



The Chartered Institute of Payroll Professionals

# Bi-Monthly Newsletter

December 2013



[cipp.org.uk](http://cipp.org.uk)

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

*leading the profession*

# Welcome

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Welcome to the December 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 – evidence of the magnitude of knowledge required in our business. Regular readers will know that 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.

In our last newsletter I remember saying that summer was officially over, well in a short space of time it would seem that autumn is too. Again this may be just be for those of us north of the border but it certainly feels like winter is upon us with all the ground frosts and biting winds.

The first of November saw welcomed changes introduced to the automatic enrolment regulations. These include 'alternative' definitions of pay reference periods for both assessing jobholder status and determining whether a scheme is a qualifying scheme.

As this newsletter is being compiled we are eagerly awaiting the Chancellor's Autumn Statement, yes I said autumn, on 5 December. We think it will be a far more positive experience this year with the improvement to the UK's economy, so hopefully no budget cut or double dip talk this time. With the general election coming round in only 18 months the political parties are starting their game playing so will there be some kind of sweetener for the public? Possibly a reduction in VAT again and maybe another freeze on fuel prices – a freeze on energy prices would also be great if you would be so kind Mr Osborne.

It has already been rumoured in the press that Nick Clegg would like the personal allowance to be increased to £10,500 in 2015 so there could be mention of this or is that a Lib Dem sweetener?

Those of you dealing with real time information will no doubt know that we are waiting for a decision on the 'on or before' reporting issues so it is likely that if there is to be any change or relaxation of rules, it will be announced in the Statement. As this newsletter is compiled a couple of weeks before distribution we may already have published our Autumn Statement summary – you could even right now be weighing up which one to read first? The decisions of a payroll professional know no bounds, so make your choice, pour your mulled wine (non-alcoholic versions are available) and feed your mind with the abundance of captivating news from the last few weeks.

And of course because this is the last newsletter of 2013, the CIPP Policy team would like to wish readers a very merry, stress-free festive season.

**Diana Bruce MCIPDip**  
*Senior Policy Liaison Officer, CIPP*

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# Apprenticeships

## ICAEW response to funding reform for apprenticeships

4 October 2013

The CIPP welcome the ICAEW's (Institute of Chartered Accountants in England & Wales) [response](#) to the [consultation](#) on funding reform for apprenticeships.

The CIPP published their response to this consultation on 23 September 2013 and opposed the Model 2 proposal for employers to recover government funding through their PAYE return. We are pleased that the ICAEW's response is in agreement. Their key summary states:

"We would have grave concerns about the amount of extra work created for HMRC, BIS, training providers and the employer population if apprenticeship funding were to be routed via HMRC's PAYE account (Model 2). A choice of Models 1 and 3 should suit most employers and keep the system simple, minimising the risk of fraud, error and confusion."

ICAEW's full response can be viewed on their website through this [link](#).

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## Apprenticeship reforms in England driven by Trailblazers

1 November 2013

Some of the UK's leading businesses have signed up to deliver new and improved apprenticeships.

Groups of companies, including BMW Group UK, have come together to give industry the power to lead the design of these new apprenticeships. More than 60 companies who took on more than 13,000 apprenticeship starts in 2011 to 2012 are involved in these groups, which are known as Trailblazers.

The [reformed apprenticeships](#) will be:

- employer-led and designed so they respond to the needs of industry, meaning each apprentice has the skills required by the sector
- focused on quality so the apprentice has to demonstrate their ability through rigorous assessment at the end of their apprenticeship
- graded on completion – pass, merit, or distinction – to mark the level of achievement.

Eight Trailblazers will represent a broad spectrum of businesses from a range of different sectors; aerospace, automotive, digital industries, electro-technical, energy, financial services, food and drink, and life and industrial sciences. Their participation will mean that apprenticeships are firmly driven by those who deliver and use them.

Skills and Enterprise Minister Matthew Hancock said:

*"We asked Doug Richard to [review the Apprenticeship system](#) and tell us what was needed to make the British system a world leader. Our reforms will do just that and I am pleased to welcome industry leaders as Trailblazers to make the new system a reality.*

*Our aim is that the new apprenticeships will focus squarely on rigorous training for learners and simplicity of use for employers. This will mean that our apprenticeship system will respond to the needs of the modern economy."*

Being involved in the Trailblazers will give employers and professional bodies the opportunity to develop the new apprenticeship standards for occupations in their sector. These will become the industry standard for any apprenticeship in that occupation.

New apprentices can expect to take part in reformed apprenticeships as early as the end of 2014.

### Further information

- [Apprenticeships consultation page](#)
- [Apprenticeships guide](#)

# Attachment of Earnings

## Direct Earning Attachments

17 October 2013

The Department for Work and Pensions (DWP) has developed detailed Direct Earning Attachment (DEA) guidance through consultation with employer and payroll software development representatives.

The guidance deals with the procedures to follow when implementing a Direct Earnings Attachment issued by the Department for Work and Pensions.

The guide will be published shortly by the DWP on GOV.UK but in the meantime, members can download the guide through [this link](#).

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## DWP Publish V4 of Employer Guide to Direct Earnings Attachments

18 November 2013

The Department of Work & Pensions has published updated guidance for employers on Direct Earnings Attachments.

Version 4 of [Direct Earnings Attachment: an employer's guide](#) has been published alongside the more detailed guide for employers and software developers.

## Autumn Statement

### Chancellor to make his annual Autumn Statement on 5 December

*13 November*

On 11 November 2013 the government **announced** that the Autumn Statement will now take place on 5 December 2013 (previously announced to be 4 December).

The Chancellor of the Exchequer, George Osborne will give his annual Autumn Statement to Parliament on 5 December 2013.

The statement provides an update on the government's plans for the economy based on the latest forecasts from the Office for Budget Responsibility. These forecasts will be published alongside the Autumn Statement on 5 December.

The CIPP Policy Team will be covering the Autumn Statement and will provide an update as soon as the details have been announced.

[Read more about the Autumn Statement](#)





## Better Regulation

### Consultation on company filing requirements

8 October 2013

The government believes that there is scope to simplify the processes for filing information at Companies House and to remove duplication of effort for companies.

The government has reviewed company law as part of its commitment to reducing unnecessary regulatory burdens under the [Red Tape Challenge](#). They have published a [consultation](#) to seek views on options for improving company law and Companies House procedures.



## Citizen News

### Pilot launched to help SMEs recruit skilled international employees

26 September 2013

UK Visas & Immigration has launched a 3 month pilot to provide online support to SMEs who need to recruit skilled international employees.

The pilot is in partnership with the Greater London Authority (GLA) to provide online support to small and medium sized businesses (SMEs).

The pilot is aimed at SMEs who need to recruit skilled international employees to help build their business, and a toolkit of information has been made available through the GLA [website](#).



The toolkit includes a simple overview of the process of sponsoring an overseas worker, a best practice guide, and some frequently asked questions, with access to expert help from the Home Office for complex issues or queries.

### Immigration Bill in the House of Commons

28 October 2013

The [Immigration Bill](#) makes changes to the UK's legal and policy framework, so that the immigration system can operate more fairly and effectively.

The Home Secretary opened the second reading debate for the Immigration Bill on 22 October. The bill continues the government's reforms to ensure that our immigration system is fair to hard-working people and legal migrants, while cracking down on those here illegally.

The Immigration Bill will make it easier to remove those with no right to be here, reduce the number of appeals they can make, and simplify the process. In addition it will ensure that only legal migrants can benefit from and have access to the labour market, health services, housing, bank accounts and driving licences.

Home Secretary Theresa May said:

*"Those who play by the rules and work hard do not want to see businesses gaining an unfair advantage through the exploitation of illegal labour. They don't want to see our valuable public services – paid for by the taxpayer – used and abused by illegal migrants. It is unacceptable that hard-working taxpayers have to compete with people who have no right to be here. The bill will begin to address these absurdities and restore the balance."*

The Immigration Bill will:

- cut the number of decisions that can be appealed from 17 to four – preserving appeals for those asserting fundamental rights
- extend the number of non-suspensive appeals – where there is no risk of serious irreversible harm, we should deport foreign criminals first and hear their appeal later
- ensure the courts have regard to parliament's view of what the public interest requires when considering Article 8 of the European Convention on Human Rights in immigration cases
- restrict the ability of immigration detainees to apply repeatedly for bail if they have previously been refused it
- require private landlords to check the immigration status of their tenants, to prevent those with no right to live in the UK from accessing private rented housing
- make it easier for the Home Office to recover unpaid civil penalties
- introduce a new requirement for temporary migrants, for example overseas students, who have only a time-limited immigration status to make a contribution to the National Health Service
- require banks to check against a database of known immigration offenders before opening bank accounts
- introduce new powers to check driving licence applicants' immigration status before issuing a licence and revoking licences where immigrants are found to have overstayed in the UK
- clamp down on people who try to gain an immigration advantage by entering into a sham marriage or civil partnership.

## Full guide for employers on preventing illegal working in the UK

31 October 2013

The UK Border Agency has [published](#) a new, updated version of their guide for employers on preventing illegal working in the UK. This guide replaces the previous one published in May 2012.

The main changes include:

- The restrictions on Bulgarian and Romanian nationals ending on 31 December 2013;
- Restrictions on Croatian nationals which came into force on 1 July 2013; and
- Information on the fast payment option for paying a civil penalty.

The guidance also contains details of an additional circumstance in which your sponsor licence can be revoked if you receive a civil penalty.

You can find the new guide on the '[guidance documents for employers](#)' web page.

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## Home Office consultation on immigration and visa charging principles

13 November

People who need permission to visit the UK and those who want to live, work or study here must pay a fee for their visa. The Home Office is seeking input into how they can ensure that those who benefit directly from the immigration system and enhanced border control contribute appropriately to its costs in the future.

They are therefore launching a targeted consultation looking at charging principles which will begin on 12 November and will last for 3 weeks.

The consultation will be seeking views on how the Home Office charges customers and the services it provides. It will seek views from stakeholders who have an interest in the way fees are set, the consistency and complexity of fees and on premium services. The Home Office is also seeking views on proposals on administrative reviews and refunds and how the Home Office interacts with third parties.

Given the very tight timescale the CIPP Policy Team is not able to publish a survey however, if this is a matter which concerns you the consultation document explains how you can give your views directly.

[Read the full consultation](#)

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## Immigration Rule changes - Armed Forces

12 November 2013

Revised immigration rules affecting members of HM Forces and their families have been laid in Parliament.

The new rules come into effect on 1 December 2013. They were announced in a written ministerial statement on 4 July 2013, and will bring Armed Forces family rules in line with the family Immigration Rules in Appendix FM.

This will mean that:

- members of HM Forces wishing to sponsor a non-EEA dependant to come to or remain in the UK will have to meet a minimum income threshold;
- a basic English language requirement, at A1 level on the Common European Framework of Reference (CEFR), will apply to all non-EEA partners seeking leave to enter or remain in the UK as a dependant of a member of HM Forces;
- to qualify for settlement, all non-EEA partners and children between the ages of 18 and 65 will be required to pass the Life in the UK test and hold an intermediate speaking and listening qualification, at B1 level on the CEFR;
- all non-EEA partners of HM Forces personnel granted leave under the Immigration Rules will serve a 5 year probationary period before being eligible to apply for settlement.

On 5 July 2013 the Home Office appealed against a High Court judgment in a legal challenge to the [minimum income threshold](#) for spouses/partners and children applying under the family route. The Home Office will continue to put on hold cases which are being refused solely due to not meeting the minimum income threshold until the case is finally determined by the Courts.

For full details of the changes see the Statement of Changes to the Immigration Rules (HC 803) on the right side of this page. The written ministerial statement can be found on [Gov.uk](#).

## Changes to document requirements

21 November 2013

From 28 October 2013 if you are applying by post for extension of stay, indefinite leave to remain or British citizenship on the forms below, you no longer need to provide an original passport from the British or settled person supporting your application - a photocopy of their passport or travel document can be provided instead.

### Applying for extension of stay or indefinite leave to remain

#### Forms FLR(M), SET(M) and SET(F)

- fiancé(e) of a British citizen or settled person;
- civil partner or proposed civil partner of a British citizen or settled person;
- spouse of a British citizen or settled person;
- unmarried partner of a British citizen or settled person;
- same sex partner of a British citizen or settled person; or
- child or other dependant relative of a British citizen or settled person.

Applying for British citizenship

#### Forms AN and MN1

- spouse of a British citizen;
- civil partner of a British citizen;
- child of a British citizen parent.

The photocopy must include all pages of the passport, including any blank pages, and we will verify it with other government departments in accordance with the Data Protection Act 1998. We may request the original document at any time during the application process, and the application will be refused if you do not comply.

You must still submit your own original passport or travel document as part of your application.

[UK Border Agency - News updates](#)



## Construction Industry

### SFO's sector-based compliance drive to focus on construction industry

11 November 2013

The Serious Fraud Office (SFO) has indicated that it will crack down on corruption in the construction industry as part of a new, sector-focused approach to compliance.

[Out-Law.com](#) reports:

SFO Director David Green set out the agency's new approach as part of a speech at the Pinsent Masons and Legal Week Regulatory Reform and Enforcement Conference. He said that the use of "sectoral sweeps" would enable the SFO's intelligence-gathering capabilities to be "far more effective".

Anti-corruption expert Barry Vitou of Pinsent Masons, the law firm behind Out-Law.com, said that the singling out of the construction sector was a "pointed and clear warning to the industry". It follows the publication of a survey of construction professionals in which 35% of respondents had been offered a bribe or incentive on at least one occasion and 49% believed that corruption was still "common" within the industry.

The Chartered Institute of Building (CIOB) published the results of its second survey about crime and corruption in the construction sector earlier this month. Its findings, based on a survey of over 700 construction professionals, found that "little progress" had been made in the sector since its last such research in 2006, despite the introduction of the Bribery Act in the meantime.

More than half of the survey's respondents thought that the Government was not doing enough to prevent and tackle corruption, while 50% felt the same about the UK construction industry. Respondents highlighted the lack of prosecutions brought in respect of offences under the Bribery Act to date as a particular area of concern.

The Bribery Act came into force in July 2011 and, broadly speaking, states that companies with a presence in the UK can face prosecution for bribery or failing to prevent bribery regardless of where the alleged activity has taken place. A company can also be responsible for bribery carried out by its employees or third-party agents without its knowledge or consent, unless the company can show that they have 'adequate procedures' designed to prevent bribery in place.



## Employment Law & Guidance

### Employment law and legislation changes coming in to force on 1 October 2013

1 October 2013

From 1 October a number of key changes will be made to legislation covering executive pay, third party harassment provisions, pension protection from TUPE transfers and the National Minimum Wage.

#### Executive pay

The aim of the new rules is to ensure greater transparency for board pay and to encourage engagement between shareholders and companies.

The major changes are:

- Next year shareholders will have a binding vote on board pay;
- Directors who authorise payments not approved by shareholders will be personally liable; and
- Much greater disclosure of board pay, including a single pay figure which will be subject to an advisory shareholder vote

#### Third party harassment provisions

The third party harassment provisions have been repealed as part of the Government's 'red tape' challenge, on the basis that they are unnecessary. However, employers may still be liable for acts of harassment by third parties, even if the act occurs after 1 October, as employees will be able to frame a claim in a different way. For example, an employer's failure to address third party harassment suffered by an employee could in itself amount to harassment or could give rise to a constructive unfair dismissal claim.

#### Amended protection for employee pensions rights on a TUPE transfer

Following a consultation, new regulations take effect on 1 October 2013, which change the obligations on the transferee post-transfer in relation to employees who were or were eligible to be members of an occupational pension pre-transfer. Previously, the transferee was required to provide access to a scheme, which met certain requirements and, in most cases, was required to match contributions made by the employee, up to a maximum of 6% of salary. The new regulations give the transferee the option of satisfying its pensions obligations under TUPE by paying contributions that match those paid by the transferor for the relevant employee immediately before the transfer.

#### Increase to National Minimum Wage

The minimum wage will increase by 12p an hour to £6.31.

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### Draft Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006

4 November 2013

Further to the government's consultation on the TUPE Regulations, draft Regulations have now been published.

The [draft TUPE Regulations](#) still need to be finalised and agreed with Ministers. The government's intention is to lay the Regulations before Parliament in December 2013, and plan that they will come into force in January 2014.

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### The TUC want government to make pay audits compulsory

7 November 2013

Today is 'Equal Pay Day' and according to a TUC analysis of official figures, women working full-time still earn almost £5,000 a year less than men and the pay gap in some jobs is as much as three times bigger.

Equal Pay Day marks the point at which women working full-time effectively stop earning as they are paid 15 per cent less per hour than men working full-time. But in certain professions the gender pay gap is much wider, says the TUC.

According to the research, female health professionals have the biggest pay gap at 31 per cent, which works out at £16,000 a year. A key reason for the size of the pay gap in health is the earnings of the best-paid professionals. Top male professionals in health earn nearly £50 an hour, twice as much as top earning women who earn £24.67 an hour.



Women working in culture, media and sport experience the next biggest pay gap at 27.5 per cent – which works out at £10,000 a year – while women working in manufacturing occupations earn nearly 24 per cent less than men.

Women earn less than men in 32 of the 35 major occupations classified by the Office for National Statistics. The three major occupations where women earn more than men – transport drivers, electricians and agricultural workers – are all male dominated. Fewer than 50,000 women are employed in these sectors, compared to 1.5 million men.

The gender pay gap across the private sector is 19.9 per cent, far higher than the 13.6 per cent pay gap in the public sector. The pay gap is even bigger for women working part-time, who earn 35 per cent less per hour than men working full-time. Equal Pay Day for women working part-time was back on 27 August.

The TUC believes that as four decades of equal pay legislation have only halved – rather than eradicated – the gender pay gap, a tougher approach is needed to stop millions of workers losing out on pay and career opportunities, simply because of their gender.

One of the reasons for the gender pay gap is the lack of transparency in pay systems that allow companies to pay female employees less than their male colleagues, without staff even being aware of it, says the TUC. Publishing annual gender pay gap information and conducting regular pay audits would enable companies to identify any gender pay gaps, and take action to close them.

#### CIPP comment

The government published 'Equal pay audits: a further consultation' in May 2013 and the CIPP submitted a formal response on behalf of members. In brief the proposals in the consultation mean that an employment tribunal which finds that an employer has discriminated on grounds of sex in contractual or non-contractual pay will be obliged to order the employer to conduct a pay audit in cases where continuing discrimination is likely. A pay audit would not be ordered if one has been completed in the last three years, the employer has transparent pay practices or the employer can show a good reason why it would not be useful.

The TUC is asking the government to go well beyond these proposals and wants them to legislate and make audits compulsory additions to annual company reports. Apparently just one in 100 companies are currently voluntarily publishing equal pay information.

The 'Equal pay audits: a further consultation' closed in July 2013 and we are still waiting for the government's response.

Read the [full press release](#) from the TUC.

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## Enforcement of Employment Tribunal Awards

7 November 2013

The government is looking at measures to clamp down on non-payment of tribunal pay outs as research shows that over half of those awarded don't actually receive the money from the employer.

[HR Bullets](#) has produced the following summary:

In light of BIS-sponsored research showing that over half of those awarded a tribunal pay out don't actually receive what they've been awarded, the government has said it will look at measures to clamp down on non-payment.

Among the measures the Employment Relations Minister Jo Swinson is considering are:

- making changes to the employment tribunal rules to give judges the power to demand deposits from businesses who they think might not pay up
- fixed penalty notices for late payment
- naming and shaming employers who fail to pay out (presumably in a similar vein to that now going to be used for non-payers of the national minimum wage), and
- making sure that people are aware how they can take enforcement action if they are not paid what they are due.

The government is also looking at what action it can take to make sure people get their tribunal award when a company has stopped trading. If a company is insolvent, the Redundancy Payments Service can already pay certain elements of an employment tribunal award. Along with raising awareness of this service, ministers are also looking to make sure that rogue directors are not able to continue to evade their responsibilities.

The [Payment of Tribunal Awards](#) 2013 study examined whether awards were paid, reasons for non-payment and the effect of enforcement

action. One of the most common reasons for non-payment was that employers simply refused to pay. Other findings included:

- Just under half (49%) of claimants who had been granted an award by a tribunal had been paid the award in full, and a further 16% had been paid in part. This amounts to 64% of all claimants, and leaves more than a third who had not received any money at all, even after in some cases enforcement action was taken.
- Of those who were not paid their award without resorting to enforcement, almost half (46%) pursued enforcement through the courts (22% of all claimants).
- Claimants with larger award values (over £5,000) who were not paid their award were more likely to report that the company had become insolvent or ceased trading.
- The reason most commonly given for non-payment was that the company no longer existed/had become insolvent or otherwise ceased trading (37%). One in three claimants whose award was not paid (29%) stated that the employer had refused to pay, and 17% were unable to locate the employer.
- The main reason given for not using enforcement to pursue an award is lack of awareness. Overall, only 41% of claimants agreed that they were aware of the options open to them if their employer did not pay their award (falling to only 28% of those who did not use enforcement).

## The Equality and Human Rights Commission tackles pregnancy discrimination

20 November 2013

The Equality and Human Rights Commission will be undertaking a new comprehensive research project into the scale of pregnancy and maternity discrimination in the workplace.

Anecdotal evidence suggests that some pregnant women experience discrimination while on maternity leave or on their return to work. However, there is no up to date evidence as the most recent data goes back to 2005.

The project will investigate employers' practices towards employees who are pregnant or on maternity leave, and these employee's experiences in the workplace to provide evidence on the extent, causes and effects of pregnancy and maternity discrimination. This information will enable the Commission and Government to shape the most appropriate response.

The Commission proposed the project to the Department for Culture Media and Sport (DCMS) as part of a package of measures to address Equality and Human Rights, and Secretary of state Maria Miller has confirmed the funding to support this project.

Education for both employers and employees nationally will be key to tackling this issue and the Commission will assess how best to raise awareness of pregnancy and maternity rights.

Mark Hammond, Chief Executive of the Equality and Human Rights Commission, said:

*'It is very concerning that in 2013 a number of women are still being disadvantaged in the workplace just because they are pregnant. That would be unlawful discrimination and needs to be tackled.'*

*'We will look at existing research, gather new evidence and carry out our expert analysis to establish the extent of the problem and advise on how best it can to be addressed.'*



## Employment Tribunals

### Calculation of week's pay for compensatory award

27 September 2013

An employment appeal tribunal raises questions as to the proper calculation of a week's pay for the purposes of both the basic and compensatory awards following a finding of unfair dismissal.

[Employment cases update](#) looks at the case of [Toni & Guys \(St Paul's\) Ltd v Georgiou](#):

Calculation of a week's pay for purposes of compensatory award for unfair dismissal can take into account factors which affected the rate of pay such as the employer's malicious actions in diverting business away from the employee. However, the basic award must be calculated strictly according to the set formula in ss 222 and 223 ERA 1996.

The claimant was found to have been unfairly dismissed and was entitled to a Basic and Compensatory Award. The EJ worked out her gross weekly pay by considering what she would have been paid if the respondent had not suspended her, blackened her name, caused her to lose the goodwill of her clients and diverted work away from her. The Basic award was calculated on this basis and the Compensatory Award was calculated using the netted down figure. The respondent appealed, saying that the Basic Award should be calculated using the definition of a week's pay as stated in ss 222 and 223 of the ERA and not according to a speculative exercise employed by the judge.

The EAT allowed the appeal in respect of the Basic Award but not the Compensatory Award – the ET has more discretion when making a Compensatory Award, since s123(1) ERA says that 'The amount of the compensatory award shall be such amount as the Tribunal considers just and equitable, having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer'. However, there was no such discretion when working out the Basic Award.

### Is an intended mother in a surrogacy arrangement entitled to maternity leave?

1 October 2013

Yes, according to the opinion of Advocate-General Kokott in Case C 167/12 - CD v ST.

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

The Claimant and her partner had a child via a surrogate mother. The Claimant started mothering and breastfeeding the child within an hour of the birth. The couple were granted a parental order. The Claimant lodged a claim with the employment tribunal after being denied paid maternity and adoption leave by her employer on the grounds that she did not give birth to or adopt the child.

Following a preliminary reference by the Employment Judge, the Advocate-General has suggested the CJEU should find that an intended mother has the right to receive maternity leave under the Pregnant Workers Directive 92/85/EC, even when she does not breastfeed the child. ~~Compulsory leave of at least two weeks must be granted to both mothers. However, the concept of surrogacy cannot result in a doubling of the~~ leave entitlement under the Directive. Four weeks of mandatory leave must be deducted from the 14 week minimum. The remaining 10 weeks should be divided between the women taking into account the legally protected interests of the Directive.

The CJEU normally, but not always, follows the opinion of the Advocate-General.

### Permanent health insurance benefits and age discrimination

2 October 2013

Was stopping Permanent Health Insurance (PHI) benefits once an employee turned 55, age discrimination?

Yes, says an employment tribunal in [Whitham v Capita Insurance Services](#).

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

Mr Witham had been in receipt of benefits from Capita under a PHI scheme arranged between Capita and an insurance provider. The payments stopped when he turned 55.

He had been denied the opportunity to join a more favourable PHI scheme arranged in 2002 which would have entitled him to receive PHI payments until he turned 65. The insurance company were not prepared to indemnify Capita in respect of PHI payments if the employee was not "actively at work" when applying to join. Mr Witham was then ill and in receipt of benefits under the original PHI scheme and therefore not eligible for the new scheme.

It was held by the employment tribunal that Capita had directly discriminated against Mr Witham because of age. Nor could this be justified as a proportionate means of achieving a legitimate aim. The employer stated that its legitimate aim was to admit as many employees into its pension and PHI schemes as possible within the constraints of the insurance company's conditions. But the tribunal did not accept that the employer had this as an aim, as the offer of PHI membership was selective; nor was stopping the PHI payment an appropriate and necessary means of achieving that purported aim. By ceasing to cover Mr Witham the employer had reduced the number of employees within the PHI scheme. This was hardly promoting its stated objective; and the employer's budgetary considerations in funding the PHI scheme were not to be taken into account.

Further, there was indirect age discrimination because the employer applied a provision, criterion or practice (the "actively at work" criterion) which put employees over a certain age at a particular disadvantage. For the same reason as applied in the direct discrimination claim, this also could not be justified.

Finally, on the facts of the case, the employment tribunal decided that Mr Witham had a contractual right to receive his PHI payments until the age of 65 because an earlier purported variation of employment terms and the policy entitlement was ineffective.

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## TUPE: service provision changeover

7 October 2013

Can work which was anticipated and regularly provided, but not contractually guaranteed, be part of a service provision change?

Yes, says the EAT, in [Lorne Stewart plc v Hyde & Ors](#).

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

Carillion provided largely routine services to Cornwall County Council under a framework agreement, repairing and installing central heating and boilers. Alongside this, the Council could offer further higher value work, but were not obliged to do so and Carillion were not obliged to accept. In practice, Carillion did all of this work. Lorne Stewart took over the contract, but argued that the two Claimants who carried out these services did not transfer, as they did not form part of the organised grouping of employees devoted to the routine work.

Upholding the employment tribunal's decision, HHJ Burke QC held that the lack of contractual commitment was not a relevant consideration. The focus must be on what was going on 'on the ground'. Following the principles in *Enterprise Management Services v Connect-Up*, both Claimants carried out work that was or was intended to be carried out by the new provider after the transfer. The existence of an organised grouping had been admitted, so both Claimants transferred.

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## Reasonable adjustments and paying for medical treatment

10 October 2013

Is it outside the scope of reasonable adjustments to require an employer to fund private medical treatment?

No according to the Employment Appeal tribunal (EAT) in [Croft Vets Ltd v Butcher](#).

The Respondent was employed by the Appellants as a reception and finance manager. She suffered from work-related stress and severe depression. She resigned from her employment when the Appellants did not act on the recommendations made by the clinical psychiatrist to whom they referred her. The Employment Tribunal held her claims that the Appellants failed to make reasonable adjustments to be well-founded, that she was unfairly constructively dismissed and that her dismissal was an act of discrimination arising from disability.

The EAT dismissed the Appellants' appeal on liability (save for the finding that the dismissal was an act of discrimination arising from disability as that was not one of the agreed issues before the ET) and the appeal on remedies against the award of compensation. The EAT, inter alia, found that there was no error by the ET in identifying the relevant "provision, criterion or practice" (PCP); and the ET correctly found that the Appellants had not made reasonable adjustments by failing to pay for the Respondent to have private psychiatric services and counselling.

The issue was not the payment of private medical treatment in general, but, rather, payment for a specific form of support to enable the Respondent to return to work and cope with the difficulties she had been experiencing at work.

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## Employment Status

11 October 2013

Did an employment tribunal make an error in law when it determined that a low level of control exercised over workers precluded there being an employment relationship?

Yes, said the Court of Appeal in [Troutbeck SA v White and Todd](#).

**Daniel Barnett** reports:

The parties had entered into an agreement to record their relationship which referred to “this employment agreement” and had various references to being “employed”. The agreement was terminated and a claim for unfair dismissal pursued.

The Court of Appeal held that the tribunal had wrongly treated the low level of actual day-to-day control by Troutbeck over the activities of the individuals as precluding an employment relationship when, viewed in the round, the relationship between the parties recorded in the agreement in the setting of the surrounding circumstances presented the principal elements of employment. Additionally, there was a sufficient degree of control over the individuals to preclude them being independent contractors.

The Court of Appeal noted that both parties signed a document referring to “this employment agreement” and that was an expression of their intentions confirming the objective analysis of the legal position.

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## Constructive Dismissal: The Correct Test

14 October 2013

In order to successfully bring a claim for constructive dismissal, must the contractual breach by the employer be the principal reason for the employee’s resignation?

No, says the EAT in [Wright v North Ayrshire Council](#).

**Daniel Barnett** reports:

It is sufficient that the repudiatory breach “played a part in the dismissal” in accordance with CA authority in [Nottingham County Council v Meikle](#).

The Claimant was a care at home assistant until she resigned. The first instance tribunal found, inter alia, that the Claimant’s three grievances had not been properly answered. The EAT was satisfied that the tribunal considered the contractual breaches serious enough to constitute a repudiatory breach/es.

However, the tribunal dismissed the claim on the basis that the Claimant’s caring responsibilities for her partner who had recently suffered a stroke were “the effective cause” of her resignation rather than her employer’s conduct, applying the EAT case [Jones v Sirl](#).

The EAT ruled that the first instance tribunal misinterpreted the meaning of the “effective cause” criterion as clarified by the CA in [Meikle](#) and the EAT case [Abbey Cars \(West Horndon\) Ltd v Ford](#). Rather than being ‘the’ effective cause it is enough that the repudiatory breach was ‘an’ effective cause, with no requirement that it be the most important cause. The extent of the role played by the breach will be taken account of in calculating the compensation award.

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## Unfair Dismissal: Redundancy and reorganisation

25 October 2013

Can an employer consider a potentially redundant candidate for an alternative role fairly, if one candidate is aware of the full job description but the other is not?

No, according to the Employment Appeal Tribunal in [Somerset CC v Chaloner](#).

[Daniel Barnett's Employment law bulletin](#) provides the detail:

When the Respondent suffered a downturn, it was proposed that four senior management posts be reduced to two vacancies, one being Business Development Manager ('BDM'). Based on the job description, the Claimant considered her role comparable to the vacancy and she applied.

Upon further review, the Respondent's finances were worse than initially thought and so the re-organisation was extended to other management, including the Finance Officer who applied for the BDM role. The job description was revised to include additional financial responsibilities and the additional candidate was considered, but the Respondent omitted to inform the Claimant of either. The Claimant was unsuccessful at interview and dismissed.

The EAT concluded that the introduction of a competing candidate and an amended job description, both of which the Claimant was oblivious to, gave the Claimant's competition an unfair advantage at interview. As such, the Respondent failed to consider the Claimant in a fair manner and the dismissal was found to be unfair.

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## Court rules against employee who poached fellow employees for a competitor company

28 October 2013

In a recent case, the High Court held that an employee who orchestrated a team move to a competitor business had acted unlawfully, despite the absence of any post-termination restrictive covenants in his contract, or terms relating to confidential information.

Pinsent Masons discusses the particulars of the case and what the outcome means for employers. Follow the link below for full details.

[Pinsent Masons](#) Employment Briefing

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## Employee bonuses: avoidance scheme involving Restricted Securities

6 November 2013

HMRC has published information about an employee bonuses tax avoidance scheme involving Restricted Securities.

HMRC has won a tribunal involving an attempt to avoid tax and National Insurance contributions on employee bonuses. In [LM Ferro Ltd v HMRC](#) a bonus was paid in the form of an award of shares. The decision confirmed HMRC's view that these types of devices to avoid tax simply do not work - if you pay what is really a bonus, tax and National Insurance contributions are due no matter how it is dressed it up.

The scheme in LM Ferro was marketed by Powrie Appleby but similar avoidance schemes were marketed by other promoters. HMRC considers cash received by beneficiaries of awards in those schemes is also chargeable to Income Tax and National Insurance contributions.

HMRC expects those who used these schemes to make full payment of the tax and National Insurance contributions due, plus interest. Those companies and employees affected should contact HMRC to settle their liabilities and prevent additional interest accruing. You can contact HMRC on Telephone 03000 532624.

Penalties may be charged if you failed to take reasonable care when making returns to HMRC.

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## Surrogacy and maternity leave entitlement: UK say yes - Ireland say no

1 November 2013

We [reported](#) a case a few weeks ago about the entitlement to maternity leave for a woman who becomes a mother by surrogacy. Another case has since given an opposing opinion by the ECJ.

[Natalie Gamble Associates](#), a specialist law firm, summarises:

The European Court of Justice has given conflicting opinions in two cases concerning whether European mothers through surrogacy should be entitled to maternity leave.

In the first case, the Advocate General (adviser to the court) said that a UK mother should be given maternity leave and that she should share her entitlement with her surrogate mother. The intended mother was employed at an NHS hospital and had a baby through surrogacy who she cared for – and breastfed – from birth, before she was granted a parental order by the UK family court giving her legal responsibility as a parent.



The ECJ preliminary opinion was that she had been discriminated against under EU law by being denied maternity leave rights.

In the second case, from Ireland, a different Advocate General expressed a different view. In this case, a mother who worked as a teacher with a child born through surrogacy in California was not discriminated against by having been denied the right to maternity leave. The adviser to the court said that whether Ireland should extend the scope of maternity leave to cover mothers through surrogacy was a matter for the Irish Parliament.

The differences are on the face of it puzzling given the factual similarities between the cases, particularly with the opinions given virtually simultaneously. However, each case was argued under different parts of European anti-discrimination law, and there was a key difference in that Ireland does not allow for surrogacy, whereas UK law does.

### UK law to change in 2015

As far as UK parents are concerned, the UK government has in any event recently announced its decision to extend maternity rights to parents through surrogacy, and is in the process of changing UK law through the Children and Families Bill. The new law is currently completing its passage through the House of Lords and is expected to come into force in 2015. UK law will then apply equal rights for parents through surrogacy, with both straight and gay couples permitted to claim paid time off work to take care of their new-born children.

In the meantime, and until the new UK legislation come into force in 2015, the ECJ opinion will give further support to any parents denied leave who wish to bring discrimination claims against their employers

### Disability discrimination - reasonable adjustments

31 October 2013

Did an employer breach its duty to make reasonable adjustments by only offering a disabled employee reduced hours for a fixed period?

No, says the Employment Appeal Tribunal in [Secretary of State for Work and Pensions v Higgins](#).

Daniel Barnett's employment law bulletin reports:

Higgins (H) was a long serving employee at the JobCentre Plus (JP) in Liverpool. Following a long sickness absence, H presented a GP "Fit Note", which recommended a phased return to work on altered hours for 3 months. H suggested a phased return over a period of up to 26 weeks, but JP proposed a Part-time Medical Grounds ("PTMG") plan for H to build up to his normal hours over 13 weeks. H did not accept this plan, and refused to return to work unless JP agreed to extend the PTMG. His request to extend the plan was refused and H was dismissed. He presented a claim on the grounds that JP had failed to make reasonable adjustments under Section 20(3) Equalities Act 2010.

The employment tribunal had held that by failing to consider an extension to the PTMG plan beyond 13 weeks, JP had breached its duty to make reasonable adjustments. JP appealed.

Allowing the appeal, the EAT found that the tribunal had incorrectly identified that the provision criteria or practice placing H at a substantial disadvantage was the requirement for him to work, whereas it should have been the requirement for him to work his contractual hours. Noting that employers are often presented with Fit Notes which last a certain duration, the EAT did not consider that it is always necessary for the employer to give an explicit guarantee to extend this period. If at the end of the agreed period, an employee continues to suffer a substantial disadvantage, then although the duty to make reasonable adjustments will still be applicable, it will be judged on the circumstances relevant at that particular time.

### Courts decide when employees on short time working should get guarantee payments

1 November 2013

The Court of Appeal has looked at what is meant by an employee being "normally" required to work.

The CIPD (Chartered Institute of Personnel and Development) has written an interesting article regarding an employer's right to exercise options under the Employment Rights Act 1996 to lay off employees or put them on short-time working when there is a downturn in trading.



Employees on short-time working may be entitled to a guarantee payment (currently £24.20) for those days when they would normally work, but do not have work because their employer has imposed a temporary reduction in working hours.

In the case [Abercrombie v AGA Rangemaster](#), recently heard at the Court of Appeal, the court considered, for the first time, when an employee being "normally" required to work occurs.

### Facts

Abercrombie and his colleagues were hourly paid employees, contracted to work Monday to Friday. Due to poor trading, the employees entered into an agreement with the employer to reduce their working hours temporarily and to shorten their working week to Monday to Thursday. The agreement, which allowed the employer to call its employees back to their full working hours on one week's notice, initially ran until 26 June 2009 but was subsequently extended to 31 December 2009.

The employees' trade union, the GMB, requested confirmation that the employees were entitled to guarantee payments for the Fridays they were no longer working. The employer denied that the employees had a right to guarantee payments on the basis that, under the new agreement, they did not "normally" work on Fridays. The trade union disagreed and issued tribunal proceedings.

### Tribunals

The claims were initially dismissed by both the employment tribunal and the Employment Appeals Tribunal on the basis that a temporary change to an employee's contract did result in a change to the employee's "normal working hours". The Court of Appeal, however, overturned the earlier decisions and held in favour of Abercrombie and his colleagues.

### Court of Appeal

The court distinguished this from previous cases where employers had permanently varied employees' working hours under their contracts of employment. The difference in this case was that the variation to the employees' contracts of employment was temporary and not permanent.

The court concluded that, due to its temporary and "abnormal" nature, the employees' express agreement to alter their normal working days did not preclude them from the right to guarantee payments. The court held that Fridays remained days on which Abercrombie and his colleagues were "normally contractually required to work" and they were, therefore, entitled to guarantee payments for those days without work.

### Comment (CIPD)

While claims for guarantee payments are rare, employers that are considering reducing employees' weekly hours temporarily should be aware that they may, in fact, still be required to pay employees guarantee payments for any days they would normally have worked under their contracts of employment. Employees can currently claim up to a maximum of five guarantee payments in any three-month period.

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## Reasonable adjustments can include private psychiatric counselling

6 November 2013

An ET found that the employer had not made reasonable adjustments by failing to pay for the employee to have private psychiatric services and counselling.

The case of *Croft Vets Ltd & Ors v Butcher* is very interesting given the government's [recent consultation](#) on the provision of tax relief on medical expenditure. An Employment Tribunal found that an employer had not made reasonable adjustments by failing to pay for the employee to have private psychiatric services and counselling. The issue was not the payment of private medical treatment in general, but, rather, payment for a specific form of support to enable her to return to work and cope with the difficulties she had been experiencing at work.

[Emplaw Online](#) reports:

Mrs Butcher started work for the veterinary practice Croft Vets in 1996. Over time the practice expanded and she was promoted to finance and reception manager. In the period from 2007 to 2010 the practice opened a new hospital and acquired new phone and IT systems, both of which suffered the inevitable teething troubles, all of which Mrs Butcher had to manage on top of her existing responsibilities. Unsurprisingly, she was observed sitting in her office staring out of the window in tears shortly after returning to the office, following a week off, during which she had moved house. A few days later in May 2010 she went off sick with depression, never to return.

Her employers' initial response was to offer the choice between support to carry on with her existing workload or taking a lesser job at lower pay. After a few weeks, they asked her to see a consultant psychiatrist "to allow us to consider whether there are any steps we can take now to facilitate your return to work."

The psychiatrist reported back on 19 August that work related stress had triggered a severe depressive episode with marked anxiety. He

recommended that as well as antidepressant medication she should have six further psychiatric sessions including CBT to help her recover. He gave an indication that the cost would not exceed £750. There ensued some correspondence between employer and psychiatrist which confirmed the diagnosis, and discussed how long she might remain unwell; no steps were taken to implement the psychiatric recommendations. In November 2010 Mrs Butcher resigned: she alleged that that her employers had caused her breakdown, questioned the psychiatrist's diagnosis, and ignored his recommendations, all of which meant that she had suffered disability discrimination. The final view of the psychiatrist, (given after her resignation) was that given specialist help, while it was difficult to predict how long she would be unwell, the average period for recovery would be a year, but that given the severity of the issues at work, there was only a 50/50 chance of her being able to return at all.

An Employment Tribunal held that the employer had imposed a "provision, criterion or practice" that she be able to get back to work and perform her essential duties, and that they had failed to make reasonable adjustments to enable to do so by failing to act on the medical advice they had received. Croft Vets appealed, largely unsuccessfully, to the EAT ([Croft Vets Ltd & Ors v Butcher](#)), who agreed that requiring her to be able to return to work was a PCP, and accepted that it was possible for payment for private psychiatric treatment to be a reasonable adjustment. An appeal against a finding of constructive dismissal did succeed because the allegation had never, in fact, been raised before the ET.

This case does not establish a general principle that employers must pay for private treatment, but in this case the payment was for: "a specific form of support to enable the Claimant to return to work and cope with the difficulties she had been experiencing at work".

## Extension of Time - Unfair Dismissal

14 November

If a Claimant asserts that he did not have mental capability to bring a claim in time, does a tribunal have jurisdiction to hear a claim brought as soon as the Claimant was able to, if it was brought outside of the time limit?

Yes, on the facts of this case, according to [Norbert Dentressangle Logistics Limited v Mr Graham Hutton](#).

[Daniel Barnett](#) reports:

The Employment Judge concluded that it was not reasonably practicable for the Claimant to have presented the claim within the three month time limit. This was on the basis that the Claimant remained unwell and he was having significant difficulty as he explained it. The Employment Judge relied upon the Claimant's graphic description of his inability to function normally.

The Employment Judge then turned separately to look at the second question, that of whether the claim was brought within a reasonable time thereafter. It was the Claimant's position that he dealt with the claim as soon as he felt able. The Employment Judge had no reason to doubt the Claimant's credibility and accepted this.

The EAT concluded that it was reasonable for the Claimant to delay beyond the initial period, on the basis that it accepted this evidence.

## Repayment Clause: Unenforceable Penalty?

15 November 2013

Can a tribunal consider whether a repayment clause is an unlawful penalty?

Yes, holds the EAT in [Cleeve Link Ltd v Bryla](#).

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

The employer had paid money for fees and air flight to the agency which recruited the employee from Poland. The employment contract stated that such fees and costs could be deducted from the employee's wages, on a sliding scale which reduced over time. The employee was summarily dismissed for gross misconduct 12 weeks into her employment, whilst the clause was still in effect. The employer set the fees off against outstanding salary, and she brought an unauthorised deductions claim.

The employer argued that the question of whether the deduction clause was enforceable was irrelevant to the statutory scheme under Part II of the Employment Rights Act 1996. On appeal, the EAT (HHJ Hand presiding) disagreed, stating that an employment tribunal's jurisdiction



frequently involves the application of common-law contractual principles to situations where the cause of action is statutory.

The EAT also provided guidance as to when a repayment clause may be enforceable. The starting point is to look at the contract when it was entered into. Then the tribunal must decide, objectively, whether the purpose of the clause was to deter or to represent a genuine pre-estimate of loss. This question may involve a comparison between the amount stated in the clause and a realistic figure the employer might recover. If the difference is "extravagant" or "unconscionable", the clause is likely to be unenforceable.

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## National minimum wage for sleepovers

14 November 2013

Is the national minimum wage payable to homecarers for the time that they are sleeping in client's homes?

Yes, sometimes said the Employment Appeal Tribunal in [Whittlestone v BJP Home Support Ltd](#).

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

W was a care worker. She was paid £6.35 per hour for time spent attending to clients at their homes, but nothing for travel time. She also undertook "sleepovers", when she was required to be present at a client's home from 11pm to 7am, and for which she was paid £40. She was provided with a bed, and permitted to sleep except when her services were actually required. It was common ground that she was doing "time work" for the purposes of regulation 3 of the NMW Regulations 1999.

W was entitled to the NMW throughout the time she was required to be present, irrespective of whether she performed any tasks. She was also entitled to the NMW for her travel time between clients' homes.




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## TUPE liability

19 November 2013

Is a company administrator able to make dismissals for economic, technical or organisational reasons (ETO) and then sell the business on without passing TUPE liability for them to the purchaser?

Yes, if the reason for the dismissals was to enable the company in administration to continue to trade, holds the Court of Appeal in [Crystal Palace FC Ltd v Kavanagh and others](#).

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

The employment tribunal had found that the reason dismissals were made by the football club's administrator was to continue trading the business, with an ultimate objective of selling it on to a purchaser waiting in the wings. It followed that the dismissals were made for ETO reasons so that liability did not pass to the club's purchaser. The EAT rejected that approach as contrary to [Spaceright Europe Ltd v Baillavoine](#). It held that the administrator's admitted intention of selling the club on meant that the dismissals could not be made for ETO reasons. That meant that liability passed to the Club's purchaser.

The Court of Appeal finds that the EAT had been wrong to reverse the tribunal. Administrators "will almost always have a transfer of the undertaking as their ultimate objective" but that does not mean that the reason for dismissals made by them will always be to make the business more attractive to a purchaser. They can also be made to allow the business to carrying on trading. On the facts the dismissals at the Club had been made for that reason, so liability did not pass to the purchaser.

The case will be of considerable importance to insolvency professionals. It marks a partial retreat from Spaceright and a recognition (notably in the firm concurring judgment of Briggs LJ) of the importance of the wider policy objective of corporate rescue.

## Court finds HMRC entitled to tax under dispute where taxpayer left it to HMRC to calculate the tax

21 November 2013

A taxpayer must perform a calculation of the amount of tax due itself, rather than leave that calculation to HMRC, in order to retain possession of funds under dispute, the Supreme Court has ruled.

**Pinsent Masons** discusses the ruling:

The ruling still leaves open the possibility that taxpayers engaged in avoidance can retain possession of the cash, and so benefit from cash flow advantages, if they carry out their own tax calculations, according to tax expert Jason Collins of Pinsent Masons.

*"HMRC has for many years been taking steps to remove the ability for taxpayers to keep possession of the cash during a dispute about tax avoidance," he said. "As the disputes are lengthy, in some cases lasting a decade or more, even if the taxpayer has to pay the tax at the end of the process with statutory interest, the cash flow advantage of keeping possession of the cash in the meantime can of itself be quite attractive."*

*"The irony is that HMRC usually strings out its enquiries into avoidance: if it were to progress cases more quickly, it would not have to worry so much about the cash flow advantages. HMRC's latest guidance states that it will not delay in opening enquiries during the 12 month window, but that is only the start of it – the issue is how quickly the enquiry itself is progressed, which is often in the gift of HMRC itself," he said.*

The taxpayer in this case, Maurice Cotter, filed his tax return for 2007/08 on 31 October 2008, without making any claim for loss relief and leaving HMRC to calculate his tax liability for that year. On 24 December, HMRC sent Cotter a tax calculation showing that he owed over £210,000 in income and capital gains (CGT) taxes. The following January, Cotter's accountants submitted a 'provisional' loss relief claim showing employment-related losses of £710,000 for 2008/09 and asserting that no further tax was due because of this.

HMRC opened an enquiry into the loss claim under the Taxes Management Act (TMA); however, it claimed the unpaid tax for 2007/08 through the county court, ignoring the loss claim that they were enquiring into. Cotter appealed on two grounds: firstly, that his loss for 2008/09 covered the amount owed for the previous year; and secondly, that the county court did not have the jurisdiction to hear the dispute.

In its judgment, the Supreme Court overturned an **earlier decision** by the Court of Appeal and found in favour of HMRC. As the loss claim for 2008/09 was not made 'in a return', the department was right to proceed to recovery through the courts. HMRC had argued that not allowing it to do so could expose it to the risk of "irrelevant claims" with no merit being made in tax return forms in order to postpone the payment of tax that would otherwise be payable.

*"Where, as in this case, the taxpayer has included information in his tax return but has left it to the Revenue to calculate the tax which he is due to pay, I think that the Revenue is entitled to treat as irrelevant to that calculation information and claims, which clearly do not as a matter of law affect the tax chargeable and payable in the relevant year of assessment,"* said Lord Hodge in his leading judgment.

*"Matters would have been different if the taxpayer had calculated his liability to income and capital gains tax by requesting and completing the tax calculation summary pages of the tax return. In such circumstances the Revenue would have his assessment that, as a result of the claim, specific sums or no sums were due as the tax chargeable and payable for 2007/08. Such information and self assessment would in my view fall within a 'return' under [the TMA] as it would be the taxpayer's assessment of his liability in respect of the relevant tax year,"* he said.

HMRC welcomed the "important" ruling, which it said could save the UK £500 million once the amount owed in around 200 similar cases was settled. However, tax expert Jason Collins described the verdict as "a deft bit of judicial engineering".

*"Whilst a sizeable victory for HMRC in this case, it does leave open the possibility that taxpayers engaged in avoidance are still able to retain the possession of the cash if they carry out their own tax calculations,"* he said. *"HMRC has in recent years consulted on amending its rules to take the 'cash flow advantage' away - including an aborted attempt to exact heavy penalties for failed planning. Whilst that initiative was put on the back burner, HMRC is now pushing to impose penalties if taxpayers do not give the cash back where related litigation goes against them at any stage of appeal in the courts and the scheme is ultimately found not to work."*

*"Perhaps HMRC might now be thinking that it would be simpler to build on this decision and overhaul all its collection rules to give it broader powers to collect payment or suspend a repayment wherever tax avoidance is alleged. If they were to do this, clear safeguards would need to be put in place to narrow the remit to cases of proper avoidance,"* he said.



## Expenses and Benefits

### CIPP and AAT joint response to the OTS employee benefits and expenses interim report

3 October 2013

The CIPP and AAT have submitted a joint formal response to the 'Review of employee benefits and expenses: [interim report](#)' by the OTS (Office of Tax Simplification), which confirms both organisations support the OTS recommendations.

The CIPP and the AAT surveyed their prospective members to obtain views on the quick wins and future recommendations by the OTS in respect of employee benefits in kind. Both the AAT and the CIPP support the OTS recommendations. Encouragingly so does the Exchequer Secretary to the Treasury (XST), David Gauke, as he states in a recent [letter](#) to the OTS requesting they continue with their work and report further in the New Year. The full CIPP and AAT joint response can be accessed through the link on the CIPP [website](#).

### Mayor of London proposing salary sacrifice season tickets to assist commuters

9 October 2013

It would appear from one of Boris Johnston's columns in the Telegraph that a recent experience on a London double decker bus has prompted him to propose the use of salary sacrifice to reduce travel costs for workers.

Boris Johnson has written a piece in his [Telegraph column](#) after a shopping trip into London where he travelled by double decker bus. He observed that "Almost 40 per cent of the compliment are travelling free or at cut price; the pensioners with their freedom passes, the kids, the veterans, the disabled, those in search of work..."

He goes on to say, "the result is that the entire burden of fare paying is carried by the 60 per cent and that includes the people who make this country work, the people on low or moderate incomes who travel large distances every day to their places of employment and who have absolutely no choice in the matter." Boris concludes, "It is time we did something about it and that something is to give tax relief on travel."

He suggests that a scheme comparable to the current Child Care Voucher or Cycle to Work scheme should be introduced whereby the employer would buy the season ticket and deduct the cost from the employee's pay before the pay is assessed for tax, aka a salary sacrifice arrangement. He also suggests that the new scheme would all be administered online to keep costs down and that the relief would only apply at basic rate.

#### CIPP comment

The CIPP supports salary sacrifice as the schemes are beneficial to both the employer and the employee through tax and NI savings. The recent OTS Expenses and Benefits Interim [report](#) highlighted a lack of understanding and/or resource of salary sacrifice in the SME sector and coupled with the fact that salary sacrifice schemes are not operated by all businesses, would the commuters who really need these savings actually benefit? Under current rules employers can offer interest free beneficial loans of up to £5,000 pa for season tickets but this is a post-tax arrangement. As announced in the year's Budget, this amount is due to be increased to £10,000 from April 2014.

At this stage this is only a proposal that has been put forward to the Chancellor. The CIPP would expect formal consultation to take place before any decision is made. We will of course keep our ears to the ground on this one and keep members duly informed.

### OTS progress report on 'Quick Wins' from employee benefits and expenses review

25 October 2013

A progress report has been published on the 'quick wins' identified in the [Office of Tax Simplification](#) (OTS) [interim report](#) which includes voluntary payrolling of benefits in place of reporting benefits on forms P11D.

These 'quick wins' are proposals that the OTS consider can be done quickly and easily and which would involve minimal change but would make the tax system (particularly administrative aspects) simpler for businesses and their employees in relation to benefits and expenses.

The 'quick wins' have been categorised into four areas:

- already implemented;
- should be implemented as soon as possible;



- will require further work before they can be put into effect (taking into account issues such as whether they will require legislative amendments or changes to HMRC or employer computer systems or processes); and
- some being taken forward by other routes.

### Already implemented

Some of the quick wins suggested in the interim report have already been put into operation - the recommendations were based on what consultees told the OTS so suggests HMRC's communication of the items listed below could be improved.

- The ability for amended forms P11D and P11D(b) to be submitted online. HMRC has confirmed that it is now possible to submit P11D(b) online, and that this facility will be also available in relation to P11D for tax year 2013/14.
- Provision for the reimbursement of car fuel where the employee contributes by 6 July. This is already permitted, and is confirmed in HMRC guidance manuals (see EIM25660 and NIM16177).
- Providing new employers with a link to the relevant sections of the HMRC website when they first register, in order to raise awareness of the employee benefits and expenses issues that may be relevant to their business. HMRC has confirmed that new employers are sent a CD Rom which provides a link to the HMRC website. However, the OTS may look at additional ways of raising employer awareness of employee benefits and expenses as part of their wider review on HMRC administration.
- Allowing voluntary use of form P46(Car) when a car is replaced. HMRC has confirmed that it is already possible to submit this form online when a car is replaced.

### Should be implemented soon

The OTS say that the following could and should be implemented within the next few months, subject to the availability of HMRC resources. These are:

- Voluntary payrolling of benefits in place of reporting benefits on forms P11D. HMRC has confirmed that it is already looking at this area, and as part of OTS's review of HMRC administration they will be working closely with HMRC to explore what gradual changes can be phased in, alongside any legislative changes that may be necessary, in order to achieve this.
- HMRC to publish a list of benefits which they consider to be trivial, presumably with limits on the amounts.
- HMRC to better publicise the guidance that it has available in relation to employee benefits and expenses, and improve the access and automatic links to relevant information - an issue that is relevant to several of the quick wins, specifically:
  - improving website guidance and cross-referencing generally, and keeping the "What's New" pages up to date;
  - improved general guidance on dispensations and PSAs, including the availability of PSAs for overseas employees and non-domiciles;
  - raising awareness that there is a list of standard items and conditions that will always qualify for dispensations (which appears at COG907120), and also raising awareness and availability of the online process for applying for dispensations;
  - improving guidance regarding the operation of the OT tax code in relation to termination payments, and the timing for issuing a P45; and
  - raising awareness that it is possible to voluntarily use form P46(Car) when a car is replaced and complete this online.
- HMRC to review the published list of employments where it is "customary" to get accommodation.

#### CIPP comment

As identified in our joint [survey](#) with the AAT, if payrolling were a voluntary option, the impact on an employee's tax affairs could be substantial. It leaves them exposed to the possibility of double taxation occurring if the employee moves between jobs and one employer payrolls benefits and the other does not. The CIPP and AAT both support this concern. However the CIPP does support the proposal that where voluntary payrolling of benefits is permitted that a P11D wouldn't be required.

View the full OTS [progress report](#) to read which 'quick wins' will require further work before they can be put into effect.

## Tax-Free Childcare

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

15 October 2013

The CIPP policy team has submitted its formal response to the consultation on the design and operation of the new Tax-Free Childcare scheme.

#### Background

At Budget 2013, the government announced the introduction of Tax-Free Childcare for working families whereby the government will provide 20 per cent of working families' childcare costs, subject to an annual limit of £1,200 contribution for each child. This is equivalent to basic



rate tax relief of childcare costs up to £6,000 a year.

Under Tax-Free Childcare, parents will register with a voucher provider and open an online account. The government will then 'top up' payments into this account at a rate of 20p for every 80p that families pay in, subject to the above limit.

Households in which all parents work but do not receive support through tax credits (or Universal Credit) will be eligible for Tax-Free Childcare, so long as neither parent is an additional rate taxpayer.

Tax-Free Childcare will be delivered by HMRC and will ultimately be available to up to around 2.5 million working families in the UK – more than the current Employer-Supported Childcare system, which is only available to some employees. Employer-Supported Childcare will therefore be phased out, though existing members will be able to choose whether to remain on their current scheme or move to Tax-Free Childcare.

Tax-Free Childcare will be phased in from autumn 2015. From the first year of operation, all children up to age five – and disabled children under the age of 17 – will be eligible. The scheme will then build up over time to include children under 12.

### **CIPP response**

The policy team has been involved in consultation meetings and our response includes anecdotal evidence as well as collective member views from the survey we distributed in September.

You can read our response in full through the link at the bottom of this page, but in summary we made the following recommendations:

Providing accurate guidance and information is critical to the success of this process. Tailored to the needs of the different stakeholders involved: employers, employees, voucher providers, childcare providers, professional advisers and the media; information should be delivered in a timely manner and be backed up by a range of support services provided by HM Revenue & Customs.

The online solution should be fully tested, and ideally made available, before the scheme goes live in autumn of 2015. This will avoid unnecessary and disruptive confusion for working parents who will inevitably turn to their employers for assistance.

The guidance should make very clear that it is not mandatory for employers to have a role in the new scheme.

We would ask you to recognise that employers who have sufficient resource will naturally look to help parent employees where they can. However, smaller employers or those who lack sufficient resource should not be 'confused' into providing support by misleading guidance.

On a final note, we noted that nowhere within any eligibility criteria is the requirement for the parent to be a tax payer and whilst we acknowledge that this might indeed put them within tax credits or universal credit thus making them ineligible it does strike us that the current name 'tax-free childcare' and terminology used might be confusing.

In our response we concluded:

The CIPP are delighted that there will be no mandatory role to play for the employer or payroll practitioner with the operation of Tax-Free Childcare. However, we do welcome government recognition of the vital role that employers and the payroll industry already play in the current operation of tax efficient Employer Supported Childcare schemes

We also welcome the proposal that the design of the Tax-Free Childcare scheme will have no impact on the existing rules around the provision of work place nurseries, which provides a measure of consistency for affected employers and we are grateful for that early confirmation.

Experience tells us that employees will turn to their employers, generally through the professionals that process their pay, on occasions when they are unclear about the tax and benefits system, so we also value the thought that has gone in to ensuring that employers, who wish to remain involved, can do so, but we are concerned that enthusiasm to keep the employer involved could easily result in confused guidance being issued to the employer community running the risk of diluting the non-mandation message.

Thank you to those members (27) who took the time to respond to our survey. Members can read the full response to this consultation through our [news pages](#).

# HMRC

## General HMRC News

### HMRC briefing on High Income Child Benefit Charge

3 October 2013

HMRC has published a briefing detailing who is affected by the child benefit charge, how it works and how it is administered.

Any taxpayer with income above £50,000 in a tax year who receives Child Benefit, or lives or lived with a partner receiving Child Benefit, is now liable to pay an income tax charge. The briefing explains who is affected by the charge, how it works, how it is administered and the information HMRC provide to customers.

#### High Income Child Benefit Charge

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### HMRC targeting health professionals in new tax campaign

10 October 2013

Physiotherapists and osteopaths are among the health professionals targeted in a [new tax campaign](#) giving a time limited opportunity to bring their tax affairs up to date.

The Health and Wellbeing Tax Plan is a new campaign which includes physiotherapists, occupational therapists, chiropractors, osteopaths, chiropodists and podiatrists. Homeopaths, dieticians, nutritional therapists, reflexologists, acupuncturists, psychologists, and speech, language and art therapists and others are also covered.



The campaign is not aimed at doctors and dentists, who were covered by a previous HMRC campaign, nor at nurses or social workers.

Health professionals have until 31 December 2013 to tell HMRC that they would like to take part in the campaign, and until 6 April 2014 to disclose and pay the tax owed.

After 31 December, HMRC will take a much closer look at the tax affairs of these health professionals. By using this campaign to come forward voluntarily, any penalty they might have to pay will be lower than if HMRC comes to them first.

Also included in HMRC's latest tax cheat crackdowns are:

- landlords who rent out residential property;
  - security guards, bouncers and their employers, focus being on workers in London and the South East;
  - the construction industry in London;
  - hidden wealth in the Midlands – including people with offshore accounts and those living lifestyles beyond their obvious means through assets from undeclared income; and
  - the hidden economy in the second-hand motor trade in the Midlands.
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### 2011 to 2012 tax gap figures published

14 October

Figures released by HMRC estimate the tax gap for 2011 to 2012 at 7% (£35 billion) of tax due, continuing a long-term downward trend.

The tax gap (the difference between the amount of tax HMRC believes is due and the amount of tax actually collected) has fallen steadily over the last six years, from 8.3% of tax due in 2005 to 2006 to 7.1% in 2010 to 2011 and 7% in 2011 to 2012. The tax gap is regularly revised to take account of improved methods and the latest available information, and the [figures](#) published today include revisions going back to 2005 to 2006. Alongside existing estimates of the beer and spirits tax gaps, a new estimate for the wine tax gap has been included for the first time. The tax gap is compiled from around 30 separate estimates for different taxes and is broken down by type of tax, customer group and customer

behaviours, including tax evasion and avoidance, customer error, the hidden economy, criminal attacks and where tax cannot be collected because businesses have become insolvent.

Exchequer Secretary David Gauke said:

*"These figures show the tax gap is continuing to fall. The vast majority of businesses and individuals pay the taxes they owe. But where they don't it is for HMRC to challenge non-compliance fiercely, protecting money that would otherwise be lost. Since 2010, the Government has invested nearly £1 billion in additional compliance initiatives over the Spending Review period. HMRC is on track to secure a further £44 billion in tax revenues over the next two years."*

Edward Troup, HMRC's Tax Assurance Commissioner and Second Permanent Secretary, said:

*"The range of non-compliance behaviours revealed by these tax gap figures underline why it is so important for HMRC to step up our wide-ranging activities against the minority who aren't paying what's due, whether they are SMEs, individuals, big business or organised criminals. This isn't just critical for the nation's finances: it's also important to protect the vast majority of honest businesses and individuals from being cheated by the unscrupulous few."*

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## An opportunity for you to help HMRC shape the design of a new online service for small and medium businesses

17 October 2013

HMRC is developing a new online service for small and medium businesses. The new service will bring together in one place everything businesses need to manage their tax affairs.

From a personalised homepage they will be able to view key information and access online services to manage their business tax affairs, for example: file tax returns, check and make payments, view important dates for future action.



HMRC is looking for volunteers to take part in a live trial of an early version of this new online service. Volunteers will be able to access the service from any internet-enabled PC they are currently using and no special equipment or expert IT knowledge will be needed, just basic internet skills.

Volunteers will be asked to provide some feedback on their experience of using the new service. This is likely to be done using short, occasional online surveys during the trial and, possibly, a slightly longer survey at the end of the trial. None of the surveys is expected to take more than 5 minutes to complete (unless you want to provide a lot of narrative comment). If you're a frequent user of the new service then you will not be asked to complete a survey every time you log in, and you will always have the option not to complete a survey.

Your feedback will be used to help shape the development and design of the service before it is made available to all small and medium businesses in 2014. Depending on the progress and outcome of the trial, HMRC may want to collect more detailed feedback, for example through telephone interviews and interest groups, and as a volunteer you will be offered an opportunity to participate – but this is not compulsory and it is not a condition of taking part in the trial.

If you are interested in taking part in this trial, please register your interest with HMRC by 16 November 2013 using the link below. This will take you to an online form where you will be asked to provide some basic information about your business, such as the nature of your business and your business postcode. HMRC will use this information to ensure that a diverse range of small and medium businesses are selected to participate in the trial.

Please note: by registering your interest to take part in the trial you will be giving HMRC permission to contact you. This will only be to confirm whether or not you have been selected to take part in the trial and, if you have, to obtain feedback about the new service.

[Link to form](#)

## HMRC supporting 'Get Safe Online Week'

23 October 2013

Last year alone, 87 per cent of small businesses suffered a cyber attack which cost between £35,000 and £65,000.

Cyber crime affects many small businesses including tax agents and advisors. This week HMRC is supporting Get Safe Online Week which aims to raise awareness of internet security.

Businesses and individuals increasingly use online for their transactions with HMRC so it is vital that they protect their online systems effectively.

There are a number of simple things tax agents and advisors can do to stay safe online, including:

- keep login details safe and never use clients' login details
- change passwords regularly
- install anti-virus software onto all systems
- keep computers secure including computers used for home working.

Follow the links below for further information:

- [Tax agent-specific tips](#)
- [Practical advice and tips for small businesses and consumers](#)
- [Get Safe Online](#)

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## Limits on Income Tax reliefs - Guidance

24 October 2013

HMRC has published guidance on the limits on Income Tax reliefs enacted in the Finance Act 2013 and having effect from the tax year 2013-14.

The limit applies to certain reliefs, which were previously unlimited and that are available to reduce an individual's total income. The limit is the greater of £50,000 or 25 per cent of the individual's adjusted total income for a tax year.

The guidance explains, with supporting examples, how the limit is calculated, the measure of income used to calculate the limit, which reliefs are subject to the limit, and how different circumstances are treated.

[Limits on Income Tax reliefs - Guidance](#)

## Stakeholder weekly updates

HMRC circulates weekly updates for stakeholders, which looks to provide informal highlights as a result of listening to employer feedback and working in partnership with stakeholders.

## HMRC stakeholder update - number 37

30 September 2013

### Real Time Information

[Real Time Information - Reconciling 2013-14 PAYE charges](#)

HM Revenue & Customs (HMRC) has published a report into the findings from an analysis of disputed PAYE charges.

[Real Time Information \(RTI\) survey closed on 20th September - thank you to all who took part](#)

HM Revenue & Customs (HMRC) will analyse the feedback received alongside other customer insight work and evidence and consider options, before making recommendations to Ministers in November. We will continue to keep key stakeholders updated with progress, and engage with them on the options.



## Employer Bulletin – Issue 45

### [Employer Bulletin Issue 45](#)

Issue 45 of the Employer Bulletin is now available. Aimed at employers and agents, it contains important information and news about topics which may affect payroll obligations to HM Revenue & Customs (HMRC).

## More 0300 Helpline telephone numbers

### [New numbers for Corporation Tax, Tax credits and others](#)

HMRC introduces new 0300 and 0345 telephone helplines for Corporation Tax, Tax credits, Blind Persons priority line and Retirement Annuity contracts.

## Toolkits update

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

HM Revenue & Customs (HMRC) has published the updated Inheritance Tax Toolkit to help agents avoid making common errors when completing form IHT400. This toolkit is effective for deaths occurring on or after 6 April 2013.

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## HMRC stakeholder update - number 38

7 October 2013

### Real Time Information

#### [PAYE for employers: Real Time Information and Exam and Elect employers](#)

HM Revenue & Customs (HMRC) are writing to Exam and Elect scheme employers about reporting PAYE in real time from April 2014.

### Expatriate Employers

#### [PAYE for employers: Update to Expatriate Employers Frequently Asked Questions](#)

The questions and answers now include important information for users of EP Appendix 5 and 6.

### New 0300 Helpline numbers

#### [New number for Probate, Inheritance Tax, Trust and Deceased Helplines](#)

HM Revenue & Customs (HMRC) introduce more 0300 telephone numbers for Probate, Inheritance Tax, Trust and Deceased Helplines and changes to other helpline numbers.

### New Gift Aid guidance

#### [New and updated charity guidance](#)

HM Revenue & Customs (HMRC) have published a Gift Aid Small Donations Scheme helpsheet and have also updated the detailed guidance on both non-charitable expenditure and tainted charity donations.

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## HMRC stakeholder update - number 39

14 October 2013

### Online Services system upgrade postponed

HM Revenue & Customs Online Services system upgrade postponed



We have decided to postpone this weekend's scheduled upgrade of our systems and we are sorry if this has caused you any inconvenience.

## **Tax Agent Strategy – updated guidance**

### [HM Revenue & Customs \(HMRC\) relationship with tax agents](#)

HMRC has updated their guidance on the Tax Agent Strategy - including an update on the Agent and Client Statistics pilot.

## **Gift Aid repayments**

### [Gift Aid repayments - no more R68\(i\) claims](#)

HM Revenue & Customs (HMRC) no longer accept Gift Aid repayment claims made on R68(i) forms. You must now use the Charities Online service.

## **Pension Scheme members – new Checking Tool**

### [Pension Statements and the Annual Allowance Checking Tool](#)

A new tool has been released so that pension scheme members can check whether they need to calculate an annual allowance tax liability and complete a Self Assessment tax return.

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## **HMRC stakeholder update - number 40**

18 October 2013

### **Postponed IT upgrade will take place this weekend (Friday 18th October from 8pm)**

#### [HM Revenue & Customs \(HMRC\) online services: maintenance work to go ahead this weekend](#)

The postponed IT upgrade will take place this weekend and to lessen the impact on you and your business we are reducing to an absolute minimum the time necessary to make the changes.

## **Pay As You Earn (PAYE)**

### [Pay PAYE Settlement Agreements](#)

Make sure you pay 2012-13 PAYE Settlement Agreement payments of tax and Class 1B NICs by the deadline or you may get a late payment penalty. When paying use the reference number on your PSA payslip beginning with 'X', not your Accounts Office reference.

### [The National Insurance Contributions \(NICs\) Employment Allowance](#)

Up to £2,000 off Employer Class 1 NICs each year from 6 April 2014

### [Chancellor's Autumn Statement 4 December 2013](#)

The Autumn Statement 2013 will be made by the Chancellor of the Exchequer, George Osborne on Wednesday 4 December.

## **Qualifying Recognised Overseas Pension Scheme – amended forms**

### [New QROPS forms APSS 251 and APSS 253](#)

These forms have been amended as a result of Statutory Instrument 2259 and should be used from 14 October 2013.

## HMRC stakeholder update - number 41

28 October 2013

### Real Time Information

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

A reminder to employers about the PAYE filing and payment position for employers reporting PAYE in real time.

#### [Helping employers keep up to date with their PAYE](#)

From today HM Revenue & Customs (HMRC) are introducing a series of new electronic messages to help employers keep their PAYE up to date.

### Pay As You Earn (PAYE)

#### [Automatic cancellation of a PAYE scheme](#)

From 28 October 2013 HM Revenue & Customs (HMRC) will be issuing letters to employers to cancel PAYE schemes where there has been no activity for 120 days. We have also published a [News Release](#) about this.

#### [PAYE Desktop Viewer \(PDV\) - required update for all users](#)

HM Revenue and Customs (HMRC) has updated the PDV application. All PDV users should download and install the new version of the PDV now to ensure that they can view the latest versions of these notices.

#### [Treatment of Class 2 contributions recovered through the PAYE tax code](#)

The Department for Work & Pensions has published draft regulations about the treatment of class 2 contributions recovered by HM Revenue & Customs (HMRC) through the PAYE tax code for the purposes of social security benefits.

#### [HMRC develops a new approach to Business Records Checks](#)

HMRC are changing their Business Record Check activity to ensure it better targets help to those who are likely to have inadequate records.

### Agent Update

#### [Agent Update 38 \(PDF 535K\)](#)

The bi-monthly round up of the latest developments in tax, HM Revenue & Customs (HMRC) service and consultations for accountants and tax professionals and a section on the latest news and issues from the Working Together network.

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## HMRC stakeholder update - number 42

4 November 2013

### Real Time Information

#### [Basic PAYE Tools - new version](#)

Basic PAYE Tools RTI has been updated - version 13.2.13232 is now available for users of Windows and Linux operating systems and version 13.2.13231 is available for users of the Mac operating system.

### Government Gateway closure – Sunday 3rd November 2014

The Government Gateway will be closed between 09:00 and 17:00 on Sunday 3 November. This is due to planned maintenance. Although this is unrelated to Real Time Information (RTI), real-time PAYE submissions will be affected.

Employers using commercial software or HMRC's Basic PAYE Tools will not be able to send their real-time PAYE submissions during this time. Anyone who tries to submit at this time will receive a server error message and will try again later.

We advise all our customers to send their real-time PAYE submissions before 9:00 or as soon as they reasonably can after the gateway reopens at 17:00 on Sunday 3 November. There are no penalties for sending submissions later in this instance. We are very sorry for any inconvenience this may cause.

EDI customers are not affected.

Full details are available on our [service availability](#) page on our website.

## **Pay As You Earn (PAYE)**

### **Outstanding Class 2 National Insurance Contributions to be collected from PAYE**

From April 2014 HMRC may collect outstanding Class 2 NICs by adjusting the tax codes.

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## **HMRC stakeholder update - number 43**

*11 November 2013*

Apology – HMRC apologise for reporting in Weekly Update 42 that the Government Gateway was closed between 9:00 and 17:00 on 3rd November 2014 – this should have read 3rd November 2013. As the date has now passed HMRC hope this didn't cause anyone too much inconvenience.

## **Employer Orderline – new contact number**

Contact details for the Employer Orderline are changing – the new telephone number which is available to use now is 0300 123 1074.

## **New approach to Business Records Checks – Update**

### **HMRC develops a new approach to Business Records Checks**

Update - this guidance has been amended. HMRC are changing their Business Record Check activity to ensure it better targets help to those who are likely to have inadequate records.

## **Employee bonuses tax avoidance scheme**

### **Spotlight - Employee bonuses: avoidance scheme involving Restricted Securities**

HMRC has published a new Spotlight about an employee bonuses tax avoidance scheme involving Restricted Securities.

## **Self Assessment deadline – guidance**

### **Self Assessment deadline - information for agents**

Guidance for tax agents and advisers to help manage the 31 January 2014 Self Assessment deadline has been published.

## **Red diesel – changes to rules for agricultural vehicles**

### **Changes to rules on using red diesel for gritting with agricultural vehicles**

Changes to Schedule 1 to the Hydrocarbon Oil Duties Act 1979 (HODA) allowing certain agricultural vehicles to use red diesel when gritting roads comes into force today.

## National Insurance

### The National Insurance Contributions (NICs) Employment Allowance

16 October 2013

The NICs Bill has now been introduced to Parliament, starting the legal process to bring the Employment Allowance regulations into force for April 2014.

The Chancellor announced the creation of a NICs Employment Allowance in the 2013 Budget. This is planned to start on 6 April 2014 and moved a step closer to becoming law with the First Reading of the Bill on 14 October 2013.

Businesses, Charities and Community Amateur Sports Clubs will be able to reduce their Employer Class 1 NICs bill by up to £2,000 per year. The Employment Allowance will be straightforward to claim using standard payroll software.

More details on how to claim the Employment Allowance will be available in the New Year - there is no need to call HMRC or do anything to claim the Employment Allowance now.

#### Further information

- [GOV.UK website- NICs Bill](#)
- [Corporate report on National Insurance: Employment Allowance](#)

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### Treatment of class 2 NICs recovered through the PAYE tax code: draft amended regulations

23 October 2013

HMRC intend to recover certain unpaid class 2 National Insurance contributions debts through a person's PAYE tax code beginning in the 2014/15 tax year.

HMRC are amending the "Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations" to specify that these contributions will be treated as paid on the 5 April in the tax year in which they are collected. From that date they will count towards social security contributory benefits in the same way as any other late paid contributions.

HMRC has published the draft amended regulations for information before they are laid in Parliament.

[Draft Social Security \(Crediting and Treatment of Contributions, and National Insurance Numbers\) \(Amendment\) Regulations 2013](#)

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### Entertainers and Class 1 National Insurance Contributions

20 November 2013

HMRC has published a brief which explains their position in relation to the NIC liability of Entertainers from 6 April 2014 onwards, subject to the proposed changes being approved by Parliament.

#### If you engage the services of entertainers

From 6 April 2014, you will not be required to operate Class 1 NICs for the entertainers you engage. If you are currently deducting employees' Class 1 NICs from the payments you make to your entertainers (including additional use payments such as royalties), and paying the respective employers' Class 1 NICs on these payments, you should continue to do so up until 5 April 2014. From 6 April 2014 however you should cease to do this.

If you use an automated payroll system or an external payroll provider service you will need to ensure your systems or payroll arrangements are updated to ensure that Class 1 NICs continue to operate on payments you make to entertainers up to 5 April 2014, and cease to be operated from 6 April 2014.

Follow the link below to read full details.

[Revenue & Customs Brief 35/13](#)

## National Minimum Wage (NMW)

### NMW policy on HMRC enforcement and naming and shaming employers

2 October 2013

The government has published a document which sets out how the revised naming scheme will operate.

In line with the recommendations of the Low Pay Commission, on 1 October 2010 BIS announced a scheme to name employers who flout NMW law. The scheme came into effect on 1 January 2011 and a revised scheme came into effect on 1 October 2013.

The [National minimum wage: policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break national minimum wage law 2013](#) sets out how the scheme will operate and the criteria for naming employers.

This document also sets out the how the Government operates the civil and criminal enforcement of the NMW in the light of the changes introduced by the Employment Act 2008, which came into effect on 6 April 2009.

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### The UK and London Living Wage rates have increased

5 November 2013

The UK Living Wage rate rose today by 20p to £7.65 per hour, and the London Living Wage rate rose by 25p to £8.80 per hour. The current national minimum wage rate for adults is £6.31.

Over 30,000 low-paid workers stand to get a pay rise of up to £400 a year because they work for companies signed up with the Living Wage Foundation as a Living Wage Employer.

There are now 432 accredited Living Wage Employers. For more details visit the [Living Wage Foundation](#) website.

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### TUC say government must increase minimum wage by more than the rate of inflation

12 November 2013

A bold rise in the national minimum wage (NMW) is needed next year to ease the living standards squeeze on the lowest paid workers, the TUC has said in its submission to the Low Pay Commission (LPC).

The warning comes as the TUC has calculated that the annual salary of a full-time worker on the minimum wage would be £770 higher this year, had the NMW kept pace with price rises since 2007.

The TUC presented evidence to the LPC on next year's minimum wage rates saying that the government must increase the minimum wage by more than the rate of inflation or average earnings growth to avoid putting even more financial strain on hard-working low-wage families.

Despite inflation currently running at 2.7 per cent, the government last month announced a minimum wage increase of just 1.9 per cent per cent for adults and 1 per cent for younger people. These small rises have meant a real-terms pay cut for around a million minimum wage workers, says the TUC.

The TUC argued that with higher household spending power so vital towards building a sustainable economic recovery, too low an increase in the minimum wage would limit demand and put more strain on the public finances. When employers pay decent wages, government spending on in-work benefits and tax credits falls, whilst revenues are boosted as income tax and national insurance receipts rise.

The TUC's view is that as the long overdue economic recovery strengthens in future years, increases in the minimum wage should become more generous. A bigger increase in the minimum wage in 2014 is also needed to restore what has been 'lost' in recent years.

TUC General Secretary Frances O'Grady said: "The recent minimum wage increase in October was actually a real-terms pay cut for hundreds of thousands of low-paid workers.

[Read the full press release from the TUC](#)

# Pay As You Earn

## Expat News

### Update to real time information expat FAQs

4 October 2013

HMRC has updated the expat frequently asked questions (FAQs). The update includes important information for users of EP Appendix 5 and 6.

[Expat employers FAQs](#)

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### BDO Expatriate Tax Newsletter

21 October 2013

BDO has kindly shared their latest Expat Tax Newsletter with the CIPP.

For members who deal with international payroll, the [BDO](#) Expat Tax Newsletter provides a brief overview of issues affecting international assignees, predominantly, but not exclusively, from a tax and social security perspective.

With thanks to BDO for sharing their newsletter. You can view the newsletter by going to the CIPP News item through the link below.

[BDO Expatriate Tax Newsletter](#)

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### Uruguay and UK Tax Information Exchange Agreement

22 October 2013

A Tax Information Exchange Agreement (TIEA) was signed with Uruguay on 14 October 2013.

The new TIEA with Uruguay will enable the UK and Uruguay to exchange information to the OECD (Organisation for Economic Co-operation and Development) to ensure that the right amount of tax is paid in each country in the future.

The Agreement will come into effect as soon as each government has completed the necessary procedures to give effect to it under its domestic laws.

The text of the TIEA can be accessed through the link below.

[Tax Information Exchange Agreements signed/not in force](#)

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### UK and Isle of Man sign agreement to improve international tax compliance

22 October 2013

As a result of an [agreement](#) between the UK and the Isle of Man, certain financial data on UK taxpayers with accounts in the Isle of Man will automatically be reported to HMRC each year.

An Arrangement comprising of an Exchange of Letters amending the 1955 Arrangement between the UK and the Isle of Man was signed in London on 10 October 2013 by David Gauke MP, Exchequer Secretary to the Treasury and Allan Bell MHK, Chief Minister of the Isle of Man. The new Arrangement permits comprehensive automatic and spontaneous exchanges of information.

This is the first time that an agreement based on the US Foreign Account Tax Compliance Act (FATCA) has been signed between two parties neither of which is the US.





The government is currently in discussions about similar agreements with the rest of the Crown Dependencies and the Overseas Territories.

The text of the new Arrangement is available on HMRC's website, and will be published by the Stationery Office as soon as it is presented to Parliament for approval.

[Go to Tax treaties signed/not in force](#)

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## Guernsey and Jersey: Tax Information Exchange Agreements (TIEAs)

24 October 2013

Exchange of Letters amending the 2009 TIEAs were signed in London on 22 October 2013 to allow for the comprehensive automatic and spontaneous exchanges of information.

Exchange of Letters amending the 2009 Tax Information Exchange Agreements (TIEAs) were signed in London on 22 October 2013 by David Gauke MP, Exchequer Secretary to the Treasury and Deputy Peter Harwood Chief Minister for Guernsey and Senator Ian Gorst - Chief Minister for Jersey respectively.

[Tax Information Exchange Agreements signed/not in force](#)

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The text of the amended Agreements is available on HMRC's website, and will be published by the Stationery Office as soon as it is presented to Parliament for approval.

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## Composite payment scheme process

25 October 2013

The process for sending payments to HMRC in January 2014 is unchanged from 2012 and 2013 so new packs will not be issued automatically.

Employers should use the template spreadsheet and reference number provided for 2012.

The spreadsheet needs to be sent for processing 5 days before the payment is made to HMRC.

If the spreadsheet or information sheet is no longer available, please contact:

- [aoc.directpayments@hmrc.gsi.gov.uk](mailto:aoc.directpayments@hmrc.gsi.gov.uk) where payments are due to be made to Cumbernauld; or
  - [aos.directpayments@hmrc.gsi.gov.uk](mailto:aos.directpayments@hmrc.gsi.gov.uk) where payments are due to be made to Shipley.
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## RDR1 - Residence, domicile and the remittance basis

25 October 2013

RDR1 is a guide for UK residents and non-residents on the residence, domicile and remittance basis rules for tax years 2012-13 onwards. It replaces the booklet HMRC6.

The [RDR1 guidance](#) reflects the introduction of the legislative changes to the remittance basis that came into effect for tax year 2012-13 and the introduction of the statutory residence test for tax years 2013-14 onwards. However, comprehensive details of these changes are not yet included and are available in the following notes:

- Information Note; Remittance Basis
  - [Guidance Note: Statutory Residence Test \(SRT\)](#)
  - [Guidance Note: Overseas Workday Relief \(OWR\)](#)

An updated RDR1 booklet, covering all these changes will be published later this year.

[RDR1 - Residence, domicile and the remittance basis](#)

## UK signs automatic tax information sharing agreement with Cayman Islands

7 November 2013

Financial information on UK taxpayers with accounts in the Cayman Islands will now be automatically provided to HMRC.

Following the commitment of all the Overseas Territories earlier this year to sign such agreements, the Cayman Islands are the first Overseas Territory to formalise their agreement with the UK.

There is an [interactive timeline](#) which gives an overview of what the government is doing internationally to reduce tax avoidance and evasion.

An important step towards the new global standard to be agreed early next year, financial information on UK taxpayers with accounts in the Cayman Islands will now be automatically provided to HMRC.

This will help HMRC to ensure that the correct amount of tax is being paid by those with money in Cayman Islands accounts and increase HMRC's ability to clamp down on tax evasion.

The announcement follows the agreements signed between the UK and the Crown Dependencies of the Isle of Man, Jersey and Guernsey in October.

The Cayman Islands have also agreed to be part of the G5 multi-lateral information sharing pilot. Initially agreed between the UK, France, Germany, Italy and Spain, the Cayman Islands will join these countries in automatically exchanging information about bank accounts held by taxpayers from their jurisdictions.

In total, 31 jurisdictions have now joined the initiative.

[HMT: HMRC press release](#)

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## General PAYE News

### Automatic cancellation of an employer PAYE scheme

4 October 2013

From October 2013 where HMRC has been contacted to set up a new PAYE employer scheme, if there has been no activity on the scheme after 120 days it will be automatically reviewed to see if it can be cancelled.

A scheme will be considered as having no activity on it where:

- you have made no submissions using PAYE in Real Time
- you have not made any payments to HMRC
- you are not an annual payer
- there is no evidence that you want to claim CIS Deductions Suffered
- you have not received an advance from HMRC
- you have not had any periods of Construction Industry liability
- there is no evidence that you have had any employees
- there is no evidence that Class 1A NIC is due.

Where none of these conditions apply your employer scheme will be cancelled and a letter issued to your business address to advise you of the action taken. Once the scheme has been cancelled you will not be able to submit any PAYE submissions in Real time. If your scheme should not have been cancelled the letter covers who you should contact in HMRC to request that your scheme is reopened.

This information was published in the latest issue of the [Employer Bulletin](#).

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### Transferable personal tax allowance for married couples and civil partners

10 October 2013

David Cameron has announced that £1,000 of the personal allowance will be transferable between eligible couples from 2015.

We [reported](#) rumours earlier in the year that tax breaks would be introduced for married couples but at the time no detail was provided.

The [BBC](#) has reported that the prime minister said four million couples would benefit from a £1,000 transferable tax allowance from 2015. The move, announced ahead of the Tory conference, comes after a deal with the Liberal Democrats to introduce free school meals for children under eight.

The tax break would apply if couples are both basic rate tax payers with one spouse earning less than the personal allowance - the amount of income you can receive each year without having to pay tax on it. This will be just over £10,000 in 2015. The measure would also include 15,000 couples in civil partnerships.

Cameron explained how the scheme would work, "From April 2015, if neither of you are higher rate taxpayers, you will be able to transfer £1,000 of your tax-free allowance to your spouse. In effect, if you pay the basic rate of tax and your partner doesn't use all of their personal allowance, you'll be able to have some of it. Most couples who benefit will be £200 a year better off as a result."

### CIPP comment

Claims are expected to be made online so at this stage we would assume that the transferable allowance will have no impact on the payroll function; other than a possible increase in enquiries as to why an employee's tax code has changed. We will as ever keep you updated as and when further details become available.

## New PAYE messages to employers from HMRC

11 October 2013

From next week, HMRC will start to send four types of new messages to employers to help them keep their PAYE up-to-date.

These messages will take two formats:

1. The first three are generic electronic messages to warn the employer that their PAYE submissions and payments appear to have fallen into arrears.
2. The fourth one will be a letter, telling an employer that HMRC are cancelling a PAYE scheme that has been inactive for 120 days.



The electronic messages are not penalty notices and therefore an employer should not appeal against them. These messages do not replace the existing compliance communications, which will continue as now.

You may have read about these messages in the September's [Employer Bulletin 45](#). HMRC will also publicise these messages with two 'What's New' announcements on the HMRC website.

### Messages from 15 October

The first of these messages will go out from 15 October, and will be an electronic notification sent if the employer appears to have missed a deadline for reporting their PAYE information.

Below is a link to a draft copy of the What's New announcement that HMRC plans to publish next week. It explains:

- That these messages are designed to help employers keep their PAYE up-to-date and avoid in-year penalties for late filing and payment when they are introduced in 2014-15.
- That some employers may receive a message even though their taxation affairs are up-to-date (and explains why this could happen).
- How employers can view this message.

### Messages from 28 October

From 28 October, HMRC will begin sending letters telling an employer that HMRC are cancelling their PAYE scheme if it was opened after 5 April 2013 but has been inactive for 120 days.

This will be followed by two more electronic notifications on approximately 1 and 9 November which will advise employers who do not appear to have paid their PAYE in full and/or have not made a PAYE submission in real time respectively.

Also shown below is a draft copy of a What's New announcement that HMRC plans to publish later in October about these messages.

From 1 February 2014, HMRC will start to send out a fourth electronic message. This will be a differently-worded version of the message warning the employer that they do not appear to have paid their PAYE in full. The wording will reflect the fact that the employer has previously received messages to this effect. HMRC will make a further What's New announcement about this message in January 2014.

### **About the electronic messages**

The aim of these messages is to help employers comply with their PAYE obligations and in particular get their businesses to submit and pay their PAYE to HMRC on time. This will help them get ready for 6 April 2014 when in-year penalties for late reporting and late payment will replace the current end-of-year PAYE penalties. HMRC wants to receive payments and returns on time; it does not want to charge penalties.

The messages warn that the employer may incur penalties in future, even if they have done nothing wrong for 2013-14 (for example if they are a smaller employer taking advantage of the current relaxation for 'on or before' reporting). If this is the case the employer does not need to contact HMRC - but they should be preparing for 2014-15.

HMRC will update the wording of these messages in April 2014.

### **About the Scheme cancellation letters (RTI206)**

These cancellation letters are sent following an automatic review of the scheme's records after a period of inactivity.

The aim is to reduce the administrative burden on both HMRC and employers. This process will cancel PAYE schemes which are set up when a new business is registered after 5 April 2013, but are then never used. The process will not cancel any schemes registered as annual schemes. HMRC understands that some external business processes are to create a PAYE scheme as normal practice when a business is set up. So to help HMRC identify unnecessary schemes at an earlier date additional questions will be asked when a scheme is registered – see [PAYE20002](#).

The guidance [How to register as an employer](#) sets out when an employer should register, and also states "Please note if you register and don't file anything with HMRC for four months then your PAYE scheme will be closed and you will have to re-register."

[Link to What's New Oct 14](#)

[Link to What's New Oct 28](#)

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## **New PAYE messages to employers from HMRC - revised message**

*18 October 2013*

We have an update from a previous HMRC message regarding new PAYE messages and the re-scheduled maintenance work taking place this weekend.

### **HMRC's online services: maintenance work affecting PAYE to go ahead this weekend**

Late last week, we made the decision to postpone our scheduled IT upgrade because there was a risk of our IT systems being down for longer than we had planned.

We have been working hard to resolve the issues and we are now able to go ahead.

From 20:00hrs on Friday 18 October 2013 to 15:00 Saturday 19 October 2013, most of our public facing IT systems are being upgraded and will undergo planned maintenance.

Although the majority of online services are expected to re-open for business at 15:00 on Saturday, HMRC Online returns and forms will be unavailable between 20:00 on Friday 18 October and 07:00 on Monday 21 October.

This will affect PAYE submissions sent through the Government Gateway (internet). Employers will still be able to send their PAYE submissions in real time and they will receive an acknowledgement that their submission has been received.

However, during this period the validation message employers receive (saying whether the submission has been successful or not) will be delayed and may not be received until Tuesday 22 October when the system is fully restored. Employers should not attempt to re-send their submissions.

Employers can also expect delayed response times from other HMRC systems at this time. The latest information about all the online services

affected is published on [our website](#).

EDI customers are largely unaffected, but could experience a short delay of up to four hours before receiving their acknowledgement report during this period.

Please share this information with your colleagues, clients, members and customers.

We are sorry for any inconvenience this may cause.

### **New electronic messages to help employers keep up-to-date with their PAYE**

From next week, we will start to send three types of generic electronic messages to warn the employer if their PAYE submissions or payments appear to have fallen into arrears.

The electronic messages are not penalty notices and therefore an employer cannot appeal against them. These messages do not replace our existing compliance communications, which will continue as now.

You may want to share details about these new messages with your clients, customers and members.

#### ***Messages from 21 October- late reporting***

The first of these messages will go out from 21 October. They are electronic notifications that HMRC will send if the employer appears to have missed a deadline for reporting their PAYE information.

In the draft What's New announcement ([link available in CIPP News item](#)) that we plan to publish on 21 October, we explain:

- that these messages are designed to help employers keep their PAYE up-to-date and avoid in-year penalties for late filing and payment when they are introduced in 2014-15
- that some employers may receive a message even though their taxation affairs are up-to-date (and explains why this could happen), and
- how employers can view this message.

#### **Messages from 1 November – late payment**

A second set of electronic notifications will start to be issued between 1 and 9 November which will advise employers who do not appear to have paid their PAYE in full and/or have not made the expected number of PAYE submissions in real time respectively.

The draft What's New announcement ([link available in CIPP News item](#)) that we plan to publish on 28 October contains more detail.

From 1 February 2014, we will start to send out a fourth electronic message. This message will warn the employer that they do not appear to have paid their PAYE in full. The message will reflect the fact that the employer has previously received messages about late payment. We will make another What's New announcement about this message in January 2014.

#### **About the electronic messages**

The aim of these messages is to help employers comply with their PAYE obligations and, in particular, get their businesses to submit and pay their PAYE to HMRC on time. This will help them get ready for 6 April 2014 when in-year penalties for late reporting and late payment will replace the current end-of-year PAYE penalties. HMRC wants to receive payments and returns on time; it does not want to charge penalties.

The messages warn that the employer may incur penalties in future, even if they have done nothing wrong for 2013-14 (for example if they are a smaller employer taking advantage of the current relaxation for 'on or before' reporting).

If this is the case the employer does not need to contact us - but they should be preparing for 2014-15.

We will update the wording of these messages in April 2014.

#### **New letters advising employers that HMRC will close new PAYE schemes after a period of inactivity**

From 28 October, HMRC will begin sending letters telling an employer that we are going to cancel their PAYE scheme if it was opened after 5 April 2013 but has been inactive for 120 days. The process will not cancel any schemes registered as annual schemes.

Our attached draft What's New announcement that we plan to publish on 21 October contains more detail. We are also planning a press release about these letters on the same day.

#### ***About the scheme cancellation letters (RTI206)***

These cancellation letters will be sent following an automatic review of the scheme's records after a period of inactivity.

This process will cancel PAYE schemes which are set up when a new business is registered after 5 April 2013, but are then never used. The aim is to reduce the administrative burden on both HMRC and employers.

We understand that some external business processes are to create a PAYE scheme as normal practice when a business is set up. So to help us identify unnecessary schemes at an earlier date additional questions will be asked when a scheme is registered – see [PAYE20002](#).

Our guidance [How to register as an employer](#) sets out when an employer should register, and also states “Please note if you register and don’t file anything with HMRC for four months then your PAYE scheme will be closed and you will have to re-register”.

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## Unused PAYE schemes to close

22 October 2013

From 28 October HMRC will be issuing letters to certain employers whose PAYE scheme shows no activity for 120 days.

The following [message](#) was posted on HMRC’s ‘What’s New’ web page:

From 28 October 2013 HM Revenue & Customs (HMRC) will be issuing letters (RTI206) to employers to advise that, because our records indicate that they have not operated PAYE or paid any subcontractors, we have automatically closed the PAYE scheme due to inactivity.

The letters are generated following an automated review of our records. The benefit of this approach is that:

- HMRC identify that no returns are due at a much earlier point
- it removes the obligation to make real time submissions and subsequent requests for both returns and payment
- it removes an unnecessary burden on employers and the additional cost to HMRC of maintaining and administrating their record on our systems.

For more information on the criteria HMRC apply for closing a scheme please see guidance on ‘Automatic cancellation of a PAYE Scheme’.

### [Automatic cancellation of a PAYE Scheme](#)

HMRC [press release](#) – 21 October 2013.

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## PAYE Desktop Viewer (PDV) - required update for all users

23 October 2013

HMRC has updated the PDV application. All PDV users should download and install the new version of the PDV to ensure that they can view the latest versions of these notices.

### [Using HMRC’s PAYE Desktop Viewer](#)

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## Wales to be offered tax raising powers

4 November 2013

The Welsh government will be offered some control over income tax subject to a referendum.

Speaking in Cardiff Bay, the Prime Minister and his deputy announced new financial powers for the devolved administration.

They include control of the stamp duty paid by house buyers and powers to finance upgrades on the M4.

It follows the publication of a report last year which said the Welsh government should have new tax powers.

At present Wales’ devolved administration cannot vary taxes or borrow money, and gets its budget in a grant from the Treasury.

Last November the Silk Commission, set up by the Westminster coalition, said the Welsh government should be responsible for raising some of



the money it spends.

### 'Opportunity to decide'

It included a recommendation to devolve powers to vary a portion of income tax by 2020, following a referendum.

Mr Cameron said Wales will be given borrowing powers, control of landfill tax and stamp duty, and a House of Commons bill giving permission to hold a referendum on the devolution of income tax.

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

#### CIPP comment

Where will it end? By the time the UK has finished we will have four different tax systems to operate in payroll; Scotland which we know is coming, England, now Wales potentially in 2020 - that just leaves Northern Ireland! One saving grace is our payroll software providers will have gone through one process and ironed out any wrinkles for the Scottish tax system; but that is of course assuming Wales decides to operate in the same way as Scotland; what are the chances of that?

## Nick Clegg pushes for £10,500 personal allowance from 2015

19 November 2013

The threshold is due to reach £10,000 in 2014/15 but the Deputy PM wants to make it £10,500 from 2015 - a move that would cost the Treasury £1bn.

The [BBC](#) reports:

Nick Clegg says he is pushing his Tory coalition partners to agree to cut income tax bills by another £100. The government has repeatedly raised the personal allowance - the amount people can earn before paying income tax - since the 2010 election.

The threshold is due to reach £10,000 in 2014/15 but Mr Clegg wants to raise the threshold by another £500 as a "workers' bonus" to make it £10,500 from 2015 - a move that would cost the Treasury £1bn. Conservatives said they would consider it but any changes must be "paid for".

Deputy prime minister and Lib Dem leader Mr Clegg said raising the personal allowance to £10,000 - a tax cut "worth £700 to millions of people" - was a "huge step" which he had been campaigning on for years. The cut would be worth £100 a year to 24 million ordinary rate taxpayers, while taking around half a million people out of income tax altogether. Mr Clegg said his preferred method of paying for the tax cut would be to raise taxes on the "super wealthy" through a "mansion tax" but he said the Conservatives would not agree to this.

He told the BBC's Andrew Marr programme "we will find other ways" to fund the policy.

"It's not agreed yet. It's something I would like to see us deliver as a coalition government in the next budget," he added.

The basic rate of income tax is 20% so an extra £500 on the personal allowance would cut tax by £100 for anyone earning £10,500 or more, though people earning over £100,000 get reduced personal allowance or none at all.

Mr Clegg said the Liberal Democrats' "long-term ambition" was to "make sure no one pays any income tax on the equivalent of the minimum wage, which is around £12,500".

The personal allowance for under 65s was £6,475 when the coalition came to power and it has risen in each of the last three tax years to its current level of £9,440. The government has already agreed to raise it to £10,000 from April, and Mr Clegg's latest proposal would take effect in April 2015 - just before the next general election.

Personal allowance

- 2010/11 - £6,475
- 2011/12 - £7,475
- 2012/13 - £8,105
- 2013/14 - £9,440
- 2014/15 - £10,000

## Real Time Information (RTI)

### Real time information: duplicated employments

2 October 2013

At the Student Loan consultation forum members raised concerns around duplicate employments.

As a reminder, employers can find guidance around new starters through this link - <http://www.hmrc.gov.uk/payerti/employee-starting/new-emp-info.htm>.

It is important to remember whether using commercial payroll software or Basic PAYE Tools, that employers don't put another start date on any FPS - including where employers haven't put a start date on their first FPS for the employee. If employers have incorrectly reported the date an employee first started working for them, or the employer did not include the start date when they reported their first payment on an FPS, the employer should update their payroll records to reflect the correct start date. The employer must not, however, report the corrected or known start date on the next FPS to HMRC as this will result in a duplication of the employee's record on HMRC's systems and the possible issue of an incorrect code number.

Those operating payroll should check with their software provider on what and how the software will work with amended dates.

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### HMRC publish report on reconciling 2013-14 PAYE charges

27 September 2013

HMRC has published a [report](#) into the findings from an analysis of disputed PAYE charges.

On 12 August 2013 HMRC published [Real Time Information - reconciling PAYE charges](#) where they explained that they had received feedback that some PAYE schemes have experienced difficulties in reconciling the difference between the tax HMRC say is due, and the tax the customer thinks is due and that they had set up a dedicated team to identify the cause of these discrepancies.

This report sets out the team's findings from an analysis undertaken between July and September 2013.

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### Real Time Information and Exam and Elect scheme employers

1 October 2013

From today, HMRC will be sending letters to all those employers who are running Exam or Electoral schemes to tell them that from April 2014:

1. They must begin operating PAYE in real time and
2. They must begin operating standard PAYE

This applies to around 450 Exam scheme employers and approximately 50 Elect schemes and follows on from the publication of the Direction requiring Exam or Elect scheme employers to report PAYE information in real time from 6 April 2014.

#### [Download Direction for Exam or Elect scheme employers to report PAYE information in real time from 6 April 2014](#)

The letters explain what the employers will need to do to get ready to report and the changes that operating standard PAYE will bring.

Accompanying the letters are:

- A helpsheet for getting ready to report PAYE in real time; and
- A formal notice of HMRC's intention to terminate the current special PAYE operating arrangements for Electoral and Exam schemes. The notice also contains more information about HMRC's review of the current PAYE arrangements for these two schemes.

## Real time information guidance updated

15 October 2013

HMRC has published updated guidance on charge calculation and paying HMRC.

Follow the links below to view the updated guidance.

[PAYE/National Insurance payments and deadlines](#)

[Using HMRC's Business Tax Dashboard as an employer](#)

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## HMRC meeting with CIPP members to explore the impact of Real Time Information

18 October 2013

HMRC's research programme in to the impact of RTI continues with a meeting between CIPP members and HMRC in London on 8 November.

This is planned as a small meeting to encourage discussion from all participants, so we are looking for around seven or eight CIPP members who will have the opportunity to help HMRC understand the challenges faced by employers and payroll bureaux as they prepared for, migrated to, and now send information through, RTI.



We know that for some members, especially payroll bureaux, meeting the "on or before" obligations has been particularly challenging, whilst for others there has been little impact. HMRC would like to hear from both employers and payroll bureaux about how you have overcome these challenges, or indeed if you are still searching for a solution. Similarly some members have told us that they have encountered no real problems with RTI, and in fact some have even said it has had a positive effect because it has made them examine their data and processes! Yet for others, it has been and continues to be, a huge burden which shows no sign of abating. HMRC would like to meet with CIPP members holding both these views.

HMRC would also like to meet with someone who was on the RTI pilot so they can understand the impact of the first end of year under the RTI regime.

If you have a view about the introduction of RTI, either positive or negative, and the effect it has had on you and would like to share your experiences in the meeting with HMRC this is your chance to directly have your say. Please email [policy](mailto:policy@cipp.org.uk) using 'RTI meeting with HMRC' as your subject title.

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## HMRC Real Time Information pilot employer research

17 October 2013

HM Revenue & Customs (HMRC) has published the findings of their external research with employers in the PAYE Real Time Information (RTI) pilot and the impact RTI has had on their end-of-year activities.

The research findings are positive overall with pilot employers generally reporting a reduction of burden at end-of-year. This included reporting that they took less time at end-of-year with RTI having eliminated the most time-consuming parts of the old process.

A small proportion of the pilot employers interviewed (12%) said they found end-of-year more difficult than expected. This is not unexpected, given that this was the first time that employers undertook these tasks. The research also shows their confidence appears to be growing with experience of reporting under RTI.

HMRC will use this research, alongside other customer insight work, information gathered from the recent RTI survey as well as other relevant evidence to consider whether they need to make any targeted changes to the 'on or before' reporting rules from April 2014.

[PAYE Real Time Information \(RTI\) pilot employer research](#)

## Real time information - movement of pensioners to new PAYE schemes

14 November 2013

HMRC has come across errors when a pensioner is moved from one PAYE reference to another that have led to the issue of incorrect codes and forms.

HMRC has published a reminder of the correct procedures to follow and some hints to help get it right.

### **Timing of the first Full Payment Submission (FPS) from the new scheme reference**

You must ensure that the first FPS from the new PAYE scheme reference is submitted after the last FPS from the old reference has been sent. If you don't do this, HMRC will set up the new pension source as a secondary employment and may issue incorrect codes.

### **Start date**

Make sure that the start date of the first FPS relates to the date that the pensioner joined the new scheme reference. If the start date used is the date that the pensioner started at the old scheme reference, this will wrongly create employments for earlier years at the new scheme reference.

### **Completing the 'Occupational Pension Bereavement' field**

Only complete the 'Occupational Pension Bereavement' field on the first FPS from the new PAYE reference where the pensioner is a recently bereaved spouse or civil partner. If you complete this field when the pensioner was bereaved some time ago it will prompt HMRC to wrongly issue forms P161W to widows/widowers - these forms refer to a recent bereavement and may cause upset.

Unless the pension at the new scheme reference is being paid as a result of a recent bereavement at the time the pensioner joined the new scheme, the 'Occupational Pension Bereavement' field should not be completed.

There are more details about what you must put in the fields on an FPS in the guide ['What to report'](#).

## Pensions

### Automatic Enrolment

#### The future of automatic enrolment in Scotland if independence is voted in 30 September 2013

A report by the Scottish government states that the criteria for automatic enrolment would stay the same but that independence would provide an opportunity to design a new scheme in Scotland.

The 135 page paper [Pensions in an independent Scotland](#) sets out proposals from the Scottish government on how pensions policy would be taken forward in an independent Scotland.



It states that on independence, the current arrangements for automatic enrolment in Scotland would continue - its staged roll-out and the criteria for automatic enrolment and contribution levels would be the same.

However it also states that a future Scottish government would be able to vary arrangements for automatic enrolment in order to ensure effective implementation of the policy. The report goes on to say that in considering any changes to the current arrangements, it would be important to achieve a balance to ensure that the level of employee contribution is not onerous and that the impact on employers, particularly small and medium-sized enterprises, is proportionate and affordable.

The use of NEST (National Employment Savings Trust) is discussed in the report saying that the Scottish government would work with the UK government on transitional arrangements to ensure that individuals and employers in Scotland continue to have access to NEST and that individuals' rights and entitlements which have accrued in NEST would continue to be accessible. However, the report also proposes that a Scottish equivalent of NEST – the Scottish Employment Savings Trust (SEST) - should be established to assist smaller employers in particular to meet their obligations under automatic enrolment. It would be for a future Scottish government to work with the pensions industry in Scotland and all other stakeholders on the design of SEST to ensure that it was fit for purpose.

#### **CIPP comment**

The Scottish Independence Referendum takes place in less than a year on 18 September 2014. The policy team will be keeping a close eye on proposed changes under a possible independent Scotland as pensions and automatic enrolment will not be the only area to affect payroll professionals and employers.

Members may already be aware that regardless of whether full independence is voted in in Scotland or not, the introduction of a Scottish Income tax is still set to take place in 2016. The CIPP policy team continue to be part of both the High Level and Technical consultation groups and will continue discussions on the detail of how Scottish income tax will work for all employers in the UK. We will of course keep members updated with relevant news.

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#### The Pensions Regulator: awareness reports, case studies and updated guidance 2 October 2013

The Pensions Regulator (TPR) has published reports on Intermediaries' and Employers' awareness, understanding and activity in relation to workplace pension reforms.

The [Employers' awareness report](#) includes research on:

- Awareness and understanding of automatic enrolment

- Attitudes towards the changes
- Preparations for the changes
- External advice.

The [Intermediaries' awareness report](#) includes research on:

- Awareness and understanding of automatic enrolment
- Knowledge of more detailed aspects of automatic enrolment
- Awareness of client staging dates
- Sources of information on automatic enrolment
- Knowledge of TPR and use of its website as an information source
- Current and expected provision of assistance to clients
- Level of service being provided or likely to be provided by intermediaries
- Likelihood to charge for services relating to automatic enrolment
- Main challenges in helping clients/employers meet deadlines.

TPR has also published a selection of [case studies](#) from real employers who have gone through the automatic enrolment process, including their tips on key steps.

Those of you who are familiar with The Pensions Regulator website will know that they are continually revising their employer guidance. The most recent updates went live on 30 September and can be accessed [here](#).

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## CIPD automatic enrolment podcast

3 October 2013

The Chartered Institute of Professional Development (CIPD) has produced an automatic enrolment podcast aimed at the SME community.

Most large employers should have now commenced their automatic enrolment duties; however the small and medium employers will be coming on board over the next few years. With this in mind the CIPD are pleased to share with CIPP members a podcast aimed at supporting the SME.

[CIPD automatic enrolment podcast](#)

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## Payroll Software Developers – Origo publishes 7 new standards

9 October 2013

Software developers may be interested in the draft pension standards produced by Origo for automatic enrolment.

Origo has published Draft A Standards arising from work to sub-divide the automatic enrolment Employee List Standard into process-specific components.

### Published Standards

This work has given rise to 7 new Standards listed below:

#### **Postponement and Estimation**

- [Postponement and Estimation Data](#)

#### **Assessment**

- [Assessment Data](#)
- [Assessed Employee List](#)
- [Assessed Employee List \(Tailored for Enrolment\)](#)

#### **Enrolment**

- [New Members \(Standard\)](#)
- [New Members \(Expanded\)](#)
- [Opt-Outs, Opt-Ins and Joiners](#)



## Summary and context documents

Additionally, in response to Working Group feedback, Origo has prepared a document summarising which Standard is designed to meet which data flow within our end-to-end view of the Auto Enrolment process. This document can be found [here](#).

A further document containing a summary of the changes applied to the data items for each of the 7 Standards following Working Group review of the BRD can be found [here](#).

A full updated Business Requirements Document (BRD) will follow in due course.

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## Firm hit with TPR fine after moving to private sector

11 October 2013

A former public sector firm was threatened with a fine by The Pensions Regulator (TPR) because its pension and payroll were still handled by the NHS.

Rowanmoor Group, which advised the firm, said the case highlights the importance to small businesses of checking their staging dates.

After becoming a private company, the firm's pension and payroll continued to be administered by the NHS under its original PAYE reference number. This meant TPR expected the company's staff to be automatically-enrolled at the same time as their former NHS colleagues, whereas if the group had its own PAYE reference number, this would not have been the case.

When the deadline for the company's staging date came around, it was issued with a TPR fine for non-compliance.

Rowanmoor liaised with TPR to amend the firm's staging date to March 2016 and warned that many small businesses that had previously been part of the public sector, such as infrastructure companies and local councils, may also face confusion or inadvertently fail to comply with automatic enrolment.

Rowanmoor consultancy administration manager Janet Bower warned this case was unlikely to be an "isolated example."

She said it was vital for businesses to check their staging date by inputting their PAYE reference on the regulator's website.

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## TPR website makes improvements to its automatic enrolment planner

14 October 2013

The Pensions Regulator (TPR) has changed its website content to make it even easier for employers to find the information, tools and guidance they need to fulfil their automatic enrolment duties.

Careful and timely planning is essential when preparing for automatic enrolment. To help employers with the planning process TPR has produced its automatic enrolment planner. This is an essential interactive tool to help you understand what you need to do and when. It now includes:

- a registration calculation and deadline marker
- case studies from employers who have been through the process
- common myths around automatic enrolment
- costs where they might occur throughout the process:

Any employer preparing for automatic enrolment should find it helpful, but it's of particular relevance to you if:

- you employ between 50 and 249 staff
- every member of staff is based in the UK
- you have one Pay As You Earn (PAYE) scheme
- you have or are planning to set up a defined contribution (DC) pension scheme

Once you've used the staging date tool, clicking on the link 'Create your plan for automatic enrolment' will allow you to see your plan instantly.

View the [TPR website](#) to begin creating your plan.

## Technical changes to automatic enrolment – consultation response published

14 October 2013

The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 have been laid before Parliament and bring certain technical changes into force from 1 November 2013.

The **Automatic Enrolment (Miscellaneous Amendments) Regulations 2013** that were laid before Parliament on 11th October change the existing legislation so that:

- Employers can choose to use alternative definitions of pay reference periods for both assessing jobholder status and determining whether a scheme is a qualifying scheme.
- The automatic enrolment joining window is extended from one month to six weeks.
- The deadline for employers to provide information to individuals on their opt in and joining rights is extended to six weeks.
- The deadlines for registration and postponement notices fit with the extended joining window.
- The extended deadline for passing worker contributions to a pension scheme applies to all new joiners (including contract joiners).
- The opt out notice provisions make clear that schemes can customise notices.
- There is greater clarity and consistency concerning the requirements for defined benefit test schemes in relation to the appropriate age, service limits and revaluation that apply in those schemes.

The final changes either give employers more options or extend deadlines for existing processes without changing the processes themselves. The secondary legislation laid before Parliament on 11th October brings the majority of changes into force on 1st November 2013. The only exceptions are the change to the joining window and registration deadlines that will come into force on 1st April 2014.

### CIPP comment

As previously [published](#), the Pensions Minister Steve Webb announced at the CIPP's Annual Payroll and Pensions Conference that these changes would be coming into force. The CIPP is pleased the DWP has listened to the concerns of employers and payroll software providers to help employers comply with their automatic enrolment duties. It will be important for employers to confirm with their software providers when they intend to make any changes to their automatic enrolment software, as whilst most changes are effective from 1 November many software providers will not be able to distribute amendments in two weeks.

For further details, the government has published their [response](#) to the consultation on draft regulations and other proposed technical changes to automatic enrolment.

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## Employers may not pass on consultancy charges to members of automatic enrolment schemes

16 October 2013

Regulations have come into force preventing employers from passing on consultancy charges to members of automatic enrolment defined contribution (DC) schemes.

**Lexology** reports that the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2013, add a new requirement that the rules of an automatic enrolment scheme must not permit employers to agree to pay third parties using money:

- taken from contributions made to the scheme;
- taken from investment proceeds of or capital gains of the scheme; or
- raised by reducing the value of the jobholder's rights under the scheme.

A "third party" for this purpose means any person other than the jobholder, trustee or manager of the scheme (in the case of occupational pension schemes) or provider of the scheme (in the case of personal pension schemes).

The condition does not apply if the employer entered into a legally enforceable agreement to pay a third party (in the above manner) before 10 May 2013, the date the government announced its plans to prohibit employer payments to third parties in this way. The DWP has, however, indicated that it will consult this autumn over whether to extend the prohibition to agreements entered into before this date.

The new requirements only apply to employers. Trustees or managers of DC occupational pension schemes and providers of personal pension schemes may pay administration charges (including charges levied to pay commission owed under agreements with third parties).

## Automatic enrolment six month count down for medium sized employers has begun

21 October 2013

The clock is ticking for thousands of medium sized employers across the UK who have six months to go before their duty to automatically enrol workers into a work-based pension begins.

Figures released by The Pensions Regulator show that more than 1.7 million workers have already been automatically enrolled by their employers. More than 2,000 large employers have complied with their automatic enrolment duties and the regulator is stressing that by now medium sized employers should have plans in place to do the same. Leaving preparations too late can risk non-compliance and this can come at a cost.



Go to research and analysis to view the automatic enrolment monthly registration [report](#).

Over the past few weeks, The Pensions Regulator has sent around 6,000 letters to employers alerting them to begin finalising their preparations to meet their duties under automatic enrolment legislation. Thousands more letters calling employers to action will follow between now and Christmas.

More than 5,000 employers will be subject to their statutory duties concerning automatic enrolment in April next year. They represent the first wave of medium sized employers due to implement automatic enrolment. Hot on their heels will be more than 20,000 employers – with fewer than 250 workers – who will reach their staging date between May and July. The staging date is the date that an employer's statutory duty is switched on.

The regulator recommends that employers due to stage in April next year should by now have identified a suitable pension provider and software provider as well as any outside help they may need. They should also have started checking which of their workers they will need to automatically enrol and communicating with them about the changes.

In order to ensure they are fully aware of what they need to do to, employers are urged to go to the regulator's website. The handy [timeline planner](#) will help them to tailor their own individual plan. There is also plenty of information about identifying a suitable pension scheme and software provider and assessing and communicating with workers. There is also information about employers' ongoing duties.

Lessons learned from larger employers who have already implemented automatic enrolment show the importance of being certain that your pensions provider can provide what you need and that your payroll systems are compatible – employers should test their systems in advance of their staging date.

[Follow this link to read TPR's full press release.](#)

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## NAPF calls for automatic enrolment contribution increases

22 October 2013

The National Association of Pension Funds (NAPF) has said that the next government must start raising automatic enrolment rates towards 12 to 15 per cent to manage expectations of savers.

[Professional Pensions](#) has reported that in her keynote speech to NAPF conference last week, chief executive Segars applauded the "green shoots of pension recovery" triggered by the successful introduction of automatic enrolment - but outlined low contribution rates as a major outstanding issue for the industry.

She said: "There aren't many of us who think that the 8% contribution is enough to deliver a decent pension. It's a good start and certainly

*better than zero, which is the reality for too many today.*

*"But now we are going to have to brave up to this issue, as 12% or 15% are more commonly seen as being the right kinds of benchmarks. We need to start managing expectations now - and set the trajectory so it is a gradual increase.*

*"This is a challenge for the next government - not the one after that or the one after that. I recognise that it's difficult to have these types of discussions, but we can't dodge them."*

However the [Confederation of British Industry](#) (CBI) says that the NAPF call to increase contributions is "deeply misguided". CBI director for employment and skills Neil Carberry said the suggestion would upset the "delicate balance" of the market as automatic enrolment is extended to small employers.

He said that the current system is a delicate balance designed to deliver the consensus that has made automatic enrolment a success so far and we should remember that automatic enrolment is one part of a much wider set of responses to the challenge of an ageing society.

Carberry said, *"The Pensions Commission chose 8% for a reason. Any suggestion of a change, just a year into the roll-out and before the vast majority of firms are involved at all, is deeply misguided. State mandated minimum contributions must be affordable for all companies and workers."*

He also agreed that "more could be done" by employers to encourage workplace saving, but said decisions should be made in light of the circumstances of individual companies. And added that this is also a discussion that needs to be seen within the wider economic context of a slow recovery and falling disposable incomes, not just the narrow lens of pensions policy.

Carberry also dismissed outgoing NAPF chairman Mark Hyde Harrison's call for a single pensions regulator, as The Pensions Regulator (TPR) "regulates companies, not financial institutions".

Pensions minister Steve Webb also rejected Hyde Harrison's suggestion of a merger between TPR and the Financial Conduct Authority (FCA), saying a "huge amount of effort" is going into ensuring the two organisations comprehensively monitor the market.

## TPR publish new automatic enrolment software guide

5 November 2013

To reflect the recent technical changes to automatic enrolment, new guidance has become available specifically for software developers.

The Regulator will be obtaining feedback and therefore this guide may be updated again in the near future.

### [A detailed guide to Automatic enrolment for software developers](#)

#### **About this guidance (excerpt from guide)**

This guidance is aimed at software developers involved with payroll applications and wider business applications, for example HR and pensions administration that may be involved in supporting an employer in complying with their new automatic enrolments duties.

It is of particular relevance to developers with employer customers who have more than 53 persons in their PAYE scheme. This is because with the staggered introduction of the new duties employers with more than 250 persons in their PAYE scheme will become subject to the new duties during the current financial year. Employers with between 54 and 249 persons in their PAYE scheme will become subject to the new duties during the 2014-2015 financial year. It is also of relevance to developers with employer customers who have more than 250 persons in their PAYE scheme as this guidance also covers the technical changes made to the legislation from 1 November 2013 and includes the addition of cyclical automatic re-enrolment.

This guidance is a comprehensive guide to the key concepts in automatic enrolment included in the 'core' payroll routines and wider routines supporting the end-to-end duties. It describes the employer duties using a technical notation and may not be suitable for a more general readership.

For a more general readership we have published a series of guides that cover all aspects of the new pension duties for employers. These are available at [www.tpr.gov.uk/detailed-guidance](http://www.tpr.gov.uk/detailed-guidance). In addition we have a range of short introductory information and online tools available at [www.tpr.gov.uk/beginner](http://www.tpr.gov.uk/beginner).

This version of the Software guide has been updated to include cyclical automatic re-enrolment and re-registration and the technical changes made to the legislation from 1 November 2013 and those that come into effect on 1 April 2014. Annex C provides details of the significant changes made to this guidance.

This guide will be updated to reflect changes to the values of the qualifying earnings thresholds and the automatic enrolment trigger point, and any other relevant legislative change. Developers can sign up to the news-by-email service on the regulator's website to find out when the guide has been updated and published: [www.tpr.gov.uk/news](http://www.tpr.gov.uk/news).

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## Automatic enrolment charge cap could force 90,000 scheme reviews

5 November 2013

Up to 90,000 employers would be forced to review their defined contribution (DC) schemes if a charge cap was introduced, according to a government paper.

The Department for Work and Pensions (DWP) is currently **consulting** on a range of options to crack down on excessive charges in DC, including a cap of 0.75% or 1% on annual fees.

In its impact assessment on the report, the DWP states that 90,000 schemes would need to be reviewed if the limit was set at 0.75%.

If the cap was set at the higher level, the number of schemes that would need reviewing would be between 25,000 and 35,000.

The pensions industry has warned that many employers due to begin auto-enrolling staff in 2014 will not have enough time to react to any changes introduced as a result of the consultation.

Read the full [press release](#) from IFA Online.

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## Defined Ambition workplace pensions consultation published

8 November 2013

A **consultation** 'Reshaping workplace pensions for future generations' has been published which looks to provide a way forward towards both reforming and reinvigorating workplace pensions.

Traditional final salary defined benefit schemes which give the consumer certainty are in terminal decline. Automatic enrolment means significantly more savers will be joining workplace pension schemes: the market is growing and employers and industry are already thinking about their future pension provision.

The Defined Ambition Industry Working Group was set up last summer to look at the market gap in relation to affordable pension guarantees and to provide the products consumers are seeking. Over the year this Group have held extensive discussions with a wide range of providers and employers and the proposals contained within this consultation provide a way forward towards both reshaping and reinvigorating workplace pensions. They offer a range of new options that will be attractive to different employers and their employees – all part of a new framework that looks beyond the current regulatory extremes of defined benefit and defined contribution.

The Minister of State for Pensions, Steve Webb says in the foreword that new forms of pension – defined ambition pensions – can create high quality provision that will appeal to employees as well as employers. He goes on to say that removing some of the regulatory constraints imposed in the past will allow new flexible forms of defined benefit pensions, which will enable employers to continue to offer pensions to members with a high level of certainty, but with much greater flexibility over the nature of benefits provided.

The CIPP policy team will review this consultation and issue a survey to collect member views, if deemed appropriate.

**Public consultation: Reshaping workplace pensions for future generations**

## Pensions update on Defined Ambition scheme proposals

11 November 2013

Further to the publication of the consultation on Defined Ambition pension schemes, Pinsent Masons has published an informative news piece on the possibilities for employers.

Defined ambition (DA) schemes are intended to provide a third way between defined benefit (DB) schemes and defined contribution (DC) schemes. DA schemes should be cheaper for employers than DB schemes, while offering members more certainty over their retirement incomes than DC schemes. The consultation paper proposes changing the law to allow various forms of DA scheme to be established. Employers should start considering now whether a DA scheme might suit them better than their current pension scheme.

Follow the link below to read more from Pinsent Masons.

[Proposed defined ambition schemes open up possibilities for employers](#)

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## The Pensions Regulator launches automatic enrolment business sector compliance visits

21 November 2013

The Pensions Regulator has carried out the first in a series of in depth fact finding visits to business sectors that may face automatic enrolment compliance challenges.

The move marks the launch of a proactive drive towards different sectors and demonstrates how the regulator will use direct intervention to ensure employers comply with their statutory duties and help establish a pro compliance culture.

The regulator's automatic enrolment compliance and enforcement team visited a number of recruitment employers where they were able to have an in-depth look at how these employers are implementing automatic enrolment.

The recruitment sector was identified through our intelligence work in line with the compliance and enforcement proportionality framework which is part of the automatic enrolment compliance and enforcement policy.

View the compliance and enforcement policy in [strategy and policy](#).

The recruitment sector faces significant compliance challenges and was particularly important to target because more than 1,000 recruitment employers are due to reach their staging date between April and July next year. The staging date is when an employer's automatic enrolment duties are switched on.

The visits were made to prevent and tackle possible breaches, ensure compliance, learn lessons and share good practice among the industry. The regulator wants to reduce the likelihood of enforcement action by identifying and, where possible addressing problems early. As a result of information gathered from the visits, the regulator will be issuing compliance guidance tailored for the recruitment sector.

[Read more from TPR.](#)

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## General Pensions News

### Pensions Industry Stakeholder Forum

7 October 2013

HMRC has published the latest set of minutes from the Pensions Industry Stakeholder Forum.

This forum focuses on operational rather than policy issues and is the main route of engagement between HMRC and representative bodies.

The CIPP policy team sits at this forum and if you have any issues that you would like to put forward to the agenda of this forum, please email Samantha Mann.

[Minutes of the HMRC Pension Industry Stakeholder Forum - 29 April 2013](#)



## HMRC Pensions Newsletter - number 59

8 October 2013

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

- Fixed Protection 2014
- Annual Allowance
- Updated forms for QROPS
- Pension Liberation Update

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

### **Annual Allowance checking tool**

HMRC has also released a new tool which enables pension scheme members to check whether they need to calculate an annual allowance tax liability and complete a Self-Assessment tax return. Access to the tool is available through the link below.

[Pension Statements and the Annual Allowance Checking Tool](#)

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## New QROPS forms APSS 251 and APSS 253

16 October 2013

If you deal with Qualifying Recognised Overseas Pensions Schemes (QROPS) you need to be aware that forms APSS 251 and APSS 253 have been **amended** and should be used from 14 October 2013.

The forms have been updated to reflect the changes in the following Statutory Instrument.

[Statutory Instrument 2259: The Registered Pension Schemes and Overseas Pension Schemes \(Miscellaneous Amendments\) Regulations 2013](#).

The following are now available from the [forms area](#) of HMRC's website.

- APSS 251 - notification to HM Revenue & Customs
  - APSS 251 Notes - Notes for completing form APSS251
  - APSS 251A - Change of Details
  - APSS 251B - Change in status and notification of fund value
  - APSS 251B insert - Notification of fund value - insert
  - APSS 253 - Payments in respect of relevant members
  - APSS 253 insert - Additional page for APSS253
- 

## HMRC strengthens processes to deter pension liberation

22 October 2013

Increasing numbers of pension savers are being targeted by unscrupulous companies encouraging them to access their pension savings early – commonly known as pension liberation.

Pension liberation has significant tax consequences and HMRC has been working closely with other government departments/agencies and the pension industry to take action to prevent pension liberation and preserve pension savings.

HMRC has made a number of changes to strengthen existing processes to deter pension liberation and safeguard pension savings. These changes will take effect from 21 October 2013.

### **Registering a pension scheme**

HMRC has made the pension scheme registration process more robust by moving away from a 'process now, check later' approach. Scheme registration will no longer be confirmed on successful submission of the online form. This will enable HMRC to conduct detailed risk assessment activity before making a decision on whether or not to register a scheme.

[Pension scheme registration - process change](#)

### **Transferring pension funds between registered pension schemes**

To help scheme administrators decide whether to make a transfer, HMRC has revised the process for responding to requests for confirmation of the registration status of the receiving scheme. Under this new process HMRC will respond to requests for confirmation of the registration status without seeking consent from the receiving scheme. However HMRC will only provide confirmation where the receiving scheme is registered and the information held by HMRC does not indicate a significant risk that the scheme was set up, or is being used, to facilitate pension liberation. Otherwise, a response will be issued setting out the conditions in which HMRC will confirm registration status and explain that one or both of the conditions are not satisfied.

Transfer request process change

### **Further information**

- You can read more about [pension liberation](#) on HMRC's website.
- A recent [Pensions Update](#) by Pinsent Masons covers a key court ruling on pension liberation.

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## **Better workplace pensions: a consultation on charging**

31 October 2013

The Department for Work and Pensions has published a consultation setting out a range of measures to address pension charges in defined contributions workplace schemes.

Steve Webb, the Minister of State for Pensions says in the consultation foreword:

*"While I am pleased that some large employers setting up schemes for automatic enrolment are getting good deals for their employees, there is a real risk that SMEs will struggle to negotiate the same low charges or will use high-charging legacy schemes. When small differences in charges can make a significant difference to final retirement incomes this is an area where we cannot afford to be complacent.*

*Therefore, through this consultation, we want to assess what can be done to improve transparency in pension scheme charges and to look at whether there is a role for the Government in improving disclosure. We also want to test the case for capping default fund charges and have offered a range of structures to help tease out some of the various issues."*

The [consultation](#) is aimed at protecting employees from poor pension returns due to pension charges and seeks views on whether:

- further action is required to improve transparency and disclosure of pension charges
- a cap on charges in default funds of defined contribution qualifying schemes should be introduced
- differential charging between active and deferred members, consultancy charges and commissions should be banned in defined contribution qualifying schemes.

The policy team will be reviewing this consultation and will publish a survey shortly if deemed necessary.

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## **DWP launches money purchase consultation following Bridge Trustees ruling**

4 November 2013

The Department for Work and Pensions (DWP) has launched a consultation into the statutory definition of money purchase benefits.

[Professional Pensions](#) reports:

The [consultation on the Pensions Act 2011 \(Transitional and Consequential Provisions\) Regulations 2014](#) seeks to clarify the money purchase definition include in section 29 of the Pensions Act 2011, and provide support for schemes affected by the changes.

The DWP said the legislation and its related transitional arrangements will affect "cash balance benefits treated as money purchase benefits" and "pensions derived from money purchase benefits or cash balance benefits that have been treated as money purchase benefits".

It is estimated 40,000 private sector occupational pension schemes contain money purchase sections. Of these, approximately 2% are hybrid schemes, containing a mixture of money purchase and defined benefit (DB) arrangements.

The DWP said it is not aware of any schemes which will "move entirely from money purchase to non-money purchase" under the regulations. However, it said information it holds is self-reported by schemes.

In July 2011, the final judgment in the long running [Bridge v Yates case](#) ruled that benefits with a guaranteed interest rate, and money

purchase benefits which had been converted into a pension scheme, were included in the definition of money purchase benefits. This raised the possibility of money purchase arrangements leading to a deficit in the scheme. Section 29 of the Pensions Act 2011 clarified that a benefit is money purchase when it is calculated "solely by reference to the assets".

At the time, experts warned of "dangerous side-effects" of the legislation.

The amendments will retrospectively apply from 1 January 1997. However, transitional and supplementary provisions that are "deregulatory in nature" are included in the consultation. These arrangements will remove the need to review decisions made from 1997 to 28 July 2011.

Schemes providing a guarantee in the accumulation phase, such as link to salary or guaranteed interest rate, or a pension in payment from money purchase or cash balance benefits without a matching insurance policy, will be affected.

Hybrid schemes are likely to make up the majority of schemes affected by the changes, the DWP said.

Trustees of hybrid schemes, or arrangements with the above features, will therefore have to review whether its benefits fall within section 29 of the legislation.

The [consultation](#) is open until 12 December.

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## Local Government Pensions

### **Pooling arrangements for academies within the Local Government Pension Scheme**

*9 October 2013*

A consultation has been published which seeks views on potential pooling arrangements, within the Local Government Pension Scheme Regulations, for Academies and Local Authorities.

# Powers, Deterrents and Safeguards

## Business Record Checks

### HMRC develops a new approach to Business Records Checks

24 October 2013

HMRC are changing their [Business Records Check](#) activity to ensure it better targets help to those who are likely to have inadequate records.

HMRC Business Records Checks (BRCs) programme uses on-site visits to encourage customers to keep better records, and keep up to date.

The checks help and encourage small and medium-sized enterprises to improve the standard of records they keep. This then helps them to send correct returns to HMRC.

Customers whose records were not adequate on first inspection, and who received follow up visits, all improved their record-keeping standard. HMRC have not had to charge any penalties.

In the latest phase of BRC, many of the customers contacted by HMRC have been keeping records correctly. So HMRC wants to explore how to better target this activity.

From 4 November 2013, HMRC's BRC activity in the Edinburgh, Glasgow, Leeds, Bradford and Stockport areas will explore new ways of using the checks. As part of this, HMRC will evaluate new risk processes and ensure new approaches are cost-effective and fit with its wider compliance activity.

HMRC will also work with tax agents' representatives to review the benchmarks of what good record-keeping should be. Many tax agents already do much to improve their clients' record keeping and HMRC wants to work with them to improve standards.

For customers outside the development areas HMRC will continue with existing BRCs until they are completed. This means:

- if you have received a letter dated on or before 23 October 2013, HMRC will still contact you by telephone to ask you to complete an initial telephone questionnaire
- if HMRC has not yet booked a visit with you, they will offer you the opportunity to get advice on keeping business records from their Business Education and Support Team as an alternative to a visit
- if HMRC has already booked a visit, they will offer you the option of advice on keeping business records from a member of the Business Education and Support Team
- if you are waiting for a follow-up visit, this will still go ahead.

#### More useful links

- [Business records checks](#)

### HMRC amend guidance on Business Records Checks

5 November 2013

Last month we published [news](#) that HMRC are changing their Business Records Check activity to ensure it better targets help to those who are likely to have inadequate records. The guidance they published has been amended.

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

HMRC Business Records Checks (BRCs) programme uses on-site visits to encourage customers to keep better records, and keep them up to date. The checks help and encourage small and medium sized enterprises to improve the standard of records they keep. This then helps them to send correct returns to HMRC.

Customers whose records were not adequate on first inspection, and who received follow up visits, all improved their record-keeping standard. HMRC have not had to charge any penalties.

In the latest phase of BRC, many of the customers contacted by HMRC have been keeping records correctly. So HMRC wants to explore how to better target this activity.

From 4 November 2013, HMRC's BRC activity in the Edinburgh, Glasgow, Leeds, Bradford and Stockport areas will explore new ways of using the checks. As part of this, HMRC will evaluate new risk processes and ensure new approaches are cost effective and fit with its wider compliance activity.

HMRC will also work with tax agents' representatives to review the benchmarks of what good record-keeping should be. Many tax agents already do much to improve their clients' record-keeping and HMRC wants to work with them to improve standards.

For customers outside the development areas HMRC will continue with existing BRCs until they are completed. This means:

- if you have received a letter dated on or before 23 October 2013, HMRC will still contact you by telephone to ask you to complete an initial telephone questionnaire
- if HMRC has not yet booked a visit with you, they will offer you the opportunity to get advice on keeping business records from 'Help and support for businesses' (see link below) where you can access further guidance on record keeping
- if HMRC has already booked a visit, they will offer you the option of advice on keeping business records from the 'Help and support for businesses' options (see link below)
- if you are waiting for a follow-up visit, this will still go ahead

[Help and support for businesses](#)

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## Tax Avoidance

### Employee bonuses: avoidance scheme involving Restricted Securities

6 November 2013

HM Revenue and Customs has published information about an employee bonuses tax avoidance scheme involving Restricted Securities.

HMRC has won a tribunal involving an attempt to avoid tax and National Insurance contributions on employee bonuses. In [LM Ferro Ltd v HMRC](#) a bonus was paid in the form of an award of shares. The decision confirmed HMRC's view that these types of devices to avoid tax simply do not work - if you pay what is really a bonus, tax and National Insurance contributions are due no matter how it is dressed it up.



The scheme in LM Ferro was marketed by Powrie Appleby but similar avoidance schemes were marketed by other promoters. HMRC considers cash received by beneficiaries of awards in those schemes is also chargeable to Income Tax and National Insurance contributions.

HMRC expects those who used these schemes to make full payment of the tax and National Insurance contributions due, plus interest. Those companies and employees affected should contact HMRC to settle their liabilities and prevent additional interest accruing. You can contact HMRC on Telephone 03000 532624.

Penalties may be charged if you failed to take reasonable care when making returns to HMRC.

## Tax Agents and Advisers

### HMRC Agent Update – issue 38

23 October 2013

HMRC have published the latest issue of the [Agent Update](#) which is the bi-monthly round up of the latest developments in tax, HMRC service and consultations for accountants and tax professionals.

This month's top articles include:

- Single Compliance Process briefing paper for tax agents - explains the outcome of the evaluation of the Single Compliance Process which has been tested by HMRC.
- Alternative Dispute Resolution (ADR) for SMEs and individuals - After a two year trial ADR becomes part of normal HMRC business. HMRC has also published a summary report of the pilot for ADR for large and complex cases.
- Employee shareholder status - new employment status available from 1 September 2013. HMRC have published guidance on tax rules that apply to the employment shareholder shares received by individuals, in return for agreeing to the new employee shareholder status.

[Agent Update 38](#)

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### HMRC surveys Agent views of Toolkits

19 November 2013

HMRC have published a survey to gather agent views as to how useful they find the HMRC toolkits.

The [survey](#), which should only take a few minutes to complete, aims to gather views and experiences from agents as to why they use the toolkits and how useful they find the toolkits to be. The survey is confidential and does not require you to submit any personal data.



# About the Chartered Institute of Payroll Professionals



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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

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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](http://www.cippmembership.org.uk), email [membership@cipp.org.uk](mailto:membership@cipp.org.uk) or call **0121 712 1000**.





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of **payroll professionals**

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**CIPP**

Shelly House, Farmhouse Way,  
Monkspath, Solihull, B90 4EH

☎ 0121 712 1000

☎ 0121 712 1001

@ info@cipp.org.uk

**cipp.org.uk**

