



Legislative changes relating to the introduction of Real Time Information

LITRG response to HMRC consultative document

1. Executive summary

- 1.1. We still have significant concerns about the impacts of RTI for both employers and individuals. For the latter, the success of the system is crucial not only to ensure employees pay the right tax and that underpayments or overpayments are minimised, but also that their benefits are calculated correctly under Universal Credit.
- 1.2. We seek clarification of a number of points in the draft Regulations, where there seems to be a lack of detail. For example, that HMRC will have the ability to direct that employers join RTI at a given time, but the Regulations do not stipulate how such notice is to be given or in what timeframe. Further safeguards are needed in the Regulations themselves, rather than being left to HMRC discretion and guidance.
- 1.3. Our fears about the abolition of the P45/P46 process have been somewhat allayed by our understanding from a consultation meeting with HMRC on 6 January 2012 that they should now be retained for the transitional period of RTI. However, we recommend that close consultation on this matter should continue.
- 1.4. We reiterate that small, unrepresented employers (particularly those who struggle with online transactions) are likely to need enhanced support in moving to RTI. An early and clear communications strategy of both the changes and sources of help (here we suggest a free-of-charge

helpline, for instance) is needed. We also suggest a soft landing to be adopted in terms of penalties, for example, a facility to suspend penalties while struggling employers are helped to comply.

- 1.5. We are concerned that the assessment of equalities impacts is inadequate and believe that HMRC should conduct a much more detailed EQIA before RTI is implemented. Also, any further impacts that come to light from the pilot must be monitored and considered further.
- 1.6. One objective of RTI must be to ensure that employees' tax position is correct, in-year, as far as possible. This relies on early use of data rather than leaving corrections to end of year reconciliation. We therefore seek clarification of how soon HMRC intend to start making early and fruitful use of RTI data.
- 1.7. We continue to have concerns about the potential for error in RTI data, and the apparent lack of mechanisms to check and make corrections at an early stage. It is imperative that employees have a facility to resolve data queries and disputes quickly and easily, particularly given that their benefits entitlement will rely on it being accurate and complete. They otherwise risk being caught in a loop of DWP, HMRC and their employer, with no means of resolution.
- 1.8. The question of payrolling of benefits in an RTI context and, in turn, how this impacts on data passed to DWP for Universal Credit purposes still requires urgent attention.

2. Introduction

2.1. About us

- 2.1.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.
- 2.1.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it - taxpayers, advisers and the authorities.

2.2. Our response to this consultation – overview

- 2.2.1. We have commented on Real Time Information proposals and consultations to date and taken part in various meetings on this subject¹.

¹ See for example:

23.9.10 LITRG response - Improving the operation of PAYE <http://www.litrg.org.uk/submissions/2010/payee-improvement>

28.2.11 LITRG response – Improving the operation of PAYE – Collecting Real Time Information

<http://www.litrg.org.uk/submissions/2011/imp-PAYE-realtime>

- 2.2.2. Our response is in addition to, and supplemented by, that of our CIOT colleagues. CIOT are focusing mainly on how the legislative changes will affect employers who are represented and their agents; whereas LITRG's focus is on unrepresented small employers, care and support employers, and on individuals, especially those on low incomes.
- 2.2.3. In particular, we support CIOT's comments on the Student Loan Regulations and how any change to the P45 procedure or replacement of the P45 by a leaver statement should include a requirement to show cumulative student loan deductions.
- 2.2.4. We comment, where relevant, not only on technical points relating to the draft regulations but also on apparent discrepancies between the technical note and our understanding from other meetings and workshops to date of how RTI was intended to work, compared to what we now see in the draft regulations. In certain instances, we believe there is ambiguity which must be clarified in the regulations themselves. HMRC guidance should not be used as a means to resolve ambiguity in legislation.

3. Our comments on the draft legislation

3.1. *Direction requiring employer to register for RTI*

- 3.1.1. HMRC will have an option to require employers to register for RTI before October 2013 by making a direction under the new Regulation 2A(2). We seek clarification of specific circumstances that would lead to such a direction. Furthermore, we seek clear definitions within the legislation as to what would constitute both "general" and "specific" directions for the purposes of Regulation 2A(2).
- 3.1.2. If a direction is of a "general" nature, how would this be publicised? For example, HMRC have been gradually phasing in the requirement to file VAT returns online for various categories of VAT business, and presumably something similar is envisaged here. But we do not think it is adequate for HMRC to direct generally that, say, all employers with X or more staff are required to comply with RTI from X date without making efforts to contact all affected employers and notify them of the change.
- 3.1.3. We also think it is imperative to specify in the Regulations how much notice HMRC must give of making such a direction. For example, it would be unacceptable to give a direction on, say 1 January, that certain employers must comply with RTI from 1 February. A notice period of at least three months, preferably six months, should be specified to ensure that employers are ready to join from the directed date.
- 3.1.4. We also make comments about such directions in the context of seasonal trades under section 6.5 below.

3.2. *Joiners and Leavers*

- 3.2.1. We have previously raised concerns about removing the P45/P46 procedure prematurely. Our concerns have been put forward at various workshops and we echo and continue to support our CIOT colleagues' earlier submission that replacing the P45 with a leaver statement should be

deferred until RTI has bedded in and after there has been suitable time for consultation on the format of any replacement leaver statement.

3.2.2. We now understand from the HMRC consultation meeting we attended on 6 January 2012 that HMRC have listened to these concerns and will be recommending that forms P45 and P46 are retained in their current format until the end of the RTI “transitional period” (expected to be April 2014 or April 2015). This development is most welcome and we believe that this position should be maintained until such time as there has been thorough consultation on all the implications of altering these procedures.

3.2.3. Amongst other things, such consultation must address:

- How the changes would be communicated to employees and pensioners
- The burden on third parties who use a P45 as a typical evidential paper of identity (we are thinking of the thousands of leaflets/forms/websites to be adjusted and debates in all other organisations of whether a leaving statement is a proper alternative)
- The increased risk of fraud by having a “leaver statement” with no definite appearance compared to a recognisable P45 format.

3.2.4. We assume now, however, that the draft regulations will be amended to remove all changes to joiner and leaver procedures and “leaver statements”.

3.2.5. Prior to attending the meeting on 6 January 2012, however, we had noted a number of problems with the draft Regulations on leaver statements and the procedures that follow. Although we now expect retention of the P45 for the time being to make these comments redundant, we nevertheless include them below for future reference should leaver statements eventually be introduced.

3.2.6. First, there is an apparent conflict between the technical note (paragraph 1) and paragraph 22(d), insertion (9)(a) of the draft Regulations which state that when an employer is given a leaver statement by a new employee they complete part 3 of a blank P45. Why should the employer complete a P45 if a leaver statement has been received?

3.2.7. Second, within paragraph 22(a), the new Regulations will include a requirement for the employer to be “satisfied the information given is correct” when a new employee supplies a leaver statement. We seek clarification on how the new employer would be expected to do that.

3.2.8. And third, the amended Regulations require an employee to give a leaver statement to their new employer, yet there does not appear to be any requirement for the former employer to supply the employee with more than one copy. This could lead to employees having incomplete records if they only have one copy which they then give to their new employer.

3.3. ***Employees currently not required to be reported to HMRC***

3.3.1. New Regulation 67B mirrors the current Regulation 66 in that it will not require an RTI submission where an employer is not required to complete a deductions working sheet under Regulation 66. Consequently, where a code is not issued to an employer, and thus Regulation 66(2) is not activated,

there appears to be no requirement under Regulation 67B for the employer to make an RTI submission for such employees. However, we had understood from consultation meetings that under RTI there would be no such exemptions and therefore seek clarity on this point.

- 3.3.2. This is indeed crucial for the purposes of both correct coding for tax purposes for employees with multiple small employments, and correct calculation of Universal Credit (UC) for eligible claimants. If certain employment income is excluded from RTI returns, then the individual risks being overpaid benefits if the UC calculation does not take into account all sources.
- 3.3.3. Following on from this, it is not clear whether Regulation 36ZA requires an employer to give a leaver statement to the employee in circumstances where a code has not been issued and where no RTI submissions have been made. Again, we seek clarity on this point.
- 3.3.4. If **all** employments must be reported under RTI, as we have understood from consultation meetings on RTI, we would like to see clear guidance issued and help offered to employers who traditionally may have had a number of employees in respect of whom they were not required to report pay details to HMRC, but will now under RTI have to do so.

4. Our comments on HMRC's Technical Note accompanying the draft Regulations

4.1. *End of year returns*

- 4.1.1. Paragraph 18 of HMRC's Technical Note states "HMRC will retain the option to require these returns if necessary, however this would only be used as a contingency during the pilot period". That HMRC will retain the option to require RTI employers to provide annual returns is then reflected in the new Regulation 72H, but it is not clear that this is a, presumably time-limited, contingency for the pilot period; nor is it specified under what circumstances HMRC may issue a notice to make such returns.
- 4.1.2. Furthermore, it is not clear during what time limits the employer would have to comply – presumably the usual 20 May deadline following the tax year; but in that case, by when will HMRC have to issue the notice that such a return is required?
- 4.1.3. We feel this proposed Regulation needs further clarification and that the Regulations should narrowly define its use. We do, however, agree that a fallback requirement to provide an annual return might be a useful provision in the early stages of RTI, if HMRC feel it is needed to check the integrity of data returned under RTI and that, as a result, accuracy of employees' data is ensured.
- 4.1.4. Indeed, if HMRC feel it is necessary to have this fallback during the "pilot period" per the Technical Note, why is it not felt necessary for other employers who come into RTI at the end of the pilot? After all, the pilot employers should be more likely to submit accurate data through RTI than those following later, given that they are being supported far more than is likely for other employers when RTI is rolled out across the board. We could therefore envisage circumstances under which HMRC would need to give such a notice after the end of the pilot, and HMRC should therefore be clear on this point up front.

5. RTI Impacts

5.1. *LITRG's project to help 'care and support' employers*

- 5.1.1. LITRG is mentioned in the equalities section of the Taxes Impact Assessment. We feel some clarification is needed in terms of the work we are doing here.
- 5.1.2. We continue to develop our website project "Tax Help for Disabled People" from funding provided to us by HMRC's Grant in Aid program. However, we feel we must point out that not all the funding we requested was granted, and thus, whilst we aim to provide the best resource possible to care and support employers, HMRC should not overestimate, or over-rely on our limited resources.
- 5.1.3. Moreover, it is important to recognise that LITRG does not intend to provide assistance to care and support employers on a one-to-one basis although we aim to provide help and guidance where we can.
- 5.1.4. We therefore seek assurance that HMRC understand the problems outlined below and will be ready to offer multi-channel support to the groups and individuals identified within them.

5.2. *Administrative burdens for small firms*

- 5.2.1. For many small businesses, there will be cost implications of moving to RTI both in terms of additional resource and costs required to meet the additional requirements, a situation made worse by the tough current economic climate. Although the impact assessment acknowledges the problems, it does not offer solutions, in particular for those who have not previously used a payroll or computer system.
- 5.2.2. Such employers may now have to buy a payroll product and then spend valuable business time learning how to operate it, in addition to the requirements imposed by RTI. Even those who opt for HMRC's free Basic PAYE tools software will have to spend time and thus money (or at least loss of "income earning hours") implementing their new payroll.
- 5.2.3. It is clear that the costs for small business have not yet been fully established. We would ask for costs to be minimised wherever possible, especially in the early years of migration to RTI, for example through the provision of a **free-of-charge** HMRC help line. We would seek assurance from HMRC that such a help line service will be adequately resourced so that employers are not faced with additional and unnecessary expense.
- 5.2.4. The guidance note does not suggest that there will be any leniency for errors made in respect of incorrect or late data filing under RTI. We would like to see an acknowledgment and understanding from HMRC of how the move to RTI will impact on small firms in the context of compliance issues.
- 5.2.5. For example, we would like to see enhanced help and support from HMRC to small employers where it is identified there has been non-compliance due to failure to understand the requirements rather than wilful avoidance of the rules. We would advocate a "soft landing" in terms of penalties for at least the first year following mandation of RTI, until the process has bedded down, which could involve HMRC having the flexibility (a discretion which should also be appealable to the tribunal) to

mitigate penalties. Appropriate use of such discretion should help to ensure that penalties are not disproportionate, particularly for small employers.

5.3. *Employers paying PAYE quarterly*

- 5.3.1. Furthermore, there may well be additional burdens placed on employers who make their PAYE payments to HMRC on a quarterly basis by virtue of current Regulation 70.
- 5.3.2. In practice, the quarterly payments method currently reduces the PAYE burden on small firms and although it seems they will continue to be able to pay on this basis even under RTI, these employers will now have to operate an additional monthly reporting system to HMRC.
- 5.3.3. We are concerned that where the RTI submission is made monthly but the employer wishes to remain a quarterly payer, the new Regulation 75A will mean the employer will be more vulnerable to a notice and demand for payment (under the new regulations) where one is not due, causing unnecessary administrative burden and worry and a cost to HMRC. Whilst we acknowledge the technical note (para 6) states there will be no change to the frequency of payments, we raise this point so that clear guidance may be issued to quarterly payers.

5.4. *Digital Exclusion*

- 5.4.1. Our recent response to HMRC's Digital by Default consultation¹ set out concerns for small and micro employers, and the problem of those who are digitally excluded. In particular, paragraph 1.3 of that response stressed that "Digital communication does not suit all businesses. It would leave some, particularly the smallest, in real difficulty, by placing additional (sometimes even insurmountable) burdens on them or involve them in disproportionate cost. It is also unfair and potentially discriminatory that HMRC should expect or even ask businesses to rely on friends or family to help them with online transactions."
- 5.4.2. Our recommendations at part 5 of our digital exclusion response are echoed in their entirety for this consultation. Indeed the requirements of RTI will only magnify the problems for disadvantaged groups by introducing yet another online system.
- 5.4.3. We continue to be concerned that many disadvantaged groups (older people, those with disabilities and low socio-economic status) who are not exempted from online filing of monthly returns, will face disproportionate burdens in meeting these requirements.
- 5.4.4. Whilst we acknowledge there will be a paper alternative for those who are exempt (care and support employers and those who object to using electronic methods of communication on religious grounds), we feel strongly the statutory exemptions should be extended to include those small

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http://www.litrg.org.uk/Resources/LITRG/Documents/2011/11/LITRG_Digital_by_default_31Oct11_FINAL.PDF

employers who are unable or will find it excessively difficult to transact online, especially on a monthly basis.

- 5.4.5. In this respect, it may well be that some smaller employers have been imposing on friends and family or others for assistance in filing annual PAYE returns online. A more frequent filing requirement under RTI might not be achievable in the same way, so HMRC will need to tailor support for those in this situation.
- 5.4.6. We welcome help for smaller employers in the form of Basic PAYE Tools and acknowledge this will allow dial-up access to submit returns online which is helpful to those businesses with limited or no access to broadband. In this context however, we are concerned that those without broadband access (or with limited access) will face disproportionate burdens in terms of cost and slower transaction times.
- 5.4.7. Ideally, we would like to see the option of RTI submission on paper for those in this position. Provision of a service whereby HMRC could be notified of data by telephone may be another option (as previously discussed in the context of VAT online filing), although this is likely to be less suitable for RTI given the much larger quantity of data involved.

5.5. ***Care and Support Employers***

- 5.5.1. We recognise that the new Regulation 67D exempts care and support employers from filing electronically. But some care and support employers who have opted to file online currently may have done so in the belief there was only one year end process. We seek assurance that employers within this group will have the option to return to paper filing if they find they cannot cope with the additional burden of dealing with more frequent returns online under RTI.
- 5.5.2. This would also apply to those who, due to a deterioration of health or other change of circumstances, may require a return to paper filing. Even those who previously received an incentive payment to move to online filing may have to revert to manual filing due to a deteriorating condition or disability. We seek clarification on how this will be dealt with by HMRC.
- 5.5.3. HMRC seem to have overlooked the group of disabled people who do not fall under the definition of “care and support employers” but who will struggle with technology and for whom some mitigation strategies will be needed. For example, this would include a disabled person who is running a small business and employs staff, rather than employing domestic staff to help in their home or for personal care needs. What support will be available to them to comply with RTI?
- 5.5.4. Care and support employers who have previously used the Simplified PAYE scheme (soon to be abolished) are also worthy of special mention as another group to which HMRC must provide tailored assistance in the transition to RTI. In particular, there may be reasons why filing dates cannot be met, due to illness or disability, and we would expect there to be reasonable consideration given to this eventuality.
- 5.5.5. As the draft legislation requires monthly returns to be made by the 19th of the month following the tax month end, HMRC need to have a robust and efficient system in place to ensure that paper forms are sent to care and support employers in good time.

- 5.5.6. In summary, whilst we acknowledge that, as stated in the impact assessment, “RTI provides HMRC with an opportunity to support the Government initiative to expand digital inclusion (for example, by working with LITRG as described above) to include those who have not yet been part of the digital revolution”, we remain concerned that there are those who will always need alternatives to online channels and that their needs should not be neglected.

6. Related Issues

6.1. *Fruitful and early use of data gathered under RTI*

- 6.1.1. For RTI to succeed it will be essential that all the new data it gathers is used in a fruitful way. For example, most Extra-statutory Concession A19 cases are based upon HMRC’s failure to make proper and timely use of data in their possession. RTI can offer an improvement in getting PAYE taxpayers’ affairs right in-year, but only if the new data supplied under RTI is used at an early stage, and not just “stored” until some later time such as end of year reconciliation, or even a future compliance check.
- 6.1.2. Could HMRC therefore clarify what they mean by the statement in the Taxes Impact Assessment that “Over time, RTI will allow PAYE to become more accurate for employees and pensioners during the year.”? That is, how soon will HMRC intend to start making best use of RTI data for the purposes of coding after all employers have joined the scheme?

6.2. *Data quality*

- 6.2.1. We raised our concerns about incorrect data in our previous responses and these remain.
- 6.2.2. For example, it appears that no safeguards have been built into the draft regulations to ensure early discovery of incorrect data in order to make corrections at the earliest possible date, and not carry them forward for a whole tax year, or indeed from one year to the next.
- 6.2.3. Without P45s (if they were replaced with leaver statements, as discussed above), P14s and P35s, we remain doubtful that the remaining requirements are sufficient to accurately identify the employee/pensioner. We believe the system will still be vulnerable to incorrect data creeping in, given that we understand an RTI submission will go through if sufficient data is **completed**, but that the data need not necessarily be **correct**.
- 6.2.4. The system must not therefore be wholly reliant on employers. By this, we mean that there must be a clear and straightforward mechanism for errors to be corrected quickly, especially where it may impact on Universal Credit entitlement.
- 6.2.5. For example, we are aware of cases where employees have found it impossible to get HMRC to recognise that figures reported on a P11D are incorrect. The employees have been directed back to their employer to raise their query and seek to get the figures changed. This leads them to a dead end if the employer refuses to change the reported figures.

- 6.2.6. It is therefore imperative that employees have a direct route to HMRC to resolve any similar discrepancies with RTI data. Such queries and delays could otherwise lead to incorrect benefits calculations and payments.

6.3. ***Payrolling of expenses and benefits***

- 6.3.1. RTI will not extend to benefits and expenses information and therefore will not remove entirely the need for post year-end re-calculation of liabilities. We have yet to see clear guidance on how those employers who currently include expenses and benefits payments to employees through the payroll will be accommodated within RTI and how post year end reconciliation will take place. We seek assurance on how the system itself will ensure no amounts are “double counted” or that employees do not suffer excessive deductions and disproportionate burdens in checking and rectifying their affairs.
- 6.3.2. Again, this has important implications in the context of Universal Credit entitlement calculations, if the data flowing to the Department for Work and Pensions includes benefits in kind or expenses payments which should not be assessed as “income” for benefits purposes.

6.4. ***Penalties***

- 6.4.1. We would very much like to see a “light touch” approach for penalties in the first few years of RTI for those, particularly small, employers who are seeking to comply but who struggle to get to grips with the new system. We note this has been acknowledged by HMRC in the technical note and at RTI Customer User Group meetings but we seek further assurance from HMRC on the specific strategy and how it will be communicated.
- 6.4.2. We believe that HMRC should have the ability to suspend penalties for RTI failures, where the employer can be helped and supported to avoid repeated errors. Furthermore, a refusal of (or dispute over the terms of) such suspension should be appealable to the tribunal.

6.5. ***Transitional period***

- 6.5.1. Staggering the introduction of RTI, whilst sensible in some ways to avoid overburdening HMRC’s systems and help lines, brings its own problems.
- 6.5.2. For example, we foresee a further burden on some employers who may be required to adopt RTI part way through a year, such as will be the case when it is introduced fully in October 2013.
- 6.5.3. We think that there should be maximum flexibility for small employers with limited resources to choose when to join RTI, in particular to suit the nature of their trade and specific business requirements. It would, for instance, be unhelpful to direct an employer engaged in a seasonal trade (such as farming or tourism) join RTI at their busiest time.
- 6.5.4. Employers should therefore have the ability to object to a direction such as that envisaged under the new Regulation 2A(2) and propose a time to join RTI more suited to the individual business’s needs.

LITRG

9 January 2012