

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2009

2009 No. 588

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 This instrument modifies the procedure for new Pay As You Earn (PAYE) income tax records for seconded expatriates. It removes from existing Regulations the HMRC powers to require production or allow inspection of an employer's PAYE records. It reduces PAYE reporting requirements about providing company cars, and it ends simplified PAYE income tax arrangements for reserve forces' pay.

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

None.

4. Legislative Context

4.1 Employers submit a form P46 to HMRC when an employee commences employment without a form P45. The P46 elicits relevant information about the new employee. The instrument provides for use of a different form P46 for seconded expatriates.

(Regulation 3 of the instrument so amends the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the "PAYE Regulations").)

4.2 Schedule 36 to the Finance Act 2008 comes into force on 1 April 2009. It contains modernised powers under which HMRC can carry out PAYE compliance checks on "statutory records". The instrument revokes unnecessary powers, but requires PAYE records to be kept and preserved (making them "statutory records").

(Regulations 4 to 8 of the instrument so amend the PAYE Regulations.)

4.3 Directors and employees earning £8,500 or more a year are liable to tax on the provision of a car by reason of their employment which is available for private use.

4.4 Regulation 90 of the PAYE Regulations requires quarterly returns to be made to HMRC on form P46 (car) by employers whenever a car becomes available or unavailable to an employee, or when an employee for whom a car is available becomes subject to the benefits code.

4.5 In addition to the quarterly return, employers are required under regulation 85 of the PAYE Regulations to report all expenses and benefits provided to directors and employees who are chargeable under the benefits code on the end of year form P11D. The cash equivalent of any car provided to the employee must be included.

4.6 The instrument removes the requirement to provide details on the quarterly return when one company car is replaced with another.

(Regulation 9 of the instrument so amends the PAYE Regulations.)

4.7 Simplified PAYE arrangements apply to Ministry of Defence payments to members of the reserve forces. This instrument ends the scheme as of 6 April 2009.

(Regulation 10 of the instrument so amends Chapter 2 of Part 7 of the PAYE Regulations.)

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 Regulation 46 of the PAYE Regulations requires employers to provide information on a form P46 when an employee starts working for them without providing a form P45 from their former employer. HMRC uses the information provided on a form P46 to set up a tax record for the employee and to issue a tax code to the employer in respect of that employee. The P46 does not currently indicate whether the employee is, or might be, a seconded expatriate.

7.2 Seconded expatriates are individuals working wholly or partly in the UK or for a UK resident employer on assignment whilst remaining employed by an overseas employer, or they are individuals assigned to work wholly or partly in the UK at a recognised branch of their overseas employer's business. The new P46 procedure for such employees will enable HMRC to identify them as early as possible and ensure that their tax records and codes are set up correctly.

7.3 The HMRC Review of Powers, Deterrents and Safeguards began in 2005, following the merger of the Inland Revenue and HM Customs and Excise, to provide a framework of law and practice for HMRC that supports the Government's objectives of a tax system that is fair and better adapted to the needs of customers. One of the main outputs of the Review is a harmonised set of powers with which HMRC may carry out checks into a person's tax position. That is contained in Schedule 36 to the Finance Act 2008 which will take effect on 1 April 2009.

7.4 HMRC wish to avoid leaving overlapping powers in place. The powers in Schedule 36 contain greater safeguards for employers than those in the PAYE Regulations and visits without notice may only take place with approval from an authorised officer. Accordingly, the powers in the Regulations are being revoked.

7.5 Regulation 90 of the PAYE Regulations requires employers to report when a car becomes available or unavailable. This means that they are required to report when one car is replaced with another, such as when a car is upgraded to a newer model (because that requires the existing car to become unavailable and the new one to become available). It has been decided that a form P46 (car) will no longer be required when one car is replaced with another.

7.6 The main purpose of the P46 (car) is to enable timely amendments to be made to an employee's tax code to reflect the provision of the car, thereby reducing the likelihood of large underpayments of tax accruing. However, the requirement to report in-year changes when one car is replaced with another can be removed because any underpayment is likely to be relatively small, and can easily be recovered through an adjustment to the tax code in the following year when the end of year return for that employee is received.

7.7 Form P46 (car) must continue to be submitted in all other cases currently covered by regulation 90. There is no change to the requirements in relation to the annual return.

7.8 Chapter 2 of Part 7 (Special Cases) of the PAYE Regulations provides for simplified PAYE arrangements to operate for payments made by the Ministry of Defence to members of the reserve forces.

7.9 These arrangements were introduced in 1975 in recognition of the fact that part-time reservists typically had a continuing source of main employment and income. Under the arrangements, tax was deducted from reservists pay at the basic rate of income tax. This proved to be an administratively convenient way of operating PAYE on the pay of reservists.

7.10 However, changes to the way the Ministry operates its payroll for forces personnel and improvements to the HMRC PAYE process meant that the modified arrangements were no longer fit for purpose. The Ministry will begin to operate standard PAYE on the pay to reservists from 6 April 2009.

- ***Consolidation***

7.11 The instrument makes relatively small amendments to the large and complex PAYE Regulations. HMRC has no current plans to consolidate these Regulations.

8. Consultation outcome

8.1 The new form P46 for expats was exposed for informal external consultation with employer groups and software developers. This gave rise to seventy four responses, the main ones of which concerned the form's layout, the present circumstances indicator, and questions as to whether the new form would be available on line.

8.2 The provisions that became Schedule 36 to the Finance Act 2008 were fully consulted on. Having a single set of powers and revoking the existing powers was

welcomed.

8.3 There was no consultation about the P46 (car) .

8.4 Discussions between the Ministry of Defence and HMRC led to closure of the modified reserve forces' PAYE arrangements.

9. Guidance

9.1 Guidance on Schedule 36 has been published and consulted about.

9.2 On the remainder, HMRC guidance, which can be accessed by employers and their agents on the HMRC website, will be amended to reflect the changes. This will involve changes to the technical Employment Income Manual and to other guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that firms will have to keep the same PAYE records in respect of employees as at present. A Small Firms Impact Test has not been undertaken because the legislation does not create additional burdens. Part of the instrument applies only to the Ministry of Defence.

11.3 The basis for the final decision on what action to take to assist small business is as described above.

12. Monitoring & review

12.1 Where the instrument revokes redundant legislation, no review is proposed. In the other areas, HMRC will monitor the practical effects of the changes.

13. Contact

Lynn Carroll at HM Revenue & Customs Tel: 0207 147 2636 or email: lynn.carroll@hmrc.gsi.gov.uk can answer any queries regarding the instrument about expatriate employees or reserve forces' pay.

Richard Davey at HM Revenue & Customs Tel: 0207 147 2391 or email: richard.c.davey@hmrc.gsi.gov.uk can answer any queries regarding the instrument about powers.

Basil Rajamanie at HM Revenue & Customs Tel: 0207 147 2384 or email: basil.rajamanie@hmrc.gsi.gov.uk can answer any queries regarding the instrument about company cars.