EXPLANATORY MEMORANDUM TO

THE INCOME TAX (EARNINGS AND PENSIONS) ACT 2003 (SECTION 684(3A) ORDER 2014

2014 No. 2438

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Most debts due to HMRC can be recovered by making deductions from the Pay As You Earn (PAYE) income of the debtor. This process is known as "coding out" because the person's tax code is adjusted to allow this recovery. This Order increases the limit on the amount of debt that can be coded out in a year from £3,000 to £17,000.

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

3.1 None.

4. Legislative Context

4.1 Sections 684(3A) and (3B) of the Income Tax (Earnings and Pensions) Act 2003 make provision for recovery of "relevant" debts by making deductions from PAYE income. A "relevant" debt is a sum owed to HMRC under or by virtue of an enactment or under a contract settlement, and can be recovered from PAYE income at HMRC's discretion and without the debtor's consent. Tax credit debts are excluded from the definition of relevant debts, but can be recovered from PAYE income with the claimant's agreement (see section 29(5) of the Tax Credits Act 2002).

4.2 This Order increases the maximum amount of relevant debt that can be recovered by coding out from £3,000 to £17,000.

4.3 The Government intends to lay Regulations (the Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2014) making further provision for how the coding out limit is applied in particular cases immediately after this Order has come into force. In particular, those Regulations will provide for a graduated scale, so that the amount which can be coded out ranges from £3,000 (for individuals with an annual income of less than £30,000) to £17,000 (for individuals with an annual income of more than £90,000). The

Regulations will also provide that no more than 50% of any one payment can be deducted.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury, Mr David Gauke MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Income Tax (Earnings and Pensions) Act 2003 (Section 684(3A)) Order 2014 are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 The amount of debt due to HMRC that can be coded out is being increased. This will enhance HMRC's powers, allowing it to collect more money due to the Crown in an effective, automated way.

- Consolidation

7.2 Given the limited nature of this change, there is no need for consolidation.

8. Consultation outcome

8.1 A consultation on this was issued in July 2013[1] with a response document being published in February 2014[2].

8.2 A total of 23 responses were received. In general, the responses supported the proposals' intentions, recognising that coding out as a mechanism for debt collection is convenient for both taxpayers and HMRC.

8.3 The draft Order was published for technical consultation on 25 July 2014 and no responses were received.

9. Guidance

9.1 Draft guidance is available on the HMRC website, and this will be updated in due course.

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[1] How to improve HMRC's collection of debt: coding out.

[2] How to improve HMRC's collection of debt: coding out: Summary of Responses.

9.2 Taxpayers are notified of their tax code in advance of any deductions being made. All those affected by this change will already have been notified of the debt due by HMRC. They will also be notified by letter of the amounts that will be deducted and will have the opportunity to contact HMRC and challenge the amounts before any deductions are made.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. Although employers will not have any additional burden in collecting more debt, they and civil society groups may receive more enquiries from debtors about the new limits.

10.2 A table of impacts was published as part of the consultation. A Tax Information and Impact Note (TIIN) was published 25 July 2014 and is attached to this memorandum. It will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation will apply to small businesses that employ individuals who owe HMRC tax debts. But the legislation places no additional burden on such businesses as they will already be subject to the provisions of the PAYE regulations. However, it may be that a proportion of the employees and pensioners likely to be affected by this measure query their tax codes, and the employer or pension provider may have to spend more time addressing these questions or directing the payee to HMRC's website or helplines.

11.2 A publicity programme is in place for this work aimed at ensuring taxpayers, employers and their advisers are aware of the extended use to be made of collecting tax debts via PAYE coding out. Full information will be available on HMRC's website, and additional detail and contact numbers for queries will be included on the P2 coding notices to be issued before the start of the 2015/16 tax year.

12. Monitoring & review

12.1 HMRC will monitor the effectiveness of this measure in reducing the outstanding debt balance.

13. Contact

13.1 John Tully at HMRC Tel: 03000 586687 or email: john.tully@hmrc.gsi.gov.uk can answer any queries regarding the instrument.