

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME)
(AMENDMENT) REGULATIONS 2012

2012 NO. 820

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

This instrument makes minor amendments to the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (the 2005 Regulations) necessary for the introduction of HMRC's Real Time Information programme (RTI).

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

None.

4. Legislative Context

4.1 The 2005 Regulations make provision in relation to the construction industry scheme (CIS) established by Chapter 3 of the Finance Act 2004.

4.2 Some of the operation of CIS relies on the Pay As You Earn system, governed by the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the PAYE Regulations). In particular, the entitlement of a qualifying sub-contractor for the purposes of CIS to a refund from HMRC in respect of overpayments under the scheme is reliant on having made the end of year return required by the PAYE Regulations.

4.3 Under RTI, employers will be required to report payments to employees and the deduction of tax to HMRC each time a payment is made and those employers using RTI will not be required to send HMRC certain PAYE end of year returns. The PAYE Regulations are being amended to give effect to these changes. RTI will also require CIS qualifying sub-contractors to report sums deducted from the amounts they are paying to HMRC under the PAYE system to take account of deductions they have suffered under CIS.

4.4 These Regulations make the necessary amendments to the 2005 Regulations to give effect to these changes and to reflect the amendments being made to the PAYE Regulations.

4.5 In addition to income tax subject to PAYE and CIS, the repayment of student loans by employees relies on the PAYE system, as does the collection

of Class 1 National Insurance contributions. Amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) are being made by HMRC at the same time as these Regulations and the amendments to the PAYE Regulations to reflect the introduction of RTI. The Department for Business, Innovation and Skills is similarly making regulations amending the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470).

5. Territorial Extent and Application

5.1 This instrument applies to all of 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 PAYE has been operating in its current form for some 60 years. RTI is being introduced from April 2012 to bring PAYE into the 21st century by making it easier for employers, pension providers and HMRC to administer and over time more accurate for some individuals by improving the processes relating to joiners and leavers.

7.2 Under RTI, employers and pension providers will tell HMRC about PAYE payments and deductions they make, (tax, NICs, Construction Industry Scheme and Student loan repayments, etc) at the time they pay their employees as opposed to the end of the year as happens now.

7.3 The employer is required to send this information to HMRC on or before the time they make payments to employees for HMRC to use to improve the accuracy of in-year taxation for individuals over time and the overall efficiency of the tax collection process. This means that employers using RTI will no longer be required to provide information to HMRC using Forms P35 and P14 after the end of the tax year, and in time there will no longer be a requirement to send Forms P45 or P46 to HMRC when employees start or leave a job.

7.4 In addition, RTI will also support the operation of Universal Credit due to commence in October 2013. The DWP will have access to necessary RTI information to identify earnings of Universal Credit claimants thereby ensuring that the correct payment in line with fluctuations in earnings. This will require up-to-date information about employment and pension income so that claimants' welfare payments can be adjusted to reflect their circumstances. RTI will contribute to the delivery of this.

- **Consolidation**

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

8. Consultation outcome

8.1 HMRC have consulted widely on RTI and the responses to these consultations have been used to inform and develop our policy. The first discussion document was published in July 2010 with a subsequent consultation document published in December 2010. These documents are available at <http://customs.hmrc.gov.uk/ConsultationDocumentsRTI>. In total there were approximately 600 responses.

8.2 In accordance with the Government's Tax Consultation Framework, a draft of these Regulations was published on the HMRC website for comment from 14th November 2011 to 9th January 2012 together with draft CIS and NICs regulations. The draft regulations and accompanying technical note are available here: <http://customs.hmrc.gov.uk/ConsultationDocumentsregs>.

8.3 There were no significant changes to the draft of these Regulations as a direct result of the consultation but changes were made to the draft amendments to the PAYE Regulations. The Regulations do include drafting adjustments to ensure they operate as intended and for the sake of clarity. All consultation responses have been considered and HMRC will provide a written response to each representation.

9. Guidance

9.1 Extensive guidance will be published on HMRC's website for employers that join RTI.

10. Impact

10.1 All employers including charities and voluntary bodies will be required to use RTI. It is expected that there will be a reduction in administrative burdens resulting from abolition of some current reporting requirements. However these savings will be partially offset by the new requirements for employers to collect and submit information each time employees are paid.

10.2 The impact of RTI on the public sector is the same as for any other employer.

10.3 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 RTI aims to reduce administrative burdens for all employers, including small employers (upon whom the current burden of PAYE currently falls disproportionately). The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process.

11.3 Small employers are already required to submit returns to HMRC electronically, but those who do not currently use payroll software are expected to find the move to RTI most difficult. However, HMRC's existing free Basic PAYE Tools software will be updated and available for all employers with 9 or fewer employees to use.

11.4 A number of small firms are taking part in the RTI pilot and HMRC's research into employer impacts. The resulting findings will inform the support HMRC needs to offer to small employers to migrate on to RTI.

12. Monitoring & review

12.1 RTI will be piloted from April 2012 and HMRC will monitor and review these Regulations alongside that pilot and make amendments where necessary.

13. Contact

Gordon Martin at HMRC Tel: 020 7084 5572 or email: Gordon.martin@hmrc.gsi.gov.uk can answer any queries regarding the instrument.