EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTTISH RATE OF INCOME TAX ETC.) (AMENDMENT) REGULATIONS 2016

2016 No. 233

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends various sets of existing legislation (see Legislative Context) relating to income-related social security benefits to reflect the introduction, by the Scottish Government, of a Scottish rate of income tax for Scottish taxpayers, from 6 April 2016, being the start of the 2016/17 tax year. Its purpose is to ensure that benefit claimants get the correct award, and that people liable to pay child maintenance have their income determined correctly, taking into account the tax rules that apply to them. This instrument also updates the various definitions of "personal allowance" currently to be found in the same legislation, aligning them with the appropriate references in the Income Tax Act 2007 http://www.legislation.gov.uk/ukpga/2007/3/contents; and makes other minor corrections.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The UK Government currently levies income tax on people at three rates: the basic rate, being 20% on their taxable income (over and above their personal allowance) up to £31,785; the higher rate, being 40% on their taxable income (over and above their personal allowance) between £31,786 and £150,000; and the additional rate, being 45% on their taxable income (over and above their personal allowance) over £150,001. The personal allowance is the standard amount of taxable income most people can have before they start paying income tax.

4.2 The Scotland Act 1998 ("the 1998 Act") http://www.legislation.gov.uk/ukpga/1998/46/contents (as amended by section 25 of the Scotland Act 2012 {"the 2012 Act"} http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted) confers on the Scottish Parliament a power to vary the three rates of income tax for Scottish taxpayers. A Scottish taxpayer is defined in the 2012 Act as someone who is a UK taxpayer and has their main place of residence in Scotland.

4.3 For Scottish taxpayers, the three rates will be calculated as per section 6A of the Income Tax Act 2007 http://www.legislation.gov.uk/ukpga/2007/3/contents (as introduced by paragraph 3 of Schedule 38 to the Finance Act 2014 http://www.legislation.gov.uk/ukpga/2014/26/contents/enacted) by reducing each of them by 10 pence in the pound and adding onto the reduced rates a single, new Scottish rate as set by the Scottish Parliament.

4.4 The Scottish rate of income tax will first be introduced from the start of the 2016/17 tax year, being 6 April 2016. In Scotland's Spending Plans and Draft Budget 2016-17 http://www.gov.scot/Resource/0049/00491140.pdf published on 16 December 2015, the Scottish Government proposed that the rate for 2016/17 would be set at 10 pence in the pound. The net effect is that the rates of income tax payable by Scottish taxpayers in 2016/17 will remain the same as the rates payable in the rest of the UK. However, that may not remain the position in tax years beyond 2016/17.

4.5 This instrument is needed in order to introduce definitions of a "Scottish taxpayer" and the "Scottish basic rate" of tax into, and to expand all references to the "basic rate" of tax to accommodate appropriate references to the "Scottish basic rate" of tax in, the following Regulations:

- the Income Support (General) Regulations 1987 (S.I. 1987/1967) http://www.legislation.gov.uk/uksi/1987/1967;
- the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) http://www.legislation.gov.uk/uksi/1996/207;
- the Housing Benefit Regulations 2006 (S.I. 2006/213) http://www.legislation.gov.uk/uksi/2006/213;
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) http://www.legislation.gov.uk/uksi/2006/214);
- the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) http://www.legislation.gov.uk/uksi/2008/794;
- the Jobseeker's Allowance Regulations 2013 (S.I. 2013/378) http://www.legislation.gov.uk/uksi/2013/378; and
- the Employment and Support Allowance Regulations 2013 (S.I. 2013/379) http://www.legislation.gov.uk/uksi/2013/379.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 Separate but corresponding provisions will be made for Northern Ireland by statutory instrument.

6. European Convention on Human Rights

6.1 As this 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 The 1998 Act confers on the Scottish Parliament a power to vary the three rates of income tax for Scottish taxpayers for the whole of any specified tax year, through the introduction of a Scottish rate of income tax. The Scottish rate of income tax is only payable by Scottish taxpayers. It is the responsibility of Her Majesty's Revenue and Customs (HMRC) to decide who is and is not a Scottish taxpayer.

7.2 Depending on the rate at which the Scottish rate is set, the rates of income tax payable by Scottish taxpayers in any tax year might be higher or lower than, or the same as, the corresponding rates for the rest of the UK. It follows that the net income and earnings of a Scottish taxpayer might differ from those of a person with similar income levels who lives elsewhere in the UK.

7.3 The Department takes into account the net income and earnings of claimants (and, where appropriate, their partners) across a range of benefits, and in certain calculations as to how much maintenance a parent is to pay in respect of their child or children. Depending on the rate at which it is set, the introduction of a Scottish rate of income tax for Scottish taxpayers therefore has the potential to affect a range of Departmental calculations, in any case where the claimant or parent has sufficient taxable income to pay income tax. This is an inescapable consequence of the change.

7.4 This instrument introduces definitions of a "Scottish taxpayer" and the "Scottish basic rate" of tax into each of the Regulations mentioned at paragraph 4.5, and amends references to the "basic rate" of tax to include a reference to the "Scottish basic rate of tax", where appropriate. There are no references to the "higher" or "additional" rates of tax in any of the substantive Regulations, so no comparable amendments are required.

7.5 This instrument also amends outdated references to "personal allowance" in each of the Regulations mentioned at paragraph 4.5, substituting references to "personal reliefs" under the relevant provisions of the Income Tax Act 2007.

Consolidation

7.6 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website http://www.legislation.gov.uk/. An explanation as to which instruments are maintained on each site is available from http://www.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 No consultation has been carried out on the provisions of this instrument. Consultation was not considered necessary as the amendments are considered to be technical and comprise, principally, changes to pre-existing definitions in legislation consequential upon the introduction by the Scottish Government of a separate rate of income tax for Scottish taxpayers.

8.2 The proposed changes were scrutinised by the Social Security Advisory Committee on 2 December 2015, under the provisions of section 173 of the Social Security Administration Act 1992 http://www.legislation.gov.uk/ukpga/1992/5. The Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, it did not conduct a public consultation exercise on the proposals.

8.3 As required by section 176 of the Social Security Administration Act 1992, the Local Authority Associations were consulted on the proposals relating to Housing Benefit. They raised no concerns.

9. Guidance

9.1 No instructions have been developed in relation to this instrument because, principally, it does no more than introduce new definitions and expand existing ones in consequence of the introduction, by the Scottish Government, of a Scottish rate of income tax.

9.2 Instructions relating to the introduction of a Scottish rate of income tax itself are being developed for staff in the Jobcentre Plus offices who advise customers, staff in benefit centres who determine benefit claims and administer awards, and staff who make child maintenance calculations.

9.3 Claimants will be informed about the changes, where relevant, at their interviews with their advisers. Leaflets and gov.uk pages will be updated as necessary.

9.4 Guidance will be made available to local authorities prior to the instrument coming into force. The guidance about the changes to Housing Benefit will also be available in the Housing Benefit for local authorities section of gov.uk

9.5 HMRC has issued a letter to all people whose main residence is (according to its records) in Scotland, advising them that the Scottish rate of income tax will apply to them, and asking them to let HMRC know if their main place of residence is not in Scotland, or of their new address if they move home. Once the Scottish Government has set the Scottish rate of income tax, HMRC will advise people classified for their purposes as Scottish taxpayers as appropriate.

10. Impact

10.1 This instrument, in itself, has no impact on business, charities or voluntary bodies. Once the Scottish Government has set the Scottish rate of income tax, HMRC will notify employers as appropriate.

10.2 This instrument, in itself, has no impact on the public sector. On the potential impact of the introduction of the Scottish rate of income tax itself, it follows that, regardless of the rate at which it is set, the only people who will be affected by its introduction are those with sufficient taxable income to pay income tax. We estimate that there are, currently, some 30,000 such claimants with benefit awards covered by the Regulations mentioned at paragraph 4.5 who are living in Scotland, and whose awards might, as a consequence, be affected if the rates of income tax payable by Scottish taxpayers were to be higher or lower than the corresponding rates for the rest of the UK. Any effects, however, would be a consequence of changes made by the Scottish Government rather than of these regulations.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance, enquiries received from the Department's offices and correspondence from members of the public.

13. Contact

13.1 David Crowther at the Department for Work and Pensions (Tel: 0114 293 4835; e-mail: david.crowther@dwp.gsi.gov.uk) can answer any queries regarding this instrument.