EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) AND THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT) REGULATIONS 2014

2014 No. 472

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

2.1 These Regulations make amendments to the Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) ("the 2003 Regulations") necessary for the operation of HMRC's Real Time Information programme (RTI) for direct collection schemes, employers exempt from online filing and employers with 9 or fewer employees who are reporting Pay As You Earn (PAYE) information in real time from 6 April 2014 until 5 April 2016.

2.2 These Regulations make amendments to regulation 72F of the 2003 Regulations from 6 April 2014.

2.3 These Regulations also make amendments to the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) ("the 2005 Regulations") to provide for application of a tolerance with regard to late filing defaults and penalties.

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

None.

4. Legislative Context

4.1 The 2003 Regulations govern the operation of the PAYE system under which Income Tax is deducted at source from employees' pay. Certain other deductions are also made under the PAYE system.

4.2 The 2003 Regulations also make provision, amongst other things, for the recovery of tax from an employee rather than an employer where it appears an amount intended to represent tax on the PAYE income has been self-assessed or paid on account

4.3 The 2005 Regulations make provision in relation to the construction industry scheme (CIS) established by Chapter 3 of Part 3 of the Finance Act 2004 (c. 12).

Reporting Requirements

4.4 Under the 2003 Regulations, employers are required to report payments to employees and the deduction of tax to HMRC each time a payment is made. These returns are also used to report changes in employment.

4.5 These Regulations make provision for the tax years 2014-15 and 2015-16 for certain employers to make one return in respect of all the relevant payments in a tax month. The employers to whom this revised filing date applies are those who are existing employers at 5 April 2014 who employ no more than 9 employees at 6 April 2014 and 6 April 2015.

4.6 The collection of National Insurance contributions (NICs) relies on the PAYE system. Amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) are being made by HMRC at the same time as these Regulations to reflect the introduction of this relaxation.

4.7 These Regulations further amend the 2003 Regulations to permit those employers who are entitled to file on paper (paper filer employers) to provide the returns on a quarterly basis rather than monthly as at present. These Regulations also clarify that where a paper filer employer files electronically, that employer will also be required to file on or before making a payment to an employee.

4.8 These Regulations also amend Chapter 4 of Part 7 to the 2003 Regulations so that employees who are required to deduct, pay over and report their tax to HMRC will be required to do so electronically and on receipt of the payment from their employer. This Part of the 2003 Regulations applies to employees whose employers have no presence in the United Kingdom.

Regulation 72F

4.9 These Regulations amend regulations 72E and 72F to allow HMRC to undertake a sampling exercise to extrapolate an amount due in respect of tax by an employer in certain circumstances, often where their employees are reclassified from self-employment to employment. They also provide HMRC with an option when it issues a notice to the employee of whether to include details of the amounts offset and the tax years they refer to or state the employment to which the notice applies.

Late payment penalties

4.10 Schedule 50 Finance Act 2013 (c. 29) amended Schedule 56 to the Finance Act 2009 (c. 10), which makes provision for late payment penalties, to provides for a "payment tolerance".

4.11 These Regulations set the payment tolerance at £100, so that where an employer pays over a sum that is within £100 of the total sum due to HMRC from all sources for the tax period in question, no late payment default will be due.

4.12 These Regulations also make an amendment to the 2005 Regulations so that the payment tolerance applies to payments from contractors who operate only a Construction Industry Scheme, as well as to the combined sum due from an employer/contractor which operates one payroll scheme in relation to all the deductions due to HMRC in any tax period.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 HMRC piloted RTI during the 2012-13 tax year. The 2003 Regulations were amended with effect from 6 April 2012 to facilitate its introduction. Further amendments were introduced to reflect changes to employers' obligations under RTI from 6 April 2013, at which date the vast majority of employers were required to report payments on or before making them.

Micro Employers

7.2 The vast majority of employers are finding reporting in real time easier than expected, however HMRC recognises that a small proportion of employers and their agents still need more time to adapt.

7.3 HMRC is putting in place a two year relaxation to the reporting requirements for existing micro employers. It will allow micro employers, whom at the 5 April 2014 have already been issued with an employer's PAYE reference and who continue to have 9 or fewer employees at 6 April 2014 and 6 April 2015, to make a return of all relevant payments to their employees in a tax month on or before making the last payment in that tax month. The current relaxation to real time reporting, which applies to employers with up to 49 employees, comes to an end on 5 April 2014.

7.4 All new employers starting to operate PAYE from 6 April 2014, regardless of size, will need to report each time they pay their employees.

7.5 The relaxation will only apply for the tax years 2014-15 and 2015-16 in order to assist the smallest employers to adapt to more frequent reporting. As from 6 April 2016 these employers will be required to file on or before the making of the payment to an employee.

Employers exempt from online filing

7.6 This legislation also makes minor changes to the PAYE Regulations for those who are exempt from online filing (paper filers). Policy allows for these employers to file quarterly, but if a paper filer decides to file electronically then that employer will be required to file on or before making a payment to an employee.

Regulation 72F

7.7 Under the 2003 Regulations, HMRC can, if certain requirements are met, transfer the liability for payment of tax from the employer to the employee by serving a notice on the employer and each individual concerned. The Notice to the individual must specify each year concerned and the tax paid for each year. Where large numbers of individuals are affected, this creates a substantial administrative burden on HMRC with no material advantage for the individuals.

7.8 These amendments reduce the burden on employers and HMRC by permitting the serving of notices on individuals but providing an option as to whether to include details of the amounts offset and the tax years they refer to or to only state the employment to which the notice applies. These amendments will also enable HMRC, in certain circumstances, to undertake a sampling exercise to extrapolate an amount by which the tax due from the employer will be reduced.

Direct Collection

7.9 The PAYE regulations provide that in certain circumstances, for example if the employer is not present the United Kingdom, HMRC can make arrangements for the collection of tax on PAYE income from the employee (Direct Collection).

7.10 The employee may object to operating the direct collection procedure, in which case HMRC can direct that the employee must return the relevant payments under Self Assessment.

Late payment penalties

7.11 Where there is a difference in the payments made to HMRC and the amounts due for a tax period, but that difference is no more than £100, no late payment default (and possibly late payment penalty) will apply. Where penalties are charged they are tax-geared, so are based on the amount of tax paid late.

7.12 These features should particularly assist employers who are required to make weekly returns and so help keep any penalties proportionate for small employers.

- ***Consolidation***

7.13 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 HMRC has consulted widely on the impact of employers reporting PAYE in real time. Analysis of the evidence indicates that the majority of employers are able to file 'on or before' and that they believe they will experience, over time, a reduction in their administrative costs when the changes to end-of-year processes are taken into account. However, there is some concern that 'on or before' reporting could increase costs for some small businesses. A report of the HMRC findings is available at https://www.gov.uk/government/publications/real-time-information-rti-assessment-of-impact-of-on-or-before-reporting

8.2 HMRC recognises that new technologies and processes could help minimise the cost of processing payroll but that these may take some time to develop and adopt.

8.3 These regulations form part of a package, developed with employers, agents, payroll software providers, representative bodies and the Department for Work and Pensions, to help micro employers as they move towards full reporting of PAYE information in real time.

9. Guidance

9.1 Extensive guidance has been published on HMRC's website for employers using RTI and this will be updated to reflect these changes.

9.2 Guidance will be published on HMRC's website for employers affected by the changes to Regulation 72F.

10. Impact

10.1 All employers including charities or voluntary bodies are required to use RTI.

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

10.3 The amendments to Regulation 72F will only affect those employers with large numbers of employees who are re-categorised.

10.4 It is unlikely that the public sector will be affected by the Regulation 72F amendment.

10.5 A Tax Information and Impact Note (in relation to the RTI programme) was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (SI 2012. No 822). This was updated as a result of changes to the impacts as a result of the year long RTI pilot 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.

10.6 A Tax Information and Impact Note covering those regulations providing for the tolerance applicable to late filing penalties was published on 20 March 2013, alongside the Budget documentation 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.

10.7 A Tax Information and Impact Note in relation to the changes to Regulation 72F was published on 24th February 2014 alongside a draft of those regulations and is available on the HMRC website at http://www.hmrc.gov.uk/the library/tiins.htm. It remains an accurate summary of the impacts that apply that apply to this instrument.

11 Regulating small business

11.1 The legislation applies to small business.

11.2 RTI aims to reduce administrative burdens for all employers, including small employers and this amendment is intended to help achieve that aim.

12 Monitoring & review

12.1 RTI was piloted during the 2012-2013 tax year and from 2013-2014 tax year most employers were required to report in real time. HMRC will however continue to monitor the operation of RTI, in particular the interaction with Universal Credit and consider further amendments as necessary.

13 Contact

The following can answer any queries regarding the instrument:
Ady Garrett at HMRC tel: 03000 586936 or email:
ady.garrett@hmrc.gsi.gov.uk