

## EXPLANATORY MEMORANDUM TO

### THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2016

2016 No. 329

#### 1. Introduction

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

#### 2. Purpose of the instrument

- 2.1 This instrument makes amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the 2003 Regulations) which make provision for the assessment, charge, collection and recovery of income tax under the PAYE system. This instrument amends the information which employers and pension providers are required to report to HMRC to include information in respect of certain lump sum payments which are made from registered pension schemes. The instrument also makes minor amendments in relation to documents to be submitted to HMRC and the use of electronic communications.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Select 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 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 2003 Regulations govern the operation of the Pay As You Earn (PAYE) system under which income tax is deducted from payments made to employees and pensioners.
- 4.2 Regulation 3 amends regulation 65 of the 2003 Regulations to remove the obligation for a taxpayer to provide Parts 2 and 3 of Form P45 when claiming a repayment of tax.
- 4.3 Regulation 4 makes two amendments to regulation 210 which is concerned with the delivery of documents to HMRC using an approved method of electronic communications.
- 4.4 Regulation 5 amends Schedule A1 to the 2003 Regulations which specifies the information that is to be reported to HMRC. This instrument inserts new paragraphs 22C and 22D into Schedule A1.
- 4.5 New paragraph 22C identifies the lump sum payments made to individuals under the pension flexibility rules inserted into the Finance Act 2004 (c. 12) by paragraph 65 of

Schedule 1 to the Taxation of Pensions Act 2014 (c. 30) which are to be reported to HMRC.

- 4.6 New paragraph 22D requires an employer to report any lump sum payment to which section 636A(4ZA) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) applies.

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

- 5.1 This instrument applies to all of the United Kingdom
- 5.2 The territorial application of this instrument is the United Kingdom.

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

- 6.1 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 As all employers are now required to report payments of PAYE income in real time, HMRC should hold an employee's previous pay and tax details if the employee requests a repayment as a result of no longer being employed. It is therefore no longer necessary for HMRC to require a taxpayer who is seeking a repayment of tax as a consequence of unemployment to produce Form P45 as part of the application process.
- 7.2 Employers have approached HMRC querying the entry in the Table in regulation 211 of the 2003 Regulations that employers are not permitted to serve a Form P45 on an employee using an approved method of electronic communications. How the Form P45 is given to an employee is a matter between the employer and the employee. Therefore, the Table has been amended to reflect this.
- 7.3 The 2003 Regulations permit an employer to elect to be treated as a separate employer in respect of certain employees - for instance an employer may decide to run one payroll for employees who are directors and another for the remainder of its employees.
- 7.4 Given the move to mandatory on line filing for much of the information to be provided by employers, HMRC has taken the view that where an employer makes such an election, the employer should be permitted to submit that election using an approved method of electronic communications if it wishes.
- 7.5 The Taxation of Pensions Act 2014 made a number of changes to the Finance Act 2004 to allow individuals with money purchase pension savings to flexibly access those savings from age 55. Where an individual receives a lump sum under the pension flexibility rules they are subject to a reduced annual allowance for pensions tax relief, the money purchase annual allowance. The money purchase annual allowance is intended to prevent individuals from using pension flexibility to avoid paying tax on their current earnings.
- 7.6 By reporting that the payment being made is a payment of a lump sum under the pension flexibility rules HMRC will know that the money purchase annual allowance applies in the case of this individual. The payments to be reported are:

- the taxable portion of an uncrystallised funds pension lump sum
- a payment of lifetime annuity made under a flexible annuity contract to which the member became entitled after 6 April 2015, where the contract allows for the payments to decrease and to continue to be paid after the member's death until the end of any guarantee period
- a payment from a member's flexi access drawdown fund, and
- a payment of scheme pension paid from a money purchase arrangement where there are fewer than 12 members including this member

7.7 Finance (No. 2) Act 2015 made changes to the taxation of lump sum death benefits paid to an individual who is the ultimate beneficiary, to remove them from the Special Lump Sum Death Benefits charge and charge them at the individual's marginal rate of tax for payments made on the death of a member aged over 75. Payments made to individuals on the death of a member who is under age 75 are not taxable. Employers, including pension providers, are required to report lump sum death benefit payments made to an individual where the member died after the age of 75. Or where the member died before the age of 75, but the lump sum is paid more than 2 years after the death of the member.

7.8 This information will enable HMRC to monitor the impacts of the changes to the taxation of lump sum death benefits.

#### *Consolidation*

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

### **8. Consultation outcome**

8.1 The Government consultation on Freedom and Choice in Pensions resulted in the Taxation of Pensions Act 2014 (the Act). The changes being made here are consequential to the changes made by the Act. The outcome of the consultation can be found at [www.gov.uk/government/consultations/freedom-and-choice-in-pensions](http://www.gov.uk/government/consultations/freedom-and-choice-in-pensions) .

### **9. Guidance**

9.1 Guidance for employers reporting information using Real Time Information reporting has been published on HMRC's website and this will be updated to reflect these changes to the reporting requirements.

### **10. Impact**

10.1 The impact on business, charities or voluntary bodies is the same as for any other employer.

10.2 The operational impact of this measure on the public sector is the same as for any other employer

10.3 An updated Tax Information and Impact Note published on 10 December 2014 covered the new reporting requirements for scheme administrators and individuals who have flexibly accessed their pension savings and can be found at [www.gov.uk/government/publications/pension-flexibility-2015](http://www.gov.uk/government/publications/pension-flexibility-2015) . This remains an accurate summary of the impacts.

10.4 A Tax Information and Impact Note published on 8 July 2015 covers the lump sum death benefits changes and can be found at

[www.gov.uk/government/publications/taxation-of-lump-sum-death-benefits](http://www.gov.uk/government/publications/taxation-of-lump-sum-death-benefits) . This remains an accurate summary of the impacts.

- 10.5 A Tax Information and Impact Note has not been prepared in respect of the amendments made by regulations 3 and 4 as they contain no substantive changes to tax policy.

## **11. Regulating small business**

- 11.1 The legislation applies to small businesses which are also employers and/or pension providers.
- 11.2 The legislation applies in the same way to small businesses as it does to any other business. Small businesses which are also employers are already required to deliver information to HMRC on or before making payments to their employees.

## **12. Monitoring & review**

- 12.1 HMRC will monitor the operation and administration of this change through continued communication with employers and external stakeholder groups.

## **13. Contact**

- 13.1 Samantha Skill at HMRC Tel: 03000 564149 or email: [pensions.policy@hmrc.gsi.gov.uk](mailto:pensions.policy@hmrc.gsi.gov.uk) can answer any queries regarding the pension changes detailed in this instrument.
- 13.2 Craig Maffey at HMRC Tel: 03000 517956 or email: [craig.r.maffey@hmrc.gsi.gov.uk](mailto:craig.r.maffey@hmrc.gsi.gov.uk) can answer any questions regarding the PAYE changes in regulations 2, 3 or 4.