

EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2023

2023 No. 307

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE Regulations") to require employers to report their employees' 'P11D Expenses and benefits' information electronically. This change will apply from 6 April 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The PAYE Regulations govern the operation of the Pay As You Earn (PAYE) system under which income tax is deducted at source from payments made to employees and pensioners.
- 6.2 Regulation 85 of the PAYE Regulations requires employers to report to HMRC details of any expenses and benefits provided to their employees. This information is required by 6 July after the end of each tax year for each employee who receives expenses and benefits.
- 6.3 Regulation 211 of the PAYE Regulations requires the information to be reported by way of Form P11D and permits electronic delivery of the content of Form P11D using an approved method of electronic communication. Electronic delivery of this information was not previously mandatory for employers.
- 6.4 The approved methods of electronic communications for the electronic delivery of information contained in Form P11D are stipulated by way of a direction issued by the

Commissioners for HMRC. They are currently the internet services provided through PAYE Online for Employers and PAYE Online for Agents. The intention is to update this direction with effect from 6 April 2023 to add a further method of electronic communications to enable employers to report any amended Form P11D information electronically.

- 6.5 This instrument amends the PAYE Regulations to require all employers to report the information in Form P11D electronically from 6 April 2023, except for those who are digitally exempt.
- 6.6 The Social Security (Contributions) (Amendment No.2) Regulations 2023 (S.I. 2023/308) make a similar change to the way employers must report their 'P11D(b) Return of Class 1A National Insurance contributions due', on the expenses provided to their employees. From 6 April 2023, the electronic delivery of Forms P11D(b) will also be mandatory for all employers except those who are digitally exempt.

7. Policy background

What is being done and why?

- 7.1 HMRC Digital services have been available for employers to submit the information contained in Form P11D for over 10 years and most employers already submit the information electronically. However, HMRC continues to receive a significant number of forms on paper from a small minority of digitally able employers and this instrument requires employers to submit the information contained in Form P11D electronically, promoting consistency with the vast majority who already do so. Separate arrangements will continue to be available to digitally exempt customers.
- 7.2 Making electronic submission of the information contained in Form P11D mandatory from 6 April 2023 will significantly reduce the requirement for manual intervention. It will also reduce processing times and costs, improve data quality and increase the quality of customer service.
- 7.3 Amended forms P11D are made by a relatively small group of employers. Currently, amendments can only be reported on paper. From 6 April 2023, employers will be required to report all information contained in Form P11D electronically, including any amendments. HMRC will be providing a facility to do so.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

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

10. Consultation outcome

- 10.1 No consultation was carried out on this instrument because it introduces minor changes to streamline existing processes.

11. Guidance

- 11.1 Guidance for employers on reporting taxable expenses and benefits is available on the GOV.UK website at www.gov.uk/employer-reporting-expenses-benefits/reporting-and-paying and will be updated in April 2023 to reflect the new reporting

requirements. In addition, affected employers will be notified of this change via targeted communications as well as articles in the Employer Bulletin, Agent Update and specific webinars raising awareness of this change.

- 11.2 HMRC will work with representative bodies to help them prepare their members for the change and engage with employer software developers to raise awareness of the change.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), HMRC will ensure that all affected businesses are aware of the availability of HMRC's free PAYE Online service to report the information contained in Form P11D.
- 13.3 The basis for the final decision on what action to take to assist small businesses, is that advanced communications to support employers prepare for the changes, along with HMRC's free software, will mitigate the impact on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is to consider the effectiveness of the new mandatory electronic reporting requirements. This will be done through continued communication with employers and external stakeholder groups through established communication and consultation channels. HMRC will monitor the reduction in paper forms and the impact of this on processing times and customer service.
- 14.2 The instrument does not include a statutory review clause because in accordance with the requirements of the Small Business, Enterprise and Employment Act 2015, it is made in relation to the imposition of a tax, duty, levy or other charge.

15. Contact

- 15.1 Craig Maffey at HMRC Telephone: 03000 517956 or email: craig.r.maffey@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Lucy Morgan, Deputy Director for Tax Administration Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.