

EXPLANATORY MEMORANDUM TO

THE PENSION (NON-TAXABLE PAYMENTS FOLLOWING DEATH) (REAL TIME INFORMATION) REGULATIONS 2021

2021 No. 506

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 provides for the reporting to HMRC of certain types of non-taxable payments through the Real Time Information (RTI) system.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 John Glen, Economic Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Pension (Non-Taxable Payments Following Death) (Real Time Information) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Payments of pension death benefits, lump sum death benefits and certain pensions payable after the death of a member, can be made to the beneficiary of a member of a registered pension scheme, in accordance with Part 4 of the Finance Act 2004 (FA 2004). Section 150 of FA 2004 defines a registered pension scheme. Section 167 defines a pension death benefit and section 168 defines a lump sum death benefit. Section 165(1) defines a pension that is payable after the death of a member of a pension scheme.

- 6.2 Section 683 of the Income Tax (Earnings and Pensions) Act 2003 defines PAYE income and this includes PAYE pension income. The Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) provide for the operation of the Pay As You Earn (PAYE) system.
- 6.3 This instrument provides for the reporting to HMRC of non-taxable payments, using RTI.
- 6.4 This instrument will have effect from 6 April 2022.

7. Policy background

What is being done and why?

- 7.1 This instrument provides for the mandatory reporting of certain non-taxable payments to HMRC through the RTI system. These payments are currently not required to be reported to HMRC under existing legislation.
- 7.2 This means HMRC will have full and complete information about both taxable and non-taxable payments and will ensure an individual pays the correct amount of tax based on all their income for PAYE purposes.
- 7.3 HMRC share income details with the Department for Work and Pensions (DWP), so this instrument will mean that DWP will also have full and complete information about an individual's income. DWP take into consideration both taxable and non-taxable income when calculating certain means-tested benefits. This instrument will help ensure an individual receives their correct entitlement to certain means-tested benefits.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 Consolidation is not required.

10. Consultation outcome

- 10.1 The draft regulations have been shared with a selection of industry representatives for a short technical consultation.
- 10.2 A wider public consultation in respect of reporting the non-taxable payments was not considered necessary. This was because the pension industry has expected this change since RTI was updated to enable the reporting of non-taxable payments in 2015. The requirements put in place here are very similar to the existing requirements for reporting PAYE pension income.
- 10.3 HMRC received four responses and have amended the regulations based on these responses.

11. Guidance

- 11.1 Existing guidance does not reflect the reporting of non-taxable payments. Amendments are required and will be made to coincide with the regulations taking effect.

- 11.2 Pension death benefit guidance is published in the Pensions Tax Manual at <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm070000>.
- 11.3 Pension payment RTI guidance is published in the CWG2 at <https://www.gov.uk/government/publications/cwg2-further-guide-to-payee-and-national-insurance-contributions>.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that they must, where they are pension payers, report non-taxable payments made to beneficiaries to HMRC using RTI.
- 12.2 The impact on the public sector is that they must, where they are pension payers, report non-taxable payments made to beneficiaries to HMRC using RTI.
- 12.3 There is no impact on HMRC costs to administer this change, as RTI can already receive the non-taxable information and the process is business as usual for HMRC.
- 12.4 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that it would not be appropriate for the policy to apply differently according to the size of the business as the use of RTI is mandatory irrespective of the number of employees and PAYE pension income must be reported irrespective of the size of the business.

14. Monitoring & review

- 14.1 This instrument will be monitored through communications with taxpayer groups including, for example, industry representatives on the Pension Forum and the Pension & RTI Working Group.
- 14.2 These Regulations do not include a statutory review clause due to the tax exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Karen Bishop at HMRC, telephone: 03000 512336 or email: pensions.policy@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Edwards, Deputy Director for Pensions Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 John Glen, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.