

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. 2)**  
**REGULATIONS 2012**

**2012 No. 1895**

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the 2003 Regulations). The amendments make provision requiring certain employers to include a reference in a return under regulation 67B of the 2003 Regulations and requiring the providers of certain electronic payment services to provide information relevant to the creation of that reference to HMRC. They also provide for the Commissioners for Her Majesty's Revenue and Customs to make directions specifying details about how this process will work.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

None.

4. **Legislative Context**

4.1 These Regulations rely on powers contained in section 684 of the Income Tax (Earnings and Pensions) Act 2003. The powers in that section were extended by section 225 of the Finance Act 2012. This is the first use of the extended powers.

4.2 The 2003 Regulations govern the operation of the Pay As You Earn (PAYE) system under which income tax is deducted at source from employees' pay. Certain other deductions are also made under the PAYE system.

4.3 The Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (the 2012 Regulations) made amendments to the 2003 Regulations as part of the introduction of HMRC's Real Time Information programme (RTI). Amongst other things, the amendments provide for RTI to be phased in. It will apply to all employers from October 2013.

4.4 Under RTI, employers are required to report payments to employees and the deduction of tax to HMRC each time a payment is made. These Regulations make amendments to the 2003 Regulations which, along with the initial direction which will be made under them, will require certain employers who make payments of earnings through the Bacs system to provide data to

HMRC to corroborate the information they report against the payment actually made. They also provide for those employers' banks to provide corresponding information to HMRC.

4.5 The initial direction to be made under the amended 2003 Regulations will set out the details about how this process will work.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 PAYE has been operating for some 60 years. RTI is being phased in from April 2012 to bring PAYE into the 21st century by making it easier for employers, pension providers and HMRC to administer and over time more accurate for some individuals by improving the processes relating to joiners and leavers.

7.2 Under RTI employers and pension providers tell HMRC about PAYE payments and deductions they make (tax, National Insurance, Student Loan repayments, etc) at the time they pay their employees.

7.3 Instead of PAYE being a separate process for employers and pension providers, the RTI process is integrated within the payroll process. Payroll software collects the information and sends it to HMRC electronically – with the smallest employers able to download HMRC's free 'Basic PAYE Tools'.

7.4 The long term intention is to enable any employer using the Bacs payment system to make wages payments to make their PAYE tax returns through that same channel. However because of concerns raised by the payroll industry, banks and others about the time scale for implementing that long term solution, HMRC announced in May 2011 that it had been decided to defer using the Bacs channel and develop a technical solution for an interim period. These Regulations give effect to that interim solution.

- *Consolidation*

7.5 There are currently no plans to consolidate the 2003 Regulations.

## **8. Consultation outcome**

8.1 HMRC have consulted widely on RTI and the responses to these consultations have been used to inform and develop our policy. Since announcing the interim solution in May 2011, HMRC have been in discussion with Bacs member banks, who are principal stakeholders affected by this change, including in relation to developing the draft regulations and direction.

8.2 In accordance with the Government's Tax Consultation Framework, a draft of the amendments made by these Regulations was published as part of the draft 2012 Regulations, alongside the draft direction, on the HMRC website for comment from 14th November 2011 to 9th January 2012. The draft 2012 Regulations, direction and accompanying technical note are available here: <http://customs.hmrc.gov.uk/ConsultationDocumentsregs>.

## **9. Guidance**

Extensive guidance is available on HMRC's website for employers that join RTI.

## **10. Impact**

10.1 All employers including charities or voluntary bodies will be required to use RTI. The change in these Regulations will affect employers who pay their employees via Bacs and who submit these Bacs payments under their own Bacs Service User Numbers. It is mainly large employers that do this.

10.2 The impact of RTI on the public sector is the same as for any other employer.

10.3 A Tax Information and Impact Note covering this instrument was published on 15th March 2012 alongside the 2012 Regulations and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business. The amendments made by these Regulations and the initial direction which will be made under them will mainly affect the largest employers who make payments under their own Bacs Service User Numbers, but will also affect small businesses who pay employees in this way.

11.2 RTI aims to reduce administrative burdens for all employers, including small employers (upon whom the current burden of PAYE currently falls disproportionately). The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process.

11.3 A number of small firms are taking part in the RTI pilot and HMRC's research into employer impacts. The resulting findings will inform the support HMRC needs to offer to small employers to migrate on to RTI.

**12. Monitoring & review**

12.1 RTI is being piloted from April 2012 and HMRC will monitor and review the amendments made by these Regulations and the initial direction to be made under them alongside that pilot and make amendments where necessary.

**13. Contact**

**Paul Harris** at HMRC, tel: 020 7147 2528 or email:

[pa.harris@hmrc.gsi.gov.uk](mailto:pa.harris@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.