of any employees who you feel would value sharing their opinions, we would encourage you to pass the details on to them [Tax-Free Consultation Parent Survey](#).

And finally, in addition to the consultation questions, we have also posed some follow up questions, aimed at gauging your early thoughts about these proposals. We would appreciate your responses, but as ever, feel free to skip any questions that you consider to be irrelevant to you.

If you have additional comments or thoughts, please email them to [Samantha Mann](#).

The survey will close on 29 September 2013.

Thank you for taking time out of your busy day to respond to this survey.

Tax-Free Childcare consultation – government short survey

17 September 2013

The government has published a short [survey](#) aimed at employers who provide childcare vouchers to their employees.

As previously published the government is introducing a new Tax-Free Childcare scheme for working families which will provide 20 per cent of working families' childcare costs, up to £1,200 for each child.

The government has developed a short online survey aimed at employers who provide childcare vouchers to their employees, to help inform the design of this new scheme.

The survey asks questions on the costs of the current voucher system and for views on the transitional period when over time Tax-Free Childcare will replace the current Employer Supported Childcare scheme.

The [survey](#) will take no more than five minutes to complete and all responses will be treated as anonymous.

For clarity there are now three short government surveys running for the Tax-Free Childcare consultation and a separate CIPP survey which we published last week – see below for details. Employers and payroll professionals – please complete both the first and second surveys as the questions are not the same.

1. Short [survey](#) - designed specifically for **employers who provide employer supported childcare** (closing date 14 October)
2. [CIPP survey](#) – relevant questions on Tax-Free Childcare for employers and payroll professionals (closing date 29 September)
3. Short [survey](#) - Tax-Free Childcare questionnaire designed specifically for parents (closing date 27 September)
4. Short [survey](#) - Tax-Free Childcare questionnaire designed specifically for childcare providers and those who work within the childcare industry (closing date 14 October)



HMRC

General HMRC News

HMRC response to consultation on how to help those who need extra help

31 July 2013

HM Revenue & Customs have published a report which summarises the responses that they received for the consultation – ‘Supporting customers who need extra help – a new approach’.

The consultation [Supporting customers who need extra help - a new approach](#) received a total of 457 responses and confirms that HMRC is now considering the issues raised and that they plan to hold a series of meetings with voluntary and community sector organisations along with representative bodies to discuss specific concerns.

It also confirms that the Pilot, which saw 13 enquiry centres close and customers in need of extra help transfer to telephony services via HMRC contact centres, will continue until 31 October 2013. A final decision will be made in early 2014.

In the meantime if you are an organisation representing people who may be affected by the changes and want to discuss these issues with HMRC before making their formal response, please get in touch with the lead official: Libby Martin, HM Revenue & Customs, 7th Floor East Spur, Euston Tower, 286 Euston Road, London, NW1 3UQ.

HMRC offer free webinars for employers

29 August 2013

HMRC offer free employer webinars which include topics such as statutory sick pay, expenses and benefits and real time information.

Businesses can get individual help, support and advice from free [HMRC webinars](#) - interactive online seminars that you can attend without leaving your desk. HMRC offers a wide variety of pre-recorded webinars that are available to watch at any time.

Find out more about [what HMRC has to offer small businesses](#).



New safeguards for debt collection visits

30 August 2013

HMRC has introduced a new Field Force Verification Helpline, so that a customer can easily check whether or not a caller on their doorstep claiming to be from HMRC is genuine.

HMRC has published the following [guidance](#) on their website:

Every year, HM Revenue & Customs (HMRC) has to visit a small number of customers who have not paid their tax or arranged to repay overpayments of tax credits, in order to collect the debt. Visits are undertaken by Debt Management and Banking's Field Force Collectors and can take place at a customer's home or business premises. Advance warning is always provided to a customer that a visit may take place if a debt is not paid.

However, when faced with an unknown caller on the doorstep, our customers may still be concerned. To provide a safeguard against bogus callers in these situations, HMRC has introduced a new Field Force Verification Helpline, so that a customer can easily check whether or not a caller on their doorstep claiming to be from HMRC is, in fact, genuine.

To access the helpline, customers should follow these simple steps:

- Ask to see the Collector's photo ID
- Make a note of the ID number on the photo ID
- call 0300 200 3862
- Provide HMRC with the ID number you've noted

Our operators will then be able to confirm to you whether or not your caller is genuinely an HMRC Collector.

To help to explain the purpose of the visit and the rights and responsibilities of customers, we have also produced a new leaflet. Every customer visited, from 13 August onwards, will be given a copy of this by the Collector on arrival at the customer's premises. This also includes the Field Force Verification Helpline number. The number is also listed at our website.

Field Force Verification Helpline

Tax rebate scam results in five arrests

3 September 2013

Five men have been arrested and are accused of setting up false self-assessment accounts from June 2012 with the aim of stealing half a million in tax rebates.

In a [BBC News report](#) HMRC said that its online systems proved extremely resilient to these attacks and that they correctly identified and prevented the vast majority of false repayment attempts from the outset.

HMRC said its investigators had worked closely with their counterparts in Italy to secure his arrest.

The five men were arrested in London, at Stansted airport and in Chatham, Kent. One has been charged with cheating the Revenue and four have been bailed. The individual who was charged was detained at Stansted on Saturday afternoon after getting off a flight from Italy.

HMRC said in the report, "These arrests clearly demonstrate that we can, and will, apprehend those suspected of attempting to cheat UK taxpayers by defrauding HMRC, with international assistance if necessary."

CIPP comment

Many members over the last few years have reported suspicious tax rebate emails to the CIPP and we have always reiterated HMRC's advice about reporting any suspicion of fraud, however minor it may seem.

Online fraud is rife and last year alone saw 80,000 scam emails reported to HMRC.

HMRC does not email customers about tax refunds - they only ever contact customers who are genuinely due tax back in writing, by post.

As a reminder to help you stay safe online, HMRC recommends the following:

- Check the advice published at www.hmrc.gov.uk/security/index.htm where they can see if the email received is listed
- Forward suspicious emails to HMRC at phishing@hmrc.gsi.gov.uk and then delete it from your computer/mail account
- Do not click on websites or links contained in suspicious emails or open attachments
- Follow advice from www.getsafeonline.co.uk
- Anyone who has answered one of these emails should forward the email and disclosed details to security.custcon@hmrc.gsi.gov.uk.

If you have reason to believe that you have been the victim of an email scam, report the matter to your bank/card issuer as soon as possible. If in doubt please check with HMRC at [HMRC fraud attempts](#).

If you suspect [customs or excise fraud or tax evasion](#) you can let HMRC know online, anonymously.

HMRC's April to June 2013 performance

2 September 2013

HMRC's performance results show a strong start to the year on securing additional tax revenues, but customer service standards are below where they want them to be.

Read HMRC's [two page](#) report showing the results of the compliance, operational and customer service measures used to assess their performance.

HMRC can now access businesses card payment information

5 September 2013

A new crackdown on tax evasion will make information on all credit and debit card payments to UK businesses available to HMRC for the first time.

Under new powers from 1 September, HMRC can now access information from the UK's merchant acquirers – the companies that process card payment transactions – to find out the number and value of transactions completed by a specific trader.

No personal data identifying the card owners or card numbers will be obtained, but this data will be used to ensure that traders have correctly accounted for all taxes due – levelling the playing field for all businesses.

Announced in the same week as it launches a tax evasion advertising campaign, HMRC estimates that this information could reduce fraud by over £50 million per annum.

The legislation allows HMRC to obtain data on card payments to all UK businesses for the previous four years. The first requests for the data will be sent to merchant acquirers this week and from next year this will be an annual request.

HMRC will analyse the data using its sophisticated risking system, Connect. This cross-references and compares the data with what the tax authority already holds. The process will allow HMRC to identify fraud and evasion. HMRC has worked closely with international tax authorities – many of which have already had great success in reducing evasion, from access to such data.

This week HMRC is launching the second stage of an evasion publicity campaign, through a series of targeted advertisements including radio advertising and over 3,000 billboards in public areas. The campaign works alongside existing compliance activity such as data collection, Taskforces and enforcement to raise awareness among those breaking the rules that HMRC is closing in on undeclared income.

Legislation was introduced in the Finance Act 2013 allowing HMRC access to merchant acquirer data. The legislation came into effect on 1 September 2013.

The Evasion Publicity campaign first aired from November 2012 to February 2013. This second burst runs from the 2 September to 4 October. Further information is available on GOV.UK.

HMRC's Your Charter

23 September 2013

HMRC has published their annual [report](#) which shows the extent to which they have demonstrated the values and standards of behaviour as set out in Your Charter.

HMRC deals with the tax and payments affairs of virtually every business and individual in the UK; [HMRC's Your Charter](#) sets out the relationship they want with their customers. This latest report (covering January 2012 to March 2013) focuses in particular on:

- answering customer calls and dealing with post;
- working with customers to pilot and then roll out Real Time Information for PAYE
- developing the [Digital Strategy](#); and
- helping customers with key life events such as retirement or bereavement and improving support to disabled customers.

You can read the full report by following the link below.

[Your Charter Annual Report Summary: January 2012 – April 2013](#)

Stakeholder weekly updates

HMRC stakeholder update – number 27

19 July 2013

HMRC has circulated their twenty sixth informal weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Real Time Information

[Real Time Information: Filing and paying HMRC](#)

This is an update on HM Revenue & Customs' earlier messages about the PAYE filing and payment position for employers reporting PAYE in real time. It will be of particular interest to employers who pay HMRC quarterly and/or have class 1A NIC liability for 2012-13.

[PAYE for employers: Real Time Information and hours worked](#)

A reminder for employers of the importance of accurately recording the hours that their employees have worked.

New Online End of Year Expenses and Benefits Service

[New online end of year expenses and benefits service](#)

Information for employers who have been unable to submit forms P11D, P11D(b) and P9D using the new online service.

PAYE: P11D(b) Return of Class 1A National Insurance Contributions – 3rd Interim Penalty for outstanding 2011-12 returns

On 15 July 2013 HMRC started to send third interim penalty notices where our records show that we have still not received your 2011-12 P11D(b) Annual Return of Class 1A National Insurance Contributions due.

It is now 12 months after the filing date of 6 July 2012. We issued reminders to file in June 2012 and first and second penalty notices in November 2012 and March 2013.

The penalty will be £100 for every 50 employees for each month your return has remained outstanding from 7 March 2013 to 6 July 2013. If you wish to appeal against the penalty notice, you must write to the office shown on the notice within 30 days stating why you think the penalty notice is wrong.

[Completing form P11D\(b\)](#)

[How to pay Class 1A National Insurance](#)

HMRC stakeholder update – number 28

26 July 2013

HMRC has circulated their twenty eighth informal weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Real Time Information

[HMRC seeking to extend RTI reporting relaxation for smaller businesses](#)

HMRC has published draft regulations for consultation on a proposed extension of the RTI reporting relaxation. This proposed relaxation, for employers with fewer than 50 employees, will run until 5 April 2014.

[Real Time Information: top tips for employers sending their first submission](#)

Some helpful information for employers who are preparing their first Employer Alignment Submission and Full Payment Submission.

PAYE for Employers

[PAYE for employers - 'Week 53' payments and potential employee tax underpayments](#)

Clarification for employers whose employees might be affected by 'week 53' payments where they are paid weekly, 2-weekly or 4-weekly and the last payday for 2012-13 fell on 5 April 2013.

New Helpline Telephone Numbers

[New numbers for CIS, SA Orderline, Payment Enquiry Line and SA Payments lines](#)

HMRC introduces cheaper rate '0300' telephone helplines for Construction Industry Scheme, SA Orderline, Payment Enquiry Line and SA Payments Lines.

Toolkits update

[Toolkits to help minimise common errors - update](#)

HM Revenue & Customs has published the updated VAT Partial Exemption, VAT Input and VAT Output toolkits. The purpose of the toolkits is to assist agents when completing their client's returns.

HMRC stakeholder update – number 29

2 August 2013

HMRC has circulated their twenty ninth informal weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Real Time Information

The move to reporting PAYE in real time continues to go well. As of 31 July 2013 we had received over 10 million PAYE submissions in real time since 6 April 2013.

[Real Time Information and annual schemes](#)

HMRC is now processing requests for annual schemes.

Online End of Year Expenses and Benefits Service

Remember that HMRC agreed to extend the P11D, P11D(b) and P9D filing deadlines for employers and agents who experienced problems with the new online service. If you are among those customers who experienced difficulties and haven't yet filed, download the [latest forms](#), follow [the guidance](#) on our web pages and file before 4th August to avoid a penalty notice.

Further information about the extended deadline is available in our ['What's new?'](#) pages.

Consultation – summary of responses

[Summary of Responses: Supporting customers who need extra help - a new approach](#)

HMRC has published a summary of responses to the recent consultation on 'Supporting customers who need extra help - a new approach'.

HMRC stakeholder update – number 30

9 August 2013

HMRC has circulated their thirtieth informal weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Construction Industry Scheme - repayment claims for companies

We have produced a checklist for companies to use prior to sending in a repayment claim. The checklist contains details of the top issues that are likely to affect how quickly we can process a claim.

[CIS checklist](#)

Self-certification of employee share schemes and online filing of share scheme forms

In December 2012, the Government announced that it would introduce self-certification of Share Incentive Plans (SIP), Save As You Earn schemes (SAYE) and Company Share Option Plans (CSOP), and online filing for all share scheme forms. This follows recommendations made by the Office of Tax Simplification in its report on tax advantaged employee share schemes, published in March 2012.

While the final details are subject to further development and discussion with stakeholders, we have produced [an outline](#) of how it is proposed that the relevant processes will operate for customers, along with anticipated implementation dates.

We are developing these arrangements with customers through our Employment Related Securities (ERS) stakeholder forum and sub groups. Further details and draft legislation will be published on our website later this year.

Employer Further Guide to PAYE and NICs - CWG2

Corrections have been made to the [CWG2 helpbook](#): page 46 - example calculation, page 52 and 53 - update to reflect that Croatia has joined the EU; page 65 - chart entry 'Vouchers' what to include on the payroll record.

Consultation: Tax-Free Childcare

A [consultation](#) seeking views on the Government's plans to introduce Tax-Free Childcare for working families, and additional assistance with childcare for parents through Universal Credit.

The closing date for this consultation is 14 October 2013.

As part of this consultation HMRC and HM Treasury will work with employers and the payroll industry to explore how the transition from Employer-Supported Childcare to Tax-Free Childcare can work best for employers, and how those employers that wish to can continue to be involved in helping their employees with childcare.

If you would like to be involved in these discussions, please express an interest by emailing tax-free.childcare@hmrc.gsi.gov.uk.

HMRC stakeholder update – number 31

19 August 2013

HMRC has circulated their thirty-first weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Real Time Information

[Real Time Information - reconciling PAYE charges](#)

Help with reconciling PAYE charges.

HMRC announces new arrangements for verifying visits to customers

[New safeguards for debt collection visits](#)

HM Revenue & Customs announces new arrangements for verifying visits to customers by Debt Management & Banking Field Force collectors.

[What to expect when we visit you \(version for England, N.Ireland and Wales\)](#)

This is a leaflet explains what to expect if HMRC visits you in order to collect an amount you owe.

[What to expect when we visit you \(version for Scotland\)](#)

This is a leaflet explains what to expect if HMRC visits you in order to collect an amount you owe.

HMRC stakeholder update – number 32

26 August 2013

HMRC has circulated their thirty-second weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Real Time Information

[Real Time information - completing the Annual Amount of Occupational Pension field](#)

More information on correctly completing this field on your Full Payment Submission.

Forms R68(i) – Gift Aid repayment claims

[Sign up for Charities Online by 30 September](#)

HM Revenue & Customs (HMRC) will stop accepting Gift Aid repayment claims on R68(i) forms after 30 September 2013.

HMRC Basic Guide for Software Developers

[Basic Guide for Software Developers \(PDF 71K\)](#)

This guide replaces the 'Introduction to Developing Software for HMRC' aimed at software developers that are new or inexperienced in developing software in respect of HM Revenue & Customs (HMRC) online services.

HMRC stakeholder update – number 33

2 September 2013

HMRC has circulated their thirty-third weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Real Time Information

Employers sending PAYE information in real time are being encouraged to take part in an online survey – closing date extended to 20 September 2013.

[Have your say: Real Time Information \(RTI\) survey](#)

HMRC Advisory Fuel Rates updated

HM Revenue & Customs has published the advisory fuel rates to operate from 1 September 2013.

[PAYE for employers: Advisory Fuel Rates updated](#)

New 0300 numbers for Stamp Taxes Helplines

HMRC introduces cheaper rate '0300' telephone numbers for Stamp Taxes Helplines.

[New numbers for HM Revenue & Customs \(HMRC\) Stamp Taxes Helplines](#)

Requests for confirmation of employment history

If you need to make a claim for compensation and you require confirmation of your employment history, please follow the updated guidance.

[How to request employment histories for compensation claims](#)

Change to legislation for agricultural vehicles

Following consultation on draft legislation to allow tractors and light agricultural vehicles to use rebated fuel ('red diesel') when gritting roads, HM Revenue & Customs (HMRC) has announced that the change will be extended to include 'agricultural material handlers'.

[Legal change to allow agricultural vehicles to use red diesel for gritting roads](#)

HMRC stakeholder update - number 34

9 September 2013

HMRC has circulated their thirty-fourth weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Real Time Information

Known RTI issue affecting student loan borrowers

A small number of student loan borrowers' employments have been incorrectly ceased on HM Revenue & Customs (HMRC's) systems, leading to employee queries regarding correspondence from the Student Loans Company.

PAYE in real time: contacting employers who have missed deadlines

HMRC is sending letters to employers who haven't started sending their PAYE real time submissions.

End of the Regional Employer National Insurance Contributions (NICs) Holiday Scheme for New Businesses

If you successfully applied for the Regional Employer NICs Holiday scheme, (which may have entitled you to claim a credit against employer NICs payable during the first half of 2013-14) you or your agent will shortly receive a letter reminding you that

○ this scheme ended on 5 September 2013 and

○ all employer NICs due on earnings for periods after 5 September will be payable to HMRC in full and without deduction. (For information about calculating the employer NICs due as the holiday ends go to www.hmrc.gov.uk/payerti/getting-started/nics-holiday/calc.htm)

If you were entitled to a credit for employer NICs relating to earnings paid in the period 6 April to 5 September 2013 but have not yet made a claim then please make sure you submit an Employer Payment Summary (EPS) as soon as possible. Go to www.hmrc.gov.uk/payerti/reporting/what-to-report.htm#8 for information about what to report on an EPS.

End of Year Return

A NICs Holiday End of Year Return for 2013-14 (Form E92 and E89(s)) will be sent to you in March 2014 so that you can provide a breakdown of the amount of employer NICs that you withheld during the period 6 April to the scheme's closure on 5 September 2013.

Employee shareholder – new employment status

Employee shareholder

Employee shareholder is a new employment status, available from 1 September 2013. HM Revenue and Customs have published guidance on tax rules that apply to the new status.

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) for SMEs and individuals - A new way

After a two year trial and extensive consultation with professional bodies and the voluntary sector, ADR becomes part of normal HMRC business.

Toolkits - update

Toolkits to help minimise common errors - update

HMRC has reviewed, refreshed and republished the Small Profits Rate and Marginal Relief Toolkit. The Toolkits are designed to help agents avoid common errors when preparing for and completing their clients' 2012-13 returns.

New HMRC videos about tools and agent services

Tax agents and advisers - updated videos

HM Revenue & Customs (HMRC) has published new videos about the tools and agent services that are available to make dealing with HMRC easier, and how you can use HMRC's agent toolkits to help reduce errors in returns.

HMRC stakeholder update - number 36

20 September 2013

HMRC has circulated their thirty-sixth weekly update for 2013 to stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

Reporting PAYE in real time - temporary relaxation extended

Following feedback from stakeholders, we said we would review extending the reporting relaxation for smaller businesses to 5 April 2014 to tie in with the full tax year. We announced a four-week consultation period on this extension, starting on 22 July.

We can now confirm that the reporting extension has been agreed and this relaxation will remain in place until 5 April 2014. Under this relaxation, employers with fewer than 50 employees who pay their employees weekly or more frequently are still required to report through the new system, but are able to do so once a month (but no later than the end of the tax month - 5th), rather than each time they pay their employees.

Employees reaching State Pension

New guidance has been published on what to do when an [employee reaches State Pension age](#) and is still working for you.

'What's new' page survey

We would like to know how you use the 'What's new' page and are currently running a [survey](#) to make sure any future updates meet users' needs. The survey closes on 27 September.

Contractor loan schemes

Tax assessments are being sent out to contractors and other individuals who used [contractor loan schemes](#) to reduce their tax.

Employment-Related Shares & Securities

The tenth [Employment-Related Shares & Securities Bulletin](#) has been published. It includes information and updates on developments relating to employment securities, including the tax-advantaged employee share schemes.

Requirement to report PAYE in real time from April 2014: Direction for employers

The Commissioners for HMRC have made a Direction requiring [EXAM or ELECT scheme employers](#) previously under the provisions of agreements under regulation 141 of the PAYE Regulations, to report PAYE information in real time from April 2014.

Checklist for Limited Company Subcontractors claiming back CIS deductions

A leaflet has been published covering '[The Top Ten Tips](#)' to help limited company subcontractors and their agents reclaim any deductions they have taken from their payments under the Construction Industry Scheme.

Withholding repayment claims in avoidance cases

A brief has been published outlining our policy on [withholding repayment claims in avoidance cases](#). Our aim is to stop tax avoiders from acquiring an advantage, even a temporary advantage, over the majority of taxpayers who don't try to get around the rules.

National Insurance

Consultation on simplifying national insurance process for self-employed

26 August 2013

Last month HMRC published a consultation document on 'Simplifying the National Insurance Processes for the Self Employed'.

The consultation looks at collecting Class 2 NICs through the Self Assessment process.

The CIPP policy team have reviewed the consultation and will not be issuing a survey to members as not relevant for the payroll profession.

If the consultation does affect you and you would like to contribute with your views, the closing date for comments is 9 October 2013 and the document can be accessed through the link below.

[Simplifying the National Insurance Processes for the Self-Employed](#)

End of the Regional Employer NICs Holiday for New Businesses scheme

9 September 2013

A reminder to employers that this holiday scheme ended on 5 September 2013.

The Regional Employer NICs Holiday for New Businesses scheme ended on 5 September.

Employer NICs due on earnings paid after this date cannot be withheld, no matter when a business started trading.

National Minimum Wage (NMW)

National Minimum Wage rates from 1 October 2013

15 August 2013

The Statutory Instrument has now been made which confirms the annual National Minimum Wage rates from 1 October 2013.

The following rates will come into effect on 1 October 2013:

- the adult rate will increase by 12p to £6.31 an hour;
- the rate for 18-20 year olds will increase by 5p to £5.03 an hour;
- the rate for 16-17 year olds will increase by 4p to £3.72 an hour;
- the apprentice rate will increase by 3p to £2.68 an hour; and
- the accommodation offset increases from the current £4.82 to £4.91.

[The National Minimum Wage \(Amendment\) Regulations 2013 SI 2013/1975](#)

National Minimum wage rogues to be publicly named and shamed

27 August 2013

Employers who fail to pay the national minimum wage (NMW) will be publicly named and shamed under revamped plans to make it easier to clamp down on rogue businesses, Employment Relations Minister Jo Swinson announced today.

The new rules are part of government efforts to toughen up enforcement of the NMW and increase compliance. By naming employers it is hoped that bad publicity will be an additional deterrent to employers who would otherwise be tempted not to pay the NMW. This is on top of financial penalties which employers already face if they fail to pay NMW.

The revised NMW naming scheme, which will come into effect in October 2013, will strip back restrictions, making it simpler for government to name more employers who break the law.

Under the original scheme, employers had to meet one of seven criteria before they could be named. The minimum amount of national minimum wage owed to workers had to be at least £2000 and the average per worker at least £500 before an employer could be referred to the Department for Business, Innovation & Skills (BIS) from HM Revenue & Customs (HMRC) for naming. The revised scheme will remove these restrictions so that any employer who breaks minimum wage law can be named.

In 2012 to 2013 HMRC identified 736 employers who had failed to pay the national minimum wage leading to the recovery of £3.9 million in unpaid wages for over 26,500 workers.

[BIS press release](#)

National Minimum Wage poster

12 September 2013

The Department for Business, Innovation & Skills has published an informative poster detailing the NMW rates which come into effect on 1 October 2013 and also the Pay and Work Rights helpline number.

The government fully supports the National Minimum Wage (NMW) because it protects low income workers. It also provides an incentive for people to work. The NMW aims are to establish fairness in the workplace, ensuring that all workers receive at least the hourly minimum rates set.

Anyone entitled to the minimum wage should receive it. If a worker is not getting what they are legally entitled to they should call the Pay and Work Rights Helpline on 0800 917 2368.

[Download the National Minimum Wage poster](#)

CIPP response to Low Pay Commission report on the National Minimum Wage

20 September 2013

The CIPP Policy team published a survey in July to gather member opinion to help inform the Low Pay Commission's report on the National Minimum Wage.

Each year the Low Pay Commission is asked to prepare a report on the National Minimum Wage (NMW). This year their remit is to:

- monitor, evaluate and review the levels of the different NMW rates and make recommendations on the levels (in this case for October 2014); and
- review the contribution the NMW could make to the employment prospects of young people.

Thank you to those members who took the time to respond to our survey. The CIPP has submitted a formal consultation response which can be accessed through the link below. A summary of key findings is also listed below.

CIPP response to consultation on NMW for LPC report

Summary of key findings

The CIPP surveyed its members using an electronic survey tool which received 66 responses. Almost two thirds of these responses (72.8%) came from respondents paying more than 250 employees. Key findings are as follows:

- The majority of respondents state that the NMW has little or no impact on their business, with 68% saying they always pay above the NMW rates and 28% saying they pay some staff NMW and some staff more. The main reason given from those who say the NMW does have an effect was the narrowing of the pay gap between skilled and non-skilled workers as the increase to the NMW was higher than the increases many companies were able to give the rest of the workforce. Another respondent reported difficulty implementing a salary sacrifice scheme for automatic enrolment contributions.
- Many respondents, though not a universally held view, feel that the NMW has a positive impact on young people, believing that it assures them a fair rate of pay whilst they gain experience. However, when asked whether the NMW has impacted the employment prospects of young people, opinion is divided, with 34% believing the NMW has affected the employment prospects of the young, compared with 40% who think it has not had an impact.
- The majority of respondents are not impacted by the Apprentice Rate, either because they do not have apprentices or because they pay higher than the Apprentice Rate. Of those who do hold a view, opinion was again divided between those who feel it helps young people get on the employment ladder, and those who feel the rate is too low and could discourage young people from taking up an apprenticeship.
- Respondent views on the retention of arrangements for the accommodation offset are inconclusive, with 22% agreeing they should remain and 11% disagreeing. The remaining 67% were not in a position to provide an opinion.
- When considering future levels of the NMW rates, the majority of respondents suggested rates higher than current rates, with some suggesting that it would be prudent to increase the level of the NMW whilst reducing the level of state benefits, further encouraging the view that work pays.

Pay As You Earn

Employee Share Schemes

Employment-related shares & securities bulletin – number 9

14 August 2013

The latest issue of the Employment Related Shares & Securities Bulletin has been published.

The **ninth edition** contains articles on:

- Employee shareholder
- Guidance on Finance Act 2013 changes to tax advantaged share schemes
- Revised SAYE prospectus
- Valuation of shares on LTIP vesting
- Employee ownership guidance
- Quick Response to enquiries trial – summary review
- Self-certification of employee share schemes

Employment-related shares & securities bulletin – number 10

12 September 2013

The latest issue of the Employment Related Shares & Securities Bulletin has been published.

The **tenth** edition contains articles on:

- Employee shareholder
- Guidance on Finance Act 2013 changes to tax advantaged share schemes – transition issues
- Grays Timber Products Ltd v HMRC

Employee Ownership

Employee shareholder status in force from 1 September 2013

23 July 2013

The Growth and Infrastructure Act 2013 (Commencement No. 3 and Savings) Order 2013 has been made which will create the new employment status of employee shareholder.

The Order **2013 No.1766 (C. 72)** will bring into force, on 1st September 2013, section 31 of the Growth and Infrastructure Act 2013 (c. 27). That section amends the Employment Rights Act 1996 under section 205A, in order to create the new employment status of employee shareholder to come in to force on 1 September 2013.

Employee shareholder status guidance

3 September 2013

The government has published three sets of **guidance** on the new employment status of employee shareholders which came into force on 1 September 2013.

The process for offering or accepting a job on an employee shareholder basis is different to jobs offered on other employment contracts. Use the Department for Business, Innovation & Skill's **guidance** to help you decide:

- if your company wants to take on an employee shareholder
- if you want to become an employee shareholder.

What is employee shareholder status?

Employee shareholders have different employment rights to employees, and are awarded at least £2,000 worth of shares in their employer or

a parent company. There is no requirement for businesses wishing to offer an employee shareholder contract to obtain HMRC's approval or agreement.

For detailed information on the tax treatment and values of shares in relation to the employee shareholder employment status, see HMRC's [employee shareholder guidance](#).

Income Tax and National Insurance Contributions on employee shareholder shares

Income Tax and NICs is not usually chargeable on the first £2,000 of share value received by an employee shareholder. This is because the employee shareholder is deemed to have made a payment of £2,000 for the shares. The normal rules for the taxation of employment-related securities apply to any value received in excess of £2,000.

The 'deemed payment' only applies on the first occasion on which an individual acquires 'qualifying shares' under an employee shareholder agreement with their employer, and is subject to the employee shareholder not having a 'material interest' in the company.

For more information see HMRC's [share schemes technical guidance](#).

Expat News

Statutory Residence Test – revised guidance note

2 September 2013

HMRC has published a revised guidance for the new Statutory Residence Test (SRT), which was introduced for the 2013/14 tax year.

This [SRT Guidance Note](#) gives you information about the SRT, introduced in Finance Act 2013, and how HMRC interprets the legislation in the context of applying the SRT to an individual's circumstances.

The guidance should be read in conjunction with the statutory residence test legislation, which forms Schedule 45 to the [Finance Act 2013](#), to gain a comprehensive understanding.

Previous CIPP news

- [Statutory Residence Test – guidance updated - 9 May 2013](#)

Revised form P85 - Leaving the UK - getting your tax right

16 September 2013

The form P85 has been further revised to take account of changes in residence rules effective from 6 April 2013.

The form can be accessed on HMRC's [website](#).

General PAYE News

Changes to manual guidance ESC A19

16 August 2013

Further to the ESC A19 review, HMRC has updated the PAYE Manual guidance to reflect policy and process changes.

As published in [Agent Update 37](#) HMRC has updated the [PAYE Manual guidance](#) to reflect policy and process changes following the recent consultation on the application of ESC A19.

This includes new guidance describing the specific circumstances under which HMRC will consider refunding tax paid, the circumstances under which forms P14 may be considered relevant for the purposes of ESC A19, and an expanded definition of 'repeated failures'.

Previous CIPP news

- [ESC A19 Review – summary of responses – 9 April 2013](#)

Libdem taxation policy

22 August 2013

The conference season is fast approaching for the political parties, and as part of their preparations the LibDems have published their [taxation](#) policy which will be discussed at their conference.

The CIPP was invited to feed into this policy back in April 2013 and the CIPP's policy team issued a survey to give members a unique opportunity to have their say.

Whilst some of the questions asked in the consultation document were not of direct interest to employers the following key points emerged and were submitted to the Liberal Democrats party and which we [reported](#) on 15 May:



Summary of key findings

- All respondents agreed with the proposal that the tax free threshold should be increased to the level of the National Minimum Wage (NMW) over the course of the next parliament.
- All respondents agreed that the personal allowance should continue to increase in line with the NMW to prevent NMW earners being caught in the tax net.
- All respondents agreed with that all rates of income tax, including the additional rate of 45% should remain unchanged.
- Although 80% of respondents agreed with the idea of calculating income tax and NIC on annual income, opinion was divided on whether income tax and NIC should be merged or remain separate.
- When looking at whether benefits in kind should be subject to both tax and NICs, there was a mixed reaction with 60% agreeing.
- When the same question was asked about pension contributions, 80% said no, pension contributions should not be subject to NIC.
- 100% of respondents disagreed with the suggestion of limiting the amount that could be taken tax free from a pensioner's pension pot.
- Turning to the possibility of compensating micro employers for the cost of tax collection, opinion was fairly divided, with 40% agreeing.
- Of those who agreed with the suggestion of compensating micro employers, opinion was split as to whether this should be for businesses with five and fewer, or nine and fewer employees.
- However, all respondents agreed that there should be a NICs exemption for very small companies.

Having now had time to study the proposed taxation policy, many of the findings shown above have been included. Their taxation policy now proposes that the tax free threshold should be increased to the level of the NMW, and the personal allowance should continue to rise in line with the NMW. The policy also backs CIPP members' belief that the 25% tax-free lump sum which can be taken out of the pension pot upon retirement should remain unchanged.

There was a slight majority in favour of Benefits in Kind being subject to both tax and NICs and the LibDems have included this proposal. However it has been taken a step further to include benefits provided in lieu of salary through salary sacrifice arrangements. Perhaps CIPP member opinion would have been less mixed if they had been asked outright whether benefits provided through a salary sacrifice scheme should also be subject to tax and NICs!

CIPP response to consultation 'How to improve HMRC's collection of debt: coding out'

4 September 2013

The CIPP has today issued its response to HMRC's [consultation](#) on improving debt collection through coding out.

Whilst in broad agreement with the proposal to introduce graduated limits for the amount of debt which can be collected through PAYE, respondents had concern for those on low incomes. There was also disquiet over the likely increase in the number of enquiries employers will receive as a result of these proposals, and respondents suggested that HMRC look to improve the explanations in letters it issues to individuals.

Members can read a summary of the survey results and the full [consultation](#) response issued to HMRC through the document below.

[CIPP response to consultation on how to improve HMRC's collection of debt: coding out - September 2013](#)

HMRC Employer Bulletin - Issue 45

25 September 2013

Issue 45 of the [Employer Bulletin](#) is now available and contains important information relating to payroll obligations to HMRC.

The latest [Employer Bulletin](#) is essential reading for employers and agents but we would like to highlight some of HMRC's 'need to know' items and also one that may cause some consternation regarding SCONs.

HMRC's 'need to know':

Reporting PAYE information in real time

Page 4 - Update on RTI and the introduction of generic notifications.

Penalties for outstanding 2012-13 Employer Annual Returns (P35 and P14s)

Page 8 – update on notifications and penalties.

HMRC Helpline contact numbers are changing

Page 13 – handy printable version of new numbers.

CIPP's 'need to know':

Mandating the Scheme Contracted-Out Number (SCON) with effect from 6 April 2014

There is an article on pages 10 and 11 which outlines a change that affects the information that employers who operate Contracted-out schemes report to HMRC. From 6 April 2014, such employers will have to report both the Employer Contracting-out Number (ECON) and the Scheme Contracted-Out Number (SCON) on Full Payment Submissions sent to HMRC.

CIPP comment

The SCON was discussed at the ECF (Employment Consultation Forum) and the CIPP is really disappointed that feedback from both the payroll software industry and the payroll profession has not been taken on board. The CIPP along with others has advised HMRC that this information is normally held by the pension scheme, rather than the payroll department. It is going to be a potentially mammoth task for payroll to get hold of the SCON and whilst the CIPP would encourage early identification of the SCONs in readiness for next year, we also advised HMRC that if a SCON is not available then we would not expect our profession to hold up their RTI submissions and risk facing a penalty all because of the SCON.

The CIPP understands the reason why HMRC needs them, but cannot understand why they didn't put pressure on the pension providers to supply it. The CIPP raised at ECF that many employers contract with a pension provider to carry out the administration tasks, one of which is when someone leaves employment, the pension provider completes the appropriate leaver forms, which include the SCON and send to HMRC; so why, why, why does the payroll department now need to do this! Unfortunately whilst the CIPP and software providers were very vocal on this subject the CIPP's policy team believe it is too late now so we will, as always just have to get on with it.

Real Time Information (RTI)

Report summarising the findings from HMRC'S RTI pilot.

19 July 2013

The RTI pilot started in April 2012 with a small group of volunteer employers and increased in three stages up to March 2013 by which time over 6 million individual records were being reported in real time. This enabled HMRC to fully test the RTI process, prior to full roll out, by identifying and resolving problems, and anticipating risks and issues.

The [report](#) summarises the findings from the pilot by explaining the background and summarising the tangible benefits that crystallised as the pilot progressed.

Research undertaken to help HMRC prepare for RTI

22 July 2013

HMRC has published the results of a series of research exercises undertaken by its Analysis department to aid and inform the introduction of Real Time Information.

There are four reports published in this series.

No. 268 - Care and Support Employers: forms and guidance testing

This research was designed to ensure RTI forms and guidance for care and support employers was clear and user friendly, and to inform HMRC's approach to communicating with these employers.

No. 267 - RTI Agent Awareness tracking report

This research tracked agents' awareness and preparation for RTI.

No. 266 - RTI Employers Compliance Research Quantitative report

This research tested specific components of the penalty regime to help develop a compliance strategy for RTI.

No. 265 - RTI February Call to Action Letter testing report

This research tested the content and effectiveness of a letter and insert sent in February 2013 to employers as a final call to action.

No. 264 - PAYE Real Time Information Pilot Customer Experience report

This research tracked employers taking part in the Real Time Information pilot to monitor their customer experience and provide indications of the likely costs and benefits of RTI.

Harvest casuals – RTI reporting

22 July 2013

HMRC are aware that some employers are having difficulties reporting in real time the PAYE payments they are making to harvest casuals.

Whilst HMRC are discussing these difficulties with employers and their representative bodies to gain a better understanding of the problems being faced, in the meantime, employers of harvest casuals who pay someone for more than one day but less than two weeks should note that they can report payments to a particular employee on a weekly basis provided that:

- Each individual payment is below the Lower Earning Limit (LEL) of £109. Employers should report any payments above the LEL separately.
- The weekly Full Payment Submission (FPS) report is made within the seven day period allowed for the earliest payment (the seven day period begins on the day after the day on which the earliest payment is made).
- For reporting purposes, the harvest casual is treated as starting on the date of the first payment and treated as leaving on the date of the last payment covered by the FPS.

HMRC has updated their harvest casuals and casual beaters guidance accordingly. This also provides further information on how to report National Insurance contributions where earnings exceed the LEL.

If an employer of harvest casuals has fewer than 50 employees (including any harvest casuals themselves) and finds it difficult to report all payments at the time of making them, they can use the temporary PAYE reporting relaxation during 2013-14 and report on a monthly basis. Please note this relaxation will not be extended beyond 5 April 2014.

HMRC urges employers to review their payroll and real time reporting processes now during this transitional year. This should mean that they are in the best possible position before April 2014 when late payment and late filing penalties will come into force, and before the temporary PAYE reporting relaxation expires.



RTI reporting of hours worked

29 July 2013

Following concerns raised by the CIPP, HMRC has now [revised the message](#) they issued recently about the need for accurate reporting of hours worked.

The original message suggested that employers should record the actual hours worked by employees, however this has now been clarified to indicate that it is the number of hours normally worked. HMRC go on to explain that option D should only be selected if the employee does not have a regular pattern of employment or the payment relates to an occupational pension or annuity. Otherwise, hours worked should be recorded as follows:

- A** Up to 15.99 hours
- B** 16 to 29.99 hours
- C** 30 hours or more

If you have selected 'D other' in earlier submissions but should instead have selected one of the other options, you do not need to resubmit an earlier Full Payment Submission (FPS). Instead, please ensure that you report the correct hours on your next FPS.

Revisions to HMRC'S RTI pilot document - update

31 July 2013

Earlier this month we [published HMRC's report](#) published HMRC's report summarising the findings from the RTI pilot. In the last few days there have been articles in the press criticising HMRC and suggesting that the final report had been altered from its original draft.

The CIPP Policy team have sought clarification from HMRC, who have confirmed that they have amended the first edition of their report as it was felt that a revision, to what was initially a final report, was needed to take account of the feedback from the developer community and to more accurately reflect the findings.

We are encouraged that HMRC continue to respond positively to constructive comments from all stakeholders.

Thank you to CIPP members for raising this issue and seeking clarification through the CIPP Policy & Research Team.

Reconciling PAYE charges

13 August 2013

HMRC has published a [message](#) regarding RTI reconciliation issues.

We have received feedback that some PAYE schemes have experienced difficulties in reconciling the difference between:

- the tax we say is due, and
- the tax they think is due

We have set up a dedicated team to identify the cause of these discrepancies.

The team is working with a number of PAYE schemes to work through their examples to examine what is causing these discrepancies, and then to resolve them.

This will also enable us to:

- understand the issue in greater depth, and
- take the steps necessary to prevent them arising in the first place

Each time we identify a root cause we will update our guidance, where appropriate, as soon as possible. We have already updated the [View your current PAYE payment and submission position](#) section of our guidance for employers using HMRC's PAYE Online, to make it clearer when we update this information, and what information will be available at any given time.

Tax code issues

15 August 2013

HMRC has been investigating a number of issues reported by some CIPP members.

After investigation it was found a number of duplicate employments had been created for various reasons. HMRC is confident these are not systematic failures but more from a processing failure. These process failures are again due to many different circumstances such as fractured employments, some FPS inaccuracies etc. HMRC has corrected those they believe have been affected and are hopeful the bulk of tax code issues either have or will be resolved very shortly.

If you do have a concern over one of your employee's tax codes there is a specific helpline for which some of the CIPP members have used and found very helpful. The number is 0300 200 3300.

Reconciliation issues

15 August 2013

HMRC has been investigating a number of issues reported by some CIPP members. Emerging findings have yet to reveal any significant issues but work will continue into these cases to flush out the causes. HMRC is also investigating the issues reported involving the transposing of figures on the Dashboard including the negative figures being reported. In the meantime HMRC has asked that we reiterate the EPS process. Below is an example of how the EPS should work, when it needs submitted and the consequences of not adhering to this guidance.

- Full Payment Submission (FPS) submitted for employees paid on 31 May (month 2) on 31 May 2013;
- The EPS relating to this FPS must be submitted to HMRC for month 2 on or before 19 June 2013;

HMRC systems look at the "Charge" (payment due) on 6 June 2013 based on the FPS and or EPS data submitted by this date for month 2. However if there is no EPS then the Dashboard viewer will be updated after 6 June with the known figures. HMRC then carries out another calculation for month 2 on 19 June 2013. The Dashboard (L&P) viewer is then updated after 20 June. If the EPS for month 2 is not received by 19 June then any submission after that is a credit against month 3. If the EPS for month 2 is submitted before 19 May it is a credit against month 1.

Based on the above example if an employer chooses to submit the FPS and EPS on 31 May 2013 then the system will still assume month 2 as it is after 20 May so there should still not be an issue. The key message is to ensure your EPS for the tax month in which it relates is submitted before 19th of the following month. HMRC have said when they have looked into EPS submissions a number of them have been after 19th of the month meaning the viewer is not correct according to the employer.

Please do keep [policy](#) informed of any issues you have. Thank you.

Annual amount of occupational pension field

15 August 2013

HMRC has [published](#) details on correctly completing this field on a Full Payment Submission (FPS).

Real Time Information - Annual Amount of Occupational Pension field

HM Revenue & Customs have seen a small number of cases where no occupational pension is being paid and employers have entered 0.00 in the Annual Amount of Occupation field on their Full Payment Submission (FPS).

Entering 0.00 in this field indicates that an occupational pension is in payment, but the payment is nil. This could have a knock-on effect.

We know which PAYE schemes are affected by this issue and will correct those cases internally by the end of August. Those employers do not need to contact us in the meantime.

If employers are not paying an occupational pension, they should leave this field blank and not enter 0.00.

Annual amount of occupational pension field - update

19 August 2013

A few days ago HMRC [published](#) details on correctly completing the annual amount of occupational pension field on a Full Payment Submission (FPS). These details have since been updated.

HMRC's [updated version](#) reads as follows:

Real Time information - completing the Annual Amount of Occupational Pension field

HM Revenue & Customs have seen a small number of cases where no occupational pension is being paid and employers have entered 0.00 in the Annual Amount of Occupation field on their Full Payment Submission (FPS).

Entering 0.00 in this field indicates that an occupational pension is in payment, but the payment is nil. This could have a knock-on effect.

If employers are not paying an occupational pension, they should leave this field blank and not enter 0.00.

Entering 0.00 in this field sets the occupational pension indicator on our records incorrectly. It has a knock-on impact for employees with student loan deductions, as it prompts an automated notification to the Student Loan Company from HMRC advising that an occupational pension being paid. This may result in the cessation of any further student loan deductions.

HMRC has strengthened guidance, intends to correct those cases affected by the end of August 2013 and plans to enhance IT systems to prevent this occurring in the future. Those employers affected do not need to contact HMRC in the meantime.

What payroll information to report

Information you must get right when running your payroll

HMRC on or before reporting survey

21 August 2013

Following the introduction of real time reporting of PAYE information in April this year, HMRC have launched an online survey to learn more about how employers and agents are finding the obligation to report PAYE information 'on or before' employees are paid.

HMRC will use the information to help assess the impact of these reporting changes and inform the discussion about whether any changes are needed to the new reporting rules.

This is your chance to have your say, so we would strongly encourage you to complete their [survey](#) which should only take 10 minutes to complete. The survey closes on 20 September.

The survey is hosted by an external company called Survey Monkey and all answers are entirely confidential – so please be totally honest in your responses.

Finally, HMRC have asked us to pass on their thanks to all our members for your hard work in making real time reporting a success.

RTI issue affecting student loan borrowers

30 August 2013

A small number of student loan borrowers' employments have been incorrectly ceased on HMRC's systems, leading to employee queries regarding correspondence from the Student Loans Company.

HMRC has published the following message on their [website](#):

Employers should be aware that:

A very small number of borrowers' employments have been incorrectly 'ceased' on HM Revenue & Customs (HMRC's) PAYE systems.

This has prompted HMRC's systems to automatically inform the Student Loans Company (SLC) that those individuals had left their employment.

As a result, SLC have issued letters to these borrowers, querying their employment status. Employees affected by this issue are being asked to respond to the SLC saying they have not ceased or changed employer.

HMRC are now in the process of correcting their systems, and are due to complete this within the next few weeks. There is an issue getting this corrected information on to the student loans system and HMRC are taking active steps to rectify this.

If you suspect that this issue has affected any of your employees, please ask them to follow the instructions above.

Letters to employers who have not started reporting PAYE in real time

4 September 2013

From the beginning of September, HMRC will write to around 120,000 employers who should be reporting PAYE in real time, but who have not started yet.

HMRC has issued a briefing note explaining that the vast majority, (more than 1.6 million) of employers have started reporting in real time but there are still a very small number who have yet to start or who need to close schemes that are no longer operating.



From the beginning of September, HMRC will write to around 120,000 employers who should be reporting PAYE in real time, but who have not started yet.

Points to note

- Employers who have already missed a deadline for reporting PAYE information also received a letter in June.
- HMRC is not writing to employers who have registered their PAYE scheme as an annual scheme.

The [letter](#) that will be sent out sets out the changes and explains to employers that they have missed a PAYE reporting deadline and need to start reporting now. It also explains that they need to contact us straightaway if their PAYE scheme is closed or is no longer operating.

The letter directs them to hmrc.gov.uk/actnow for more help and information.

If employers or agents (on behalf of their clients) have set up PAYE schemes that have never been used – or have schemes which are now ceased – you need to call HMRC to close the scheme. (The [Employer Helpline](#) tends to be less busy Tuesday – Thursday so HMRC recommend that you call mid-week if you can).

Agents who have clients with active PAYE schemes and who have not started reporting in real time should help their clients to start reporting immediately.

HMRC believes many of these schemes can be closed because they don't have any employees linked to them. However, it is important to note that there are some employers who are required to operate a PAYE scheme for expenses and benefits. In this case, employers should either submit a nil EPS each month or contact HMRC to change the scheme to annual and then send them a nil-EPS once a year.

RTI letters for missing deadline

6 September 2013

We reported in [CIPP news](#) on 4 September that HMRC would be sending out letters to all employers who should be reporting in real time but have not yet started. HMRC has today issued a [press release](#).

More than 1.6 million employer PAYE schemes, covering over 40 million individual records, are already reporting in real time since the launch of new reporting requirements in April, and any employers who have failed to follow the new process have been urged to act now by HM Revenue and Customs (HMRC).

Employers or agents (acting on behalf of their clients) who have set up unused PAYE schemes should contact HMRC to close them.

This month, around 167,000 employers who have missed one or more deadlines for reporting PAYE will receive a letter. Employers need to act now and start reporting in real time. If employers have not reported because they don't pay anyone, the PAYE scheme has closed or it is no longer operating, they still need to let HMRC know by calling our Employer Helpline. More information can be found [here](#).

Universal credit early progress report from the National Audit Office

6 September 2013

The National Audit Office (NAO) has published its first report on the progress of Universal Credit and has concluded that the Department for Work and Pensions (DWP) has not achieved value for money in its early implementation.

The NAO said that the report - [Universal Credit: early progress](#) - determines that the Department was overly ambitious in both the timetable and scope of the programme. The Department took risks to try to meet the short timescale and used a new project management approach which it had never before used on a programme of this size and complexity. It was unable to explain how it originally decided on its ambitious plans or evaluated their feasibility.



Given the tight timescale, unfamiliar project management approach and lack of a detailed plan, it was critical that the Department should have good progress information and effective controls. In practice the Department did not have any adequate measures of progress.

Amyas Morse, head of the National Audit Office, said the following:

"The Department's plans for Universal Credit were driven by an ambitious timescale, and this led to the adoption of a systems development approach new to the Department. The relatively high risk trajectory was not, however, matched by an appropriate management approach. Instead, the programme suffered from weak management, ineffective control and poor governance. Universal Credit could well go on to achieve considerable benefits if the Department learns from these early setbacks and puts realistic plans and strong discipline in place for its future roll-out."

In response to the NAO [report](#), a DWP spokesperson said:

"Universal Credit is a vital reform that will ensure we have a welfare system that means people are always better off in work than on benefits and we are a country that truly backs those who work hard and want to get on."

We are committed to delivering Universal Credit on time by 2017 and within budget, and under new leadership we have a plan in place that is achievable."

The report does not cover the significant developments we've made since April including the go live in Greater Manchester, our progress on the IT challenge, the latest plans for expansion from October, or the fact that we brought in 2 of the country's leading project management experts to lead Universal Credit."

The National Audit Office itself concludes that Universal Credit can go on to achieve considerable benefits for society."

CIPP comment

As many of you will have heard, Ian Duncan-Smith has said lots of changes have been made since the NAO conducted their research into Universal Credits, not least new project management. This is encouraging as many members know RTI is fundamental to Universal Credits working properly.

After many employers have experienced increased costs due to a number of reasons, and the current reconciliation issues it would be most disappointing if the Universal Credits policy was to change significantly.

The issue of submitting data "on or before" is still an issue for many small employers and it is of great concern to the CIPP policy team to learn that not only have the IT systems had problems, but that the policy on how Universal Credits will work wasn't ironed out. If this is the case how then did the DWP insist on employers submitting data more frequently than once a month? A question the team will be asking via the many forums we attend.

Do you have any comments for the policy team? Please do contact policy if you do.

EXAM or ELECT scheme employers

17 September 2013

The Commissioners for HMRC have made a direction requiring EXAM or ELECT scheme employers to report PAYE information in real time from April 2014.

The direction states:

Any employer who is at the date of this Direction an excluded employer is required to deliver to HMRC returns under regulation 67B of the PAYE Regulations with effect from 6th April 2014.

To read the direction in full, follow the link below.

[Requirement to report PAYE in real time from April 2014: Direction for employers](#)

HMRC confirm RTI extension for smaller businesses

19 September 2013

HMRC has published the Statutory Instruments which confirm the extension to the temporary relaxation of the reporting rules for businesses with fewer than 50 employees.

As previously [reported](#), following feedback from stakeholders, HMRC said they would seek to extend the reporting relaxation for smaller businesses to 5 April 2014 to tie in with the full tax year.

Statutory Instrument: SI 2013/2301 - The Social Security

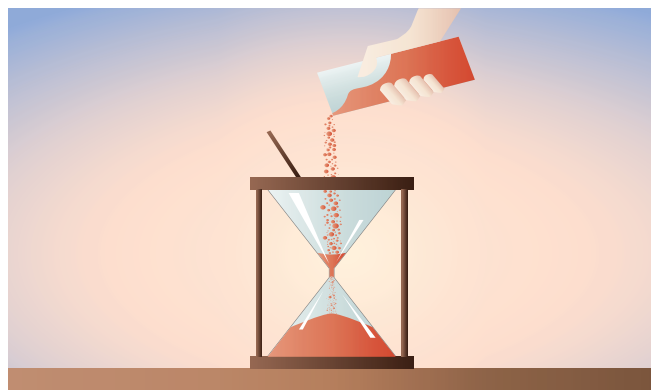
(Contributions) (Amendment No. 4) Regulations 2013 - updated regulations for reporting PAYE information in real time will come into force on 6 October 2013.

Statutory Instrument: SI 2013/2300 - The Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2013 - updated regulations for reporting PAYE information in real time will come into force on 6 October 2013.

HMRC has also published the following on their [What's New](#) web pages:

HM Revenue & Customs (HMRC) recognise that some small employers who pay employees weekly, or more frequently, but only process their payroll monthly may need longer to adapt to reporting PAYE information in real time. HMRC have therefore agreed a relaxation of reporting arrangements for small businesses for a transitional period until April 2014.

This relaxation means that employers with fewer than 50 employees, who find it difficult to report every payment to employees at the time of payment, may send information to HMRC by the date of their regular payroll run but no later than the end of the tax month in which the payments are made (a tax month always ends on the 5th of a calendar month).



HMRC will continue to work with employer representatives to assess and understand the impact of RTI on the smallest businesses and consider whether they can make improvements to real time reporting which will address their concerns without compromising the benefits of RTI or the success of the Department for Work and Pension's Universal Credit.

Please see HMRC's guidance on exceptions to reporting PAYE information 'on or before' paying an employee.

[Exceptions to reporting PAYE information 'on or before' paying an employee](#)

Previous CIPP news

- [HMRC seeking to extend the temporary relaxation](#) - 12 June 2013
-

CIOT 'on or before' supplementary survey

24 September 2013

A number of members have commented that HMRC's RTI 'on or before' online survey did not provide enough space for additional comments to be made.

Consequently, the CIOT (Chartered Institute of Taxation) has launched a very short supplementary [survey](#) to enable individuals to explain the reasons for 'on or before' reporting problems and any suggestions about how to resolve these.

If you have encountered any problems with 'on or before' reporting or have found ways around potential difficulties please do complete their [survey](#).

HMRC's 'on or before' survey has now closed and on their behalf thank you to all who took the time to contribute their views. HMRC will analyse the feedback received alongside other customer insight work and evidence and consider options, before making recommendations to Ministers in November.

For those members who contacted the CIPP policy team with their individual comments, the details have been passed on to HMRC.

Payroll Giving

Payroll Giving overhaul announced

16 September 2013

Further to the Treasury consultation earlier this year, proposals to make it easier for employers to encourage charitable donations using Payroll Giving have been [announced](#).

Payroll Giving enables individuals to donate money to charity directly from their salary via their employer, meaning that their donation is made free from income tax. This means that the charity receives the full donation upfront, rather than having to reclaim the tax afterwards, as through Gift Aid.

In 2012 to 2013, Payroll Giving raised £124 million for charities from 750,000 donors. Over £1.4 billion has been donated using this method in the last 25 years. However it is thought that the total amount collected could be considerably higher.

Following [consultation](#), the government is to almost halve the processing time for donations from 60 to 35 days, allowing charities to access the money that has been donated more quickly.

Improving the process for charities and PGAs

A very commonly heard request was for an improved web presence for Payroll Giving, so the government will create a new home for Payroll Giving, drawing together the best of the existing available information. This will provide the place to go for donors, employers, HR professionals, charities and Payroll Giving Agencies (PGAs). It will also host relevant performance information to increase transparency and improve connectivity between different parties. GOV.UK, the cross government website will host the information and options will also be explored for providing a tool whereby prospective donors can search for their employer and link to the relevant PGA. This should more easily facilitate the start of the donor journey, and as such improve universality.

Raising awareness among employers

Whilst suggestions were made to make Payroll Giving mandatory for all employers, or to target specific employers, the government do not feel that a forced approach is appropriate given the further demands it could place on businesses. However there is certainly more that can be done to raise awareness of Payroll Giving, and the benefits it brings, to encourage more employers to offer the scheme and more donors to sign up. Existing government channels of communication with employers can be better utilised in making the case for Payroll Giving so findings from the Cabinet Office's Behavioural Insights Team's research will be used to inform communications. Payroll Giving will be promoted across the wider public sector with the aspiration that all public sector employees should have access to Payroll Giving and as part of the existing Payroll Giving Awards an Award for 2014 will be created for the best government department or agency.

CIPP comment

The CIPP Policy team has been part of the group calling on the government to review payroll giving and we are pleased that formal consultation has resulted in some improvements to the system. Earlier in the year we published a joint survey with Workplace Giving UK and responded with the full results (see previous CIPP news below).

We recommended in our response that consideration should be given to National Insurance contribution relief on all payroll giving donations. However, disappointingly the government has no current plans for this and state that the existing payroll giving scheme works well alongside Gift Aid as both offer the same overall relief. They believe that altering this to make Payroll Giving more generous would undermine Gift Aid and lead to a substitution away from Gift Aid.

We are pleased to learn the government intends to reduce the time it takes for PGAs to pass donations over to Charities. However [Workplace Giving UK](#) has said that as most do pay contributions over within a month it might not make a significant difference.

The government's response states it will look at providing an online portal, hosted by GOV.UK. We will be looking to work with the government on this proposal as the response states it will explore the possibility of donors being able to search for their employer to check whether they offer payroll giving and the link to the PGA. The CIPP will look to understand how this might work with minimum administration burden on employers, but do hope this online portal will be something much more than exists now.

We are extremely pleased the government does not intend to implement the view by some, of forcing employers to offer a payroll giving scheme. The suggestion by charities to include payroll giving information on a P45 would also not be supported by the CIPP as we hope with

the introduction of RTI and personal tax statements the P45 will become obsolete.

We also recommended the government continue with the annual awards ceremony and are pleased the government not only intends to do this but also introduce an award in 2014 for the best government department or agency.

Looking ahead, the government will be hosting a series of working groups, involving charities, PGAs and other stakeholders, to help PGAs and charities consider further improvements to the Payroll Giving process. The CIPP policy team will continue to be part of this consultation group and don't forget, the CIPP's Samantha Mann and Michael Sanders from the Behavioural Insight Team at the Cabinet Office will be delivering a presentation at the Annual Payroll & Pensions Conference this year on how to motivate employees to join the employer payroll giving scheme.

Workplace Giving UK offer CIPP members a special introductory offer on The Big Charity Whip Round

23 September 2013

Workplace Giving UK launch the Big Charity Whip Round to coincide with the CIPP Annual Payroll and Pensions Conference and offer a half price set up fee to CIPP members until 31 December 2013.

To coincide with CIPP's Annual Payroll and Pensions Conference, this week sees the launch of Workplace Giving UK's latest initiative – The Big Charity Whip Round. It rounds down participating employees' net pay to the nearest pound, and the remaining pennies are donated direct to charity. So if the payslip says £965.23 it's rounded down to £965, and the 23p is donated to the chosen good cause.

No employee will ever donate more than 99p per pay day but together they can turn pennies into pounds and make a world of difference.

Helen Hargreaves, Senior Policy and Research Officer for the CIPP comments: "The CIPP welcomes any initiative which promotes charitable giving. A simple low cost system, which enables individuals to donate a few pennies every month could mean that over the period of a year, a company's employees, together, will have made a significant contribution to their chosen charity."

Workplace Giving UK are offering CIPP members a special half price set up fee of £14.99 until 31 December if you mention your membership. For more information call 0208 731 5125 or visit <http://www.thebigcharitywhipround.co.uk/>



Pensions

Automatic Enrolment

Pensions Regulator survey shows many schemes not keeping required records

29 July 2013

The Pensions Regulator's (TPR) annual record-keeping survey shows there is a lack of awareness of data obligations amongst smaller schemes.

Maintaining accurate records is crucial to the effective administration of pension schemes. TPR previously set targets for schemes to meet certain 'common' data standards by the end of 2012. 'Common' data includes name, date of birth, National Insurance number and other basic member information.

Schemes also need to ensure that their 'conditional data' is correct and complete. This is additional information required to accurately calculate benefits.

TPR's recent survey has revealed that many schemes are still falling short of achieving the standards set, despite steady improvements in some areas.

It shows that the majority of large and medium trust-based schemes measure common data, and over half meet the overall target. But measuring conditional data is less prevalent, with 29% of large schemes saying that it was not a priority and half of trust-based schemes unaware of the requirement to do so.

1.7 million lose out on automatic enrolment due to thresholds set too high

1 August 2013

The TUC have issued a press release following the recent publication of a report of Commentary and Analysis of Automatic Enrolment from the Pensions Regulator.

The report [automatic enrolment commentary and analysis](#) is the first report on the impact of automatic enrolment and its role in increasing participation in workplace pension schemes. It focuses on the implementation and operation of automatic enrolment during the 2012 - 2013 financial year. It's based on information provided by employers when they complete the registration process and includes additional analysis and commentary, as well as trends that have started to emerge in 2013 - 2014.

The Pensions Regulator plans to publish the next wave of the employers' awareness, understanding and activity relating to workplace pensions reforms on 20 August 2013.

However, the **TUC** General Secretary Frances O'Grady said:

'Automatic enrolment is proving a big success, but it does not apply to low-paid workers. This government has consistently raised the size of the wage packet that triggers auto-enrolment, with the inevitable result - that the Pensions Regulator confirms today - that many women have been left out of what should be a pensions revolution.'

'Ministers were wrong to link the earnings trigger to the income tax personal allowance, as this means that every time it goes up more women lose out on a pension.'

Opt-out rate 9 per cent for first 6 months of automatic enrolment

8 August 2013

Research conducted with large employers has shown that across all the public and private sector employers in the study, the average opt out rate was 9 per cent.

The Department for Work and Pensions (DWP) conducted the research as part of their commitment to evaluate the effects of the workplace pension reforms.

The [report](#) shows analysis of opt out rates in large employers with automatic enrolment start dates falling between October 2012 and April 2013. Opt out being a key indicator of the impact of automatic enrolment on workplace pension participation.

Across the 42 employers providing detailed data, it is estimated that overall participation in a workplace pension increased from 61 per cent to 83 per cent (from around 1.2 million workers to 1.6 million workers).

For further information you can read the 8 page summary [report](#) provided by the DWP and their [press release](#).

Full findings from this research will be published in Autumn 2013 on the DWP's research pages at GOV.UK.



First employer issued with automatic enrolment failure notice

15 August 2013

The Pensions Regulator has issued its first notice to an employer which has failed to meet its automatic enrolment duties.

[Professional Pensions](#) reported that it has been revealed that The Pensions Regulator (TPR) has issued its first non-compliance notice to an employer who has failed to meet its auto-enrolment obligations.

TPR confirmed the non-compliance notice, which requires employers to make specific remedial action, was served to an un-named company in the period to 12 August.

It was also revealed that the Regulator has issued 28 warning letters to employers for minor breaches of the regulations. TPR stated that warning letters are part of its formal compliance process but do not come within its statutory powers.

Free automatic enrolment know-how events

15 August 2013

The Pensions Regulator (TPR) is holding sector specific events for employers staging from 2013 to 2015 and private sector events for employers staging from 2013 to 2014.

TPR has published the following information:

Sector specific events for employers staging from 2013 – 2015

In some sectors assessing the workforce and working out who is an employee is more complex as the workforce can be made up of varied contractual relationships e.g. zero hours, casual workers and self employed.

We are holding individual sector specific events for:

- construction industry
- recruitment
- arts and entertainment
- accommodation and food services.

Each event will focus on the topics most relevant to your sector, such as the variety of contractual relationships you are likely to have. You will discover where to find tools and guides to assist you and there will be an opportunity to put your questions to the regulator.

[Register now for a sector specific event.](#)

Private sector events for employers staging from 2013 – 2014

We are hosting four half day events in London and York, designed specifically for private sector employers staging throughout 2013 and 2014. These events will help you understand and implement automatic enrolment. The events will be informative and interactive with the opportunity to share ideas, issues and challenges with your peers and put your questions to the regulator.

[Register now for an event.](#)

Automatic enrolment employer awareness research

22 August 2013

Research [released](#) this week by The Pensions Regulator shows employers are beginning to recognise the need to allow time to plan for automatic enrolment, but many could face a steep learning curve to be ready on schedule.

The proportion of medium employers who have drawn up plans and started to act on these plans has increased significantly compared to autumn 2012, from 13% to 27%. The first wave of medium sized employers, those with between 160 and 250 staff, are due to stage in April 2014. These employers should now be making sure they have compatible payroll software in place and be well on way to selecting a qualifying scheme that suits their workforce.

The Pensions Regulator's survey also indicates awareness of automatic enrolment remains high amongst all sizes of employers and attitudes supportive of the policy. Large and medium employers are significantly more positive about the changes than they were a year ago.

80% of medium employers believed automatic enrolment is a good idea for workers compared to 64% in spring 2012.

But the regulator is warning against complacency, as the research shows levels of detailed understanding remain unchanged and awareness of the need to complete registration by declaring compliance information to the regulator after staging remains low.

To avoid problems, employers should [check their staging date](#) and [start their automatic enrolment plan](#).

The Pensions Regulator's executive director of automatic enrolment Charles Counsell said:

"The response of the largest employers to automatic enrolment has been positive and at the start of August more than 1,600 employers had returned their compliance declaration to us by registering their information.

"But the vast majority of employers are yet to go through automatic enrolment, with tens of thousands of medium-sized companies due to stage in 2014. Our call to action to employers to know your staging date and make a plan are more relevant than ever.

"This research is a key element of our understanding of how employers are responding to their new duties. We have tools and information on our website including a timeline planning tool and a suite of new guides to help employers with limited pensions experience to select a good quality scheme for automatic enrolment."

Go to [research and analysis](#) to read the Employers' awareness, understanding and activity relating to workplace pension reforms report in full. You can also find a report that includes the full data.

Key findings include

Awareness

Awareness of the changes in workplace pensions law remained high among all employer sizes. As in previous waves, awareness was lower among micro-employers (61%) than large employers (99%).

Awareness of the details of the reforms remained low in terms of the types of people who need to be assessed for automatic enrolment, the eligibility criteria and the types of earnings that need to be taken into account.

Progress

Significantly more large (62%) and medium employers (52%) felt the process would take four months or longer than in autumn 2012 (49% and 43% respectively).

A larger proportion of medium employers (up 11% to 84%) and micro-employers (up 12% to 30%) had started their preparations than in autumn 2012. 40% of small employers had started a plan.

41% of small employers said they would 'leave it as late as possible before thinking about how to comply with the introduction of automatic enrolment' consistent with 40% in autumn 2012.

Confidence

Most large employers (99%) were confident that they would have done everything needed by the deadline.

Small employers, who are not due to stage until after June 2015, remain positive about meeting their deadline. 57% were 'very confident' and 23% 'fairly confident'.

Three out of four micro-employers (74%) were confident they would be ready for their deadline.

Small firms choose advisers for automatic enrolment help

28 August 2013

According to recent research advisers remain the preferred source of information for small firms when choosing a company pension.

[IFAonline](#) discuss the research, carried out by polling agency Populus on behalf of the Personal Finance Society (PFS) which revealed that more than two-thirds of micro (1-9 employees) and small firms (10-49 employees) do not currently offer their employees any form of workplace pension scheme, representing nearly five million employees not yet covered by employee pension.

Nearly half (49%) of small firms said they would turn to an adviser when choosing a pension, representing over half a million businesses.

Small firms fared better with auto-enrolment than their micro counterparts, with almost half (48%) now offering and contributing to a workplace pension compared with only 16% of micro employers, the survey found.



When opting for financial advice, the PFS found, small and micro-sized firms were most prepared to pay for one-off tailored advice and setting up a pension scheme and ongoing tailored advice on the pension scheme than presentations and individual financial advice to employees.

The research found that firms with a turnover of more than £500,000 were a lot more likely to want to pay for advice services than lower turnover firms.

The online survey, which was entitled Are we 'in' yet?, questioned around 500 small and micro employers following the launch of the government's auto-enrolment reforms in October last year, and its subsequent media awareness television campaign.

Read the full article from IFAonline [here](#).

Automatic enrolment: What workers want to know

4 September 2013

How much will it cost me? What will I get back at the end? Who's looking after my money?
Have members of staff asked you any of these questions about automatic enrolment?

According to NEST (National Employment Savings Trust) these three questions are the most common ones that workers ask when they hear they will be automatically enrolled into a workplace pension scheme.

- How much will it cost me?
- What will I get back at the end?
- Who's looking after my money?

NEST has produced a short video, '[Three things to know about automatic enrolment](#)', to help tackle these three core questions.

Members may find this a useful resource as it will help some staff to understand how pensions work in basic terms and it may help to reduce the number of questions you are asked when dealing with automatic enrolment.

To share the video:

- Use this link: <http://tinyurl.com/nestvid3>; or
- embed the video in your website or intranet using this code: `<iframe width="420" height="315" src="//www.youtube.com/embed/1e75RJdFqSk" frameborder="0" allowfullscreen></iframe>`

Automatic enrolment is working, but are pension contributions adequate?

10 September 2013

Recent research has shown that 55% of people are not saving enough for retirement.

Although automatic enrolment should bring more young people into pension savings, there is still the challenge of educating people as to how much to contribute to ensure there is enough money in the pot for an adequate retirement income.

A [report](#) published by Scottish Widows has examined the nation's attitudes and behaviour towards pensions saving and found that retirement savings have hit an all-time low. The report says that the average British worker anticipates stopping work around age 66 and is looking for retirement income of £25,000 a year which would require savings of £1,000 a month from the age of 30. Someone earning £25,000 and saving at Scottish Widows benchmark 12% level would be likely to see a fall of over 50% in their income after retirement.

The report points out that starting to save at 20 rather than 30 could add 39% to retirement income. Deferring retirement from 65 to 70 could add 43% and increasing contributions by 3% of earnings every five years could add 68%.

Some of the key findings from the report are:

- Only 45% are making enough provision for their retirement, down from 46% in 2012.
- The fall in the Pensions Index is a result of fewer people who are not relying mainly on a defined contribution pension saving at the benchmark 12% level.
- 20% are saving nothing in 2013, compared with 22% in 2012.
- The gender gap between men and women is 9%, up from 7% last year. 49% of men are currently saving adequately, compared to 40% of women.
- The age gap is similar to last year. 53% of over-50s are preparing adequately, compared with 42% of those between 30 and 50. More women over 50 are saving adequately this year than last year, but fewer men. This finding is reversed for those under 50, with only 36% of women aged 30-50 saving adequately.
- Currently 55% of those earning over £30,000 are saving adequately, but only 40% of those earning between £10,000 and £30,000. This is similar to 2012, but there is evidence of lower savings among those earning over £50,000 a year.

The Scottish Widows UK Pensions [Report](#) is based on research carried out online by [YouGov](#) who interviewed a total of 5,216 UK adults over the age of 18 between 25 February and 4 March 2013.

Intermediaries rise to automatic enrolment challenge

11 September 2013

New [research](#) from The Pensions Regulator shows the vast majority of payroll administrators and accountants now expect to have some involvement with automatic enrolment.

96% of payroll administrators and 95% of accountants said they anticipate helping clients with their duties according to the research from The Pensions Regulator.

Awareness of the reforms remains high amongst the intermediary groups, which include pension scheme trustees, independent financial advisers (IFAs), employee benefit consultants (EBCs), payroll administrators, HR professionals, accountants and bookkeepers.

But new questions introduced since the spring 2013 survey show that intermediaries still have work to do to get to grips with some of the details that they are likely to be assisting with. This includes:

- the types of earnings to be assessed
- what a pay reference period is
- the duty to enrol workers who opt in during the postponement period (if used)
- the types of workers who are eligible for automatic enrolment (namely employees and contractors).

The Pensions Regulator's executive director of automatic enrolment Charles Counsell said:

"Many advisers have risen to the challenge - as well as the opportunity - presented by the roll out of automatic enrolment and are keen to assist their clients.

"The Pensions Regulator has a key role to play in supporting these intermediaries by providing the detailed information they need to help their clients prepare for automatic enrolment.

"There are still gaps in knowledge. We will be highlighting our role over the coming months to advisers ensuring they are aware of the information and help that is available to them.

"We also need to ensure advisers and employers know that the regulator is not just a source of information but also the body that all employers need to submit their automatic enrolment details to in order to be compliant."

Today's survey follows one last month into [the awareness and attitudes of employers](#), which found 80% of medium employers believed automatic enrolment is a good idea for workers but also found low awareness of the need to register with The Pensions Regulator four months after staging.

Other key findings include:

- Levels of understanding were lower among payroll administrators (77%), trustees (67%), and lowest among accountants (60%) and bookkeepers (48%), both of whom are more likely to be dealing with employers furthest away from their staging dates.
- Most financial advisers had already helped their clients (69% of IFAs and 91% of pensions consultants).

The main challenges for HR professionals continued to concern cost, while payroll administrators were more concerned about the lack of understanding and their clients' perception that the reforms were not relevant to their business.

Awareness and understanding levels remained largely unchanged among both accountants and bookkeepers compared with autumn 2012. Many had already had some form of interaction with their clients about automatic enrolment (62% of accountants and 38% of bookkeepers).

Follow this link to read the [Intermediaries' awareness, understanding and activity relating to workplace pension reforms](#) report in full.

Achieving the 21st century pensions settlement: Beyond automatic enrolment

24 September 2013

JLT Employee Benefits has published a White Paper which makes recommendations for the next stage in pension reform. The CIPP contributed opt-out research to the report.

The research paper makes for a very interesting read, however if time is not on your side to scan the forty or so pages, the following is a short summary.

The report 'Achieving the 21st century pensions settlement: Beyond automatic-enrolment' has two themes:

- every £1 invested must be made to work as hard as possible towards improving member retirement outcomes; and
- until trust in the pension system is restored, hard compulsion should not be considered.

The executive summary explains why these two themes are used. Pension scheme membership alone does not guarantee retirement security. For anyone other than a low earner, minimum contributions under automatic enrolment (after allowing for the prospective single tier State pension) will not provide adequate pension outcomes. Nevertheless, the only real and meaningful measure of success for the workplace pension reforms will be the outcomes experienced by those auto-enrolled. Increasing minimum contributions under automatic enrolment and/or requiring everyone to save more is not appropriate in the current economic environment.

The report's key recommendations are:

- Decommissioning DB Schemes: A lot of time is devoted to past service DB schemes and companies are spending more on DB deficit contributions than on DC pension provision for current employees. If they are expected to properly engage with their DC schemes or seriously consider Defined Ambition as an alternative, then employers need more support in their endeavours to manage down existing pension liabilities that no longer play a part in the recruitment, retention or motivation of employees.
- 'Pot Follows Member': The concept of automatic transfers should be extended to all transfers. However, to protect members from fraud and from themselves, trustees should be allowed to refuse a transfer request where they have a reasonably founded concern that pensions liberation is taking place.
- Open Market Option: Consideration of the open market option (OMO) must be made compulsory; automatic enrolment schemes should have a process to help members at retirement; and alternatives to annuities should be explored as part of the Defined Ambition initiative.
- Working Longer: Delaying retirement or, at least, full retirement has to be part of the solution for achieving pensions adequacy. We therefore need to remove barriers to working longer and ensure that workers delaying their retirement remain productive by staying healthy, so that they are not just 'retiring on the job'.

The full report can be accessed through the link below.

[Achieving the 21st century pensions settlement: Beyond automatic-enrolment](#)

General Pensions News

Pension industry stakeholder forum – scheme transfers

17 July 2013

In advance of the publication of the revised draft Annual Allowance Charge Order HM Revenue & Customs has issued a circulation to the Stakeholders of the Pensions Industry Stakeholder Forum (PISF).

Work is on-going to address a number of unintended outcomes from the changes to the Annual Allowance Charge tax rules introduced in Finance Act 2011. HMRC intends to issue a revised draft Annual Allowance Charge Order for comment as soon as possible – having considered the range of responses to consultation into the previous draft published on 16 November 2012.

Work to finalise the revised draft continues but it is understood that current uncertainty in the sector about the tax treatment of 'underfunded' bulk transfers for Annual Allowance purposes is causing difficulty, particularly for those registered pension schemes seeking to merge where member benefits will be unchanged after the transfer.

Ahead of the publication of the revised draft Order, it may be helpful to confirm that it is the Government's intention that pension input amounts

should not arise in situations where all of the following criteria are met;

- There is a 'bulk' or 'block' transfer of a group of members from one registered pension schemes to another as a result of an employer rearranging its pension schemes or as part of a business transaction
- The member's retirement benefit in the receiving scheme represented by the transfer is the same in principle as if it had remained in the original scheme and the rearrangement of pension schemes or business transaction had not taken place i.e. a transfer on a mirror image basis. This requirement may be expressed using a value test to ensure that some variations in benefit format can be accommodated, however this is still being finalised and further detail will be provided by the draft Order on publication.
- The pension input amount would at present arise simply because the transfer is 'underfunded' (that is, the sums or assets transferred to the receiving scheme are not sufficient to support the level of benefits promised by the receiving scheme).

The draft Order to be published will include revised provisions to address this 'underfunded bulk transfer' issue and it is intended that the provisions will have effect for pension input amount calculations for 2011/12 and subsequent tax years.

The Government will consult further on the revised draft Order, including these provisions, and the final draft will require parliamentary scrutiny. It is therefore possible that further changes may be required.

Any queries should be routed to pensions.policy@hmrc.gsi.gov.uk

HMRC pensions industry business update – issue 6

24 July 2013

Issue 6 of the Pensions Industry Business update has been published.

Amongst other topics of interest, **Issue 6** of the Pensions Industry Business Update, which was previously known as the National Insurance Services to Pensions Industry News Letter, contains an article explaining the importance of the SCON reference and why it is to become a mandatory requirement on the Full Payment Submission (FPS) as from April 2014.

Additionally and as a result of an upgrade to the telephone system contact telephone number have changed recently, previous numbers that you may have recorded should be replaced in your contacts.

Personal Pensions Sections 1-3 (PP):

03000 553617 - Dealing with PP scheme members prior to State Pension Age

Personal Pensions Section 4 (PP4):

03000 574171 - Dealing with retired and deceased members in PP and COMP schemes including members in receipt of Protected Rights

Contracted-out Money Purchase (COMP):

03000 553618 - Dealing with COMP Scheme members prior to State Pension Age

Contracted-out Salary Related (COSR):

03000 553574 - Dealing with COSR Scheme members prior to State Pension Age

Government response to consultation on simplified disclosure regime

31 July 2013

The Department for Work & Pensions have published the government response to the consultation held on the Occupational and Personal Pensions Schemes (Disclosure of Information) regulations 2013.

In the [government response to the consultation](#) it is stated that the intention is that regulations will be made and laid in Parliament as soon as possible following recess and come in to force on 6 April 2014.

HMRC Pension schemes newsletter – number 58

13 August 2013

HMRC has published the August 2013 edition of the HMRC Pension Schemes Services Newsletter. Topics covered include:

- Fixed Protection 2014 – Do it Online
- Fixed protection 2012 – applications by relieved members of relieved non-UK pension schemes
- Individual Protection 2014
- Legislation

The newsletter is available to view on HMRC's [website](#)

New QROPS forms APSS 262 and APSS 263

13 August 2013

If you deal with Qualifying Recognised Overseas Pensions Schemes (QROPS) you need to be aware that forms APSS 262 and APSS 263 have been **amended** and should be used for all QROPS from 12 August 2013.

- APSS 262 - Transferring UK tax-relieved pension assets
- APSS 263 - Member information

The forms have been amended due to new Registered Pension Schemes (Provision of Information)(Amendment) Regulations 2013 (SI1742/13).

The new regulations for recognised transfers apply to transfer requests made by the member from 12 August 2013.

For member transfer requests made before 12 August 2013 you may not have the information you need to complete questions 6 and 9 on new form APSS262.

Question:

- 6 - member's date of birth
- 9 - the date the member left the UK, if their principle residential address is overseas

If you don't have the information to complete these questions please provide a covering letter to the form stating this. You will only be able to do this up to 12 October 2013. From 13 October 2013 the form must be fully completed.

Same sex marriages and occupational pension schemes

21 August 2013

The law is changing and from summer 2014 same sex couples will be able to marry. What do employers and trustees need to do?

Pinsent Masons have provided a useful update which explains what action may need to be taken in light of the change of law.

Pensions update

From summer 2014, same sex couples will be able to marry. Spouses of members in a same sex marriage will have the right to certain death benefits under occupational pension schemes. The rules of most schemes will need to be amended in order to ensure compliance. Trustees and employers will need to decide whether to pay just the minimum benefits required by law, or to treat same sex marriages in the same way as opposite sex marriages.

What are the options?

The Government has decided that pension schemes need not treat same sex marriages exactly the same as opposite sex marriages. Trustees and employers will need to decide whether they wish to pay just the minimum, or to treat same sex marriages in the same way as opposite sex marriages. They should discuss the potential cost implications with the scheme actuary. Many schemes chose to pay more than the minimum



when civil partnerships were introduced: they agreed to treat civil partnerships in the same way as marriages. Those schemes are likely to wish to treat same sex marriages in the same way.

What are the minimum death benefits payable in respect of same sex marriages?

According to the legislation enacted by the Government, death benefits payable to a same sex marriage survivor can be based just on the pensionable service the member had completed from 5 December 2005 (rather than on his full pensionable service). The position is different for contracted-out schemes. Any contracted-out death benefits must be based on rights the member built up from 6 April 1988. These adjusted death benefits are the same as those that civil partners are currently entitled to. The adjustments only affect death benefits that are calculated according to length of pensionable service. Death benefits based just on a multiple of final salary are calculated in the same way as for opposite sex marriage survivors.

There is, however, a risk that the courts might take a sterner view of what constitutes the minimum. If so, this would lead to additional costs. We go into more detail below.

What do the employer and the trustees need to do to implement the changes?

The requirement to pay contracted-out death benefits to a same sex marriage survivor will not override scheme rules. The rules of most contracted-out schemes will, therefore, need to be amended. The requirement to pay other death benefits to a same sex survivor will override scheme rules – but only to the extent required to provide the minimum required by law.

Schemes that provide death benefits based only on multiples of salary (and not pensionable service) need do nothing, as the statutory override will ensure they comply and no restriction will apply to the amounts payable. Most pure defined contribution schemes will fall into this category. We recommend that all other schemes amend their rules so that it is clear what death benefits must be paid to same sex marriage survivors. The amendments should be made before summer 2014, in time for the first same sex marriages. Trustees will need to tell members about the changes.

Uncertainty about the current requirements and possibility of change

There has been a good deal of controversy about the restriction on death benefits payable to the survivors of same sex marriages and civil partnerships. An employment tribunal decided in November 2012 that the restriction for civil partners breached European law prohibiting discrimination on the grounds of sexual orientation. Although a court would not be forced to follow that tribunal ruling, its reasoning is persuasive. Following criticism in Parliament, the Government has undertaken to complete a review by 1 July 2014. As a result, the Government may decide that occupational pension schemes must treat same sex marriages on a par with opposite sex marriages. Schemes wishing to pay only the minimum benefits currently required by law should bear in mind that they may be forced to change their stance – at their own cost.

The Pensions Advisory Service launch web chat tool

9 September 2013

Web chat is a new online service where you can talk to experts in real time about pensions.

The Pensions Advisory Service (TPAS) is an independent non-profit organisation that provides free information, advice and guidance on the whole spectrum of company, personal and stakeholder schemes.

With automatic enrolment high on the agenda, employees and employers alike will have pension questions they need quick answers to.

Visit TPAS's website for further information on how to use web chat.



One million fewer facing inadequate retirement incomes

16 September 2013

A report has been published which looks at the impacts of the introduction of the single-tier pension and automatic enrolment as a whole to identify where future challenges remain.

The report '[Framework for the Analysis of Future Pension Incomes](#)' published by The Department for Work and Pensions shows that as a result of the key pension reforms - and based on conservative assumptions about behaviour change - 1 million fewer people will be facing inadequate retirement incomes, and 73 per cent of those facing inadequate retirement incomes will see an improvement in their incomes, bringing them closer to their target income.

The government do expect that the true impact of their policies will be significantly larger than this, for example as a simpler state pension encourages more private saving, and as mass membership of workplace pensions improves the pensions 'saving habit'.

There are a number of actions individuals can take to improve their future retirement incomes. These include:

- having a full working history
- saving whilst in work
- saving more.

The right level of saving for an individual will depend on their particular circumstances but this document '[Framework for the Analysis of Future Pension Incomes](#)' can help people understand the options.

OFT secures agreement with TPR to tackle reform of pension schemes

23 September 2013

An agreement has been reached between the UK Office of Fair Trading (OFT) and The Pensions Regulator (TPR), whereby the two organisations will propose improvements to defined contribution (DC) workplace pension schemes, in order to make sure pension savers get value for their money.

[Financial News](#) reports:

The OFT said that it is calling for changes to the £275bn DC workplace pension market, following its market study which revealed that the complexity of pension schemes makes it difficult for pension savers and employers to choose the right product. Approximately five million people are currently saving into DC pension schemes and now that the Government has introduced auto-enrolment, the numbers of savers are expected to increase to nine million over the next five years. However, auto-enrolment could cause some problems for employers who are responsible for deciding which pension scheme to choose for their employees, as smaller businesses with limited resources may not be able to assess the value of certain pension schemes.

According to the OFT, savers may not get value for money from old and high charging contract and bundled-trust schemes, which contain around £30bn of savings, while smaller trust-based schemes, which contain around £10bn of savings, may not provide value for money due to a lack of trustee engagement and capability. The OFT also said steps should be taken to improve the scrutiny of pension schemes.

Read the full story from [Financial News](#).

The Pensions Regulator codes of practice on maintaining contributions

24 September 2013

The Pensions Regulator (TPR) has published revised codes of practice on maintaining contributions. They are accompanied by guidance to help employers calculate their contributions and pay them on time.

The codes which came into force last week set out TPR's expectations of trustees and pension providers, and how they should meet their duty to monitor payments, communicate with members, and report failures to pay. They build on current good practice and existing legal duties, and focus on establishing clear accountabilities for achieving good outcomes for members.

View the [codes of practice](#) and our guidance for [employers on contributions](#).

Local Government Pensions

The reformed Teachers' Pension Scheme

18 September 2013

The government has published their response to the consultation on the reformed Teachers' Pension Scheme and has also published draft regulations for consultation.

This [consultation response](#) summarises the responses to consultation on the implementation of a reformed Teachers' Pension Scheme. It provides the government's response to each issue raised as a result of the consultation and acknowledges respondents wider concerns on scheme reforms.

The response also confirms the launch of the consultation's second stage which is seeking views on draft regulations to give statutory effect to the reformed scheme.

Local Government Pension Scheme 2014 – government response to consultation

25 September 2013

The government has published their response to the LGPS 2014 consultation.

The Local Government Pension Scheme Regulations were made on 12 September 2013 and laid before Parliament on 19 September. Further regulations on cost management, transitional savings and protection matters and scheme governance are to follow.

The department consulted widely on the provisions in the period between December 2012 and August 2013.

The government response summarises the comments received.

A copy of the main regulations, together with related Explanatory Memorandum and impact assessment can be found at www.legislation.gov.uk.

Previous CIPP news

- [Local Government Pension Scheme 2014: Payroll and HR specifications](#) – 4 September 2013

Powers, Deterrents and Safeguards

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution for SMEs and individuals

4 September 2013

After a two year trial and extensive consultation with professional bodies and the voluntary sector, Alternative Dispute Resolution (ADR) becomes part of normal HMRC business.

Richard Summersgill, HMRC Director of Local Compliance published a message on HMRC's [website](#) announcing that ADR for SMEs and individuals has entered mainstream HMRC business. He states that customers have said they like the speed and flexibility of ADR and that evidence has shown that by using the simple ADR service many disputes can be significantly shortened and resolved without recourse to Tribunal.

Capability has been increased and a new national team of specially trained facilitators are in place to help resolve tax disputes.

For more information on ADR and how to complete the fast and simple application process follow the link below.

[Alternative Dispute Resolution trial for Small and Medium Enterprise and Individual customers](#)

Alternative Dispute Resolution pilot for large and complex cases

10 September 2013

HMRC has [published](#) a summary report of the pilot for Alternative Dispute Resolution (ADR) for large and complex cases and announces the ongoing use of the facility.

This pilot has tested the effectiveness of using ADR techniques in large and/or complex tax and related disputes to either resolve the issue(s) outright by achieving a mutually acceptable outcome or by bringing clarity to the factual landscape or arguments to make litigation more efficient.

You can read the 8 page report by following the link below.

[Alternative Dispute Resolution in Large or Complex cases](#)

Tax Avoidance

Consultation on raising the stakes on tax avoidance

13 August 2013

Users of failed tax avoidance schemes will face penalties, and government will clamp down on high-risk promoters under new proposals.

The government is consulting on proposals to tackle the behaviour of high-risk promoters of avoidance schemes, including naming high-risk promoters, a range of new information requirements and other associated penalties.



Tackling the supply of and demand for avoidance schemes, [Raising the stakes on tax avoidance](#) follows on from the 2012 [Lifting the lid on tax avoidance schemes](#) consultation.

The 2012 consultation highlighted the behaviour of high-risk promoters as a problem for HMRC, tax advisers and representative bodies and this consultation seeks views on proposals to address this.

One proposal for tackling the behaviour of high-risk promoters is to 'name and shame' them. HMRC does not currently have the power to name promoters of avoidance schemes whose behaviour is high-risk; Raising the stakes on tax avoidance consultation looks to give HMRC the power to do so unreservedly.

Naming high-risk promoters will publicly identify them, distinguish them from mainstream tax advisers and make sure that their customers know who they are dealing with.

Other proposals include new information powers so that HMRC gets early information about the avoidance schemes which these high-risk promoters are promoting and penalties of up to £1 million for failing to comply with the information powers.

For avoidance schemes users the stakes could be equally as high. Once a scheme has been defeated in court by HMRC, users of similar avoidance schemes under investigation could be forced to amend their return or face paying a penalty based on the tax avoided.

Aimed at making sure tax avoiders settle their tax liabilities quickly, imposing penalties for failed avoidance schemes will also act as a deterrent. This will help HMRC clear cases more quickly and will reduce the amount of time spent on litigation.

The vast majority of tax advisers are not high-risk and have moved away from selling aggressive avoidance schemes but; there is still a minority that persists in promoting these schemes.

This stage of the consultation will close on 4 October 2013.

The policy team will be reviewing this [consultation](#) and will publish a survey shortly if deemed necessary.

HMRC review of tax avoidance disclosure regimes

13 August 2013

HMRC is inviting anyone with experience of tax disclosure schemes to share their views.

HMRC is conducting a full review of the UK's disclosure regimes - the Disclosure of Tax Avoidance Schemes (DOTAS) regime and the VAT Disclosure Regime. The review is due to be complete by March 2014.

This review will consider the success of the regimes since their introduction in 2004, how they're operating against policy objectives, levels of compliance with the regimes and the burden they place both on taxpayers and HMRC.

How you can help

HMRC is asking anyone with experience of either DOTAS or the VAT Disclosure Regime to help them by answering a short questionnaire on the regimes. Your experiences are important in helping HMRC form a more complete, objective view of the disclosure regimes.

All responses to questionnaires will be anonymised and held confidentially. Questions do not relate to specific discloseable schemes or arrangements. Responses will be analysed collectively and information provided will not be used by HMRC beyond the scope of this review, or to identify individual promoters or users.

In order to guarantee that your feedback is included in the review, HMRC asks that you complete the [questionnaire](#) by Friday 20 September 2013.

HMRC briefing on tackling tax avoidance

10 September 2012

HMRC has published a briefing on tackling tax avoidance. The brief explains what HMRC are doing to stop those bending the rules of the tax system to gain an unfair tax advantage, in cases where a business or individual operates within the letter - but not the spirit - of the law.

HMRC Briefing - Tackling tax avoidance

Compensating adjustments rules for tax avoidance and evasion

18 September 2013

The government is taking action to stop people avoiding tax by using rules known as compensating adjustments.

The rules, which are designed to avoid double taxation between individuals and connected companies, are increasingly being used by individuals to reduce their income tax bill.

HMRC has evidence that the rules are being exploited in two areas. In the first, partnerships pay companies for services at cost price and use the tax rules to create a mark-up which is not actually paid, but which reduces the bill of individual partners.

In the second type of case seen by HMRC, individuals lend money to a company in which they are a shareholder, charging excessive interest payments on which they do not pay full income tax.

The government will change the law to remove this avoidance opportunity, following a period of informal consultation on the technical detail.

Separately, HMRC is to launch a campaign targeting landlords who are failing to pay the tax due on rents they receive on their properties.

HMRC estimates that up to 1.5 million landlords may have underpaid or failed to pay up to £500 million in tax in 2009 to 2010.

The campaign will target all landlords, but will be focussing compliance activity into specific landlord 'types', for example, those who own more than one property, specialist landlords who rent to students, people with holiday lets and those who let houses in multiple occupation.

The campaign will give landlords who owe tax the opportunity to come forward voluntarily to put their tax affairs in order. If they do not do this and HMRC finds them first they will face bigger penalties and could face criminal proceedings.

[HM Treasury/HMRC press release](#)

HMRC policy on withholding repayment claims in avoidance cases

19 September 2013

HMRC has published a Brief setting out their policy on withholding repayment claims in avoidance cases.

HMRC aims to stop tax avoiders from acquiring an advantage, even a temporary advantage, over the majority of taxpayers who don't try to get around the rules.

[Revenue & Customs Brief 28/13](#)

Statutory Deductions

Student Loans

Collection of Student Loans forum – Your views wanted

5 September 2013

Yesterday the CIPP policy team attended the Collection of Student Loans consultation forum. As well as a range of stakeholders, this meeting is attended by representatives from HMRC, the Student Loans Company and the Department for Business, Innovation and Skills (BIS). This meeting is always informative, but there were several requests for your suggestions, ideas and comments made at yesterday's meeting.

1. As many of you will be aware, from April 2016 there will be two different repayment plans for students to repay their student loans, depending on where and when the student first began their studies. This means there will be two different thresholds in place, depending on which type of repayment plan applies to that particular debt. From that time, if an employee tells you they are repaying a student loan; HMRC will tell you which threshold applies to that individual. But it is entirely possible that the employee will have two student loans to repay, one under Plan 1 and one under Plan 2. Again, HMRC will tell you what you need to do. However, it may be that during a financial year, the employee completes the repayments for Plan 1, but repayments for Plan 2 would need to continue. Under the current arrangements you would receive a Stop Notice for Plan 1 and then a Start Notice for Plan 2. BIS are suggesting that this system is revised and you would receive instead an amended notice which merges both the Start and Stop Notice into one document. BIS are keen to hear your views on whether you think this is a good idea or not and the reasons why.

2. HMRC are interested in your views on whether notices should be issued electronically by default. At the moment you have a choice whether to receive student loan notifications electronically or on paper. As less and less communications are issued on paper HMRC would like to hear your views on whether all notices should be issued electronically, including any issues this would raise for you and any system enhancements you think would make this possible.

To enable you to submit your views easily we have created a very short [survey](#) containing just these two questions. We would be very grateful, as would HMRC and BIS, if you could spare five minutes to complete this [survey](#) which closes on 17 September.

3. And finally, HMRC are now considering ways in which the collection of student loan process could be further improved during 2015-16. They are very keen to speak to employers and payroll bureaux face to face to find out exactly how the system impacts you. To this end, they would like to set up a round table meeting in the first week in October and are looking for volunteers from different sized companies and payroll bureaux in all sectors to discuss the issues, and possible solutions affecting collection of student loans. The location of the meeting is not yet known as it is dependent on the location of the volunteers. If you would like to attend this meeting please email policy@cipp.org.uk titling your email "student loan meeting".

The policy team would like to thank you, in advance, for your help.

Collection of Student Loans forum – response to 'your views'

20 September 2013

Earlier in the month we asked members to complete a short survey regarding some discussions that took place at the last student loan forum.

We received 16 responses to the survey and would like to thank those members who took the time to give feedback.

You can download the document below which details the two questions we asked and the corresponding answers with comments in full. The response has been forwarded to the appropriate departments within HMRC for further discussion.

[CIPP student loan research - September 2013](#)

Tax Agents and Advisers

Tax agent strategy and agent online self serve (AOSS)

26 July 2013

HM Revenue & Customs has produced a briefing paper to update Tax Agents on the latest developments of the Tax Agent Strategy and Agent Online Self Serve.

The update aims to provide Tax Agents with news of the latest developments with the Tax Agent Strategy as a result of work being carried out by HMRC, who is working closely with the [Joint Tax Agent Strategy Steering Group](#), the Agent Engagement Group and the Agent Strategy Group to ensure that any proposed changes are informed by involvement with and feedback from agents, who, the briefing suggest, will also be given plenty of opportunity to be involved with user testing of the new online services before they are rolled out.

The Agent Online Service which is one of the four exemplar services named within the HMRC [Digital Strategy](#) will introduce for the first time a single identifier for an agent – the Unique Agent Reference (UAR). The UAR will be the Agent's route to access new digital services and will replace all existing processes more information will follow when this is going live, which will be soon, so keep watching.

HMRC agent update – issue 37

7 August 2013

HMRC have published the latest issue of the [Agent Update](#) which looks to pull together news, information and updates from HMRC.

This edition's lead subjects include:

- **HMRC service** - Changes to HMRC service, upcoming HMRC events and guidance.
- **Consultations** - Details of live consultations and response summaries.
- **Working Together** - Latest updates from the partnership between HMRC and the six main agent representative bodies.

This month's top articles include:

- **Tax Agent Strategy** - update
- **Self Assessment deadline** - information for agents
- **RTI** - relaxation of reporting arrangements for small businesses extended

HMRC'S relationship with tax agents

7 August 2013

HMRC has updated their guidance on the Tax Agent Strategy - including the development of new online services for agents.

New online services for agents

HMRC published their digital strategy in December 2012. This set out HMRC's ambition to deliver a transparent tax system that encourages voluntary compliance, enabled by customer-focused digital services.

As part of this work, the Tax Agent Strategy programme will introduce some new agent services by March 2015. These will:

- help you take more control of your clients' tax affairs
- let you carry out the same tasks online as your clients
- reduce your need to contact HMRC
- make the information about your clients' tax affairs more accurate and up-to-date
- reduce costs to both agents and HMRC

This [guide](#) provides an overview of the new services and updates on their development.

Single compliance process – update for tax agents

8 August 2013

HMRC has published a [briefing note](#) explaining the outcome of the evaluation of the Single Compliance Process.

What is the Single Compliance Process (SCP)?

HMRC sees the SCP as a single framework within which the majority of future small and medium enterprise business compliance checks will be undertaken, catering for both single tax and cross-tax enquiries. The aim is to relieve the compliance burden on businesses and their agents and to increase the efficiency of their activities.

A specially convened sub-group of the Compliance Reform Forum has been working closely with HMRC over the last couple of years to develop and trial a new enquiry process. During the design/trial stages, feedback and concerns were considered and agreement was reached on a revised opening approach under which the agent will be contacted in the first instance.

The evaluation work has and will help HMRC to understand more about how customers can benefit from an SCP approach. It has also allowed the department to gather additional information to establish that indicative benefits will be seen across the broader range of cases.

For full details read HMRC's [briefing note](#).

Update on the Tax Agent Strategy

5 September 2013

The latest briefing note on the Tax Agent Strategy explains the latest position on HMRC's digital services and future plans.

Briefing Note – August 2013

Looking to the Future

- HMRC had intended to publish a consultation this summer to ask for views from agents and the public on the next steps for the Tax Agent Strategy. After careful consideration we have, however, decided that we can make progress and take the next steps without the need for a formal consultation at the present time.
- The Spending Review 2013, which details the Government's spending plans for 2015-16, allocated more than £200m over the next three years to enable HMRC to become an increasingly digital business – offering customers a range of digital services which are so convenient and easy to use that anyone who can use them will choose to do so. We are building a number of initial services as models for other services (known as exemplar services).
- The first digital exemplar services (including Agent Online Self Serve) are already being developed using the new "agile" method of IT development that is being widely rolled out across Government. This process allows us to build and test quickly, learn from feedback as we go, make changes and move incrementally towards a final system - rather than designing a system in full at the outset. The result is a system which allows the needs of users to be recognised and catered for as it develops, so the final system works better for everyone when it is implemented.
- We are working with the Government Digital Service (GDS) to build a single Digital Tax Platform that will operate across all HMRC Lines of Business/tax regimes and address the needs of customers and their agents. We are also committed to designing new digital services for customers which are capable of being used by agents on their clients' behalf provided a valid agent/client relationship can be verified. This important aspect now underpins all of our digital systems development.
- The work that we have done so far suggests that a formal public consultation document is neither necessary nor appropriate at this point. We are pleased to report that a number of volunteer agents are testing developments as we build them (see more below).
- We re-iterate that HMRC has no plans to regulate the tax agent profession. HMRC would like to reaffirm its view that agents have an essential role to play in making the tax system work and securing the tax base. HMRC wants to work with agents to support them in that role as we move towards an improved and more efficient tax system based on a digital platform.

What we will do

- We will continue work developing the new agent registration service under which agent firms will apply for a Unique Agent Reference (UAR).
- We will shortly begin developing an improved agent authorisation service which will make it easier for agents to let HMRC know when they are engaged by a new client.
- We also need to establish and test the process for transition, in particular the simple transfer of clients across to the new system.
- We will work with GDS and other colleagues to develop our 'digital' vision for the future. We want to be able to share this vision with agents and discuss the role of the agent in an increasingly digital world with you. This may take the form of a consultation at a later date and we will keep agents informed of our plans.

- We will set up a series of pilots to continue to test Agent and Client Statistics (A&CS brings together information held on HMRC systems about agents and the filing, payment and compliance histories of their clients) with the aim of identifying what 'good looks like' and how the best agents work.
- As part of this work we will test how best to manage compliance risk – both before and after tax returns have been submitted – and how HMRC can work with agents to lower these risks.
- We will continue to work closely with the agent representative bodies (through the Joint Tax Agent Strategy Steering Group, the Agent Engagement Group, the Agent Strategy Group and the Compliance Reform Forum) as work on the above areas progresses and we will consult on the pilots and any changes proposed at the various agent/HMRC consultative groups.

'User testing'

- We're pleased to say that the first 'user testing' session – covering registering to act as an agent under the new system – took place on 20 August. The session was successful and GDS and HMRC received some useful feedback on these very early screens. We'll continue the build-and-test approach to ensure we design a new system which works well for both agents and HMRC.
- We will continue testing developments for agents with agent firms of all sizes so that we can be sure that any new systems and processes will work for all.

About the Chartered Institute of Payroll Professionals



The Chartered Institute of Payroll Professionals (CIPP) is the only Chartered Institute for individuals working in payroll in the UK, and has a dedicated pensions faculty for individuals responsible for pensions administration and management.

Representing over 6,500 members and students, as well as the payroll and pensions professions, the CIPP policy and research team attends government consultation forums to discuss potential changes to legislation and the impact on payroll and pensions in practice. This enables us to ensure that CIPP members and students are amongst the first to hear about changes, and have their say through consultation surveys and responses.

As well as providing access to information about proposed changes, the CIPP also provides our members and students with access to support and information to assist them in their career development, and ensure that they are efficient, effective and compliant in their roles, this includes:

- Advisory service helpline available Monday to Friday which will answer member queries relating to payroll and pensions legislation
- E-newsletter providing the latest news and developments straight to your inbox
- PayrollProfessional and TPF Insight magazines which feature news and case studies relating to payroll, pensions and HR
- Payroll factcard providing all of the key figures needed to run a payroll, whatever the frequency

If you would like to find out how membership of the CIPP can benefit you, or sign up for a free trial, please visit www.cippmembership.org.uk, email membership@cipp.org.uk or call **0121 712 1000**.





the **chartered institute**
of **payroll professionals**

leading the profession

CIPP

Shelly House, Farmhouse Way,
Monkspath, Solihull, B90 4EH

☎ 0121 712 1000

☎ 0121 712 1001

@ info@cipp.org.uk

cipp.org.uk

