EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT) REGULATIONS 2014

2014 No. 608

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC), in part, on behalf of Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the SSCR 2001"), necessary for the provision to HMRC of information in real time; that is the Real Time Information (or RTI) programme.

2.2 This instrument also gives legislative effect to extra-statutory concession A4 ("ESC A4"). The House of Lords' decision in R v HM Commissioners of Inland Revenue exp Wilkinson [2005] UKHL 30 ("the Wilkinson case") clarified the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position.

2.3 The enactment of Extra-Statutory Concessions Order 2014 (S.I. 2014/211) gave legislative effect to ESC A4. This instrument makes corresponding provision in relation to National Insurance Contributions (NICs).

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

None.

4. Legislative context

4.1 The SSCR 2001 set out the provisions which apply to calculation, reporting and payment of NICs. This instrument amends the SSCR 2001 as detailed in paragraphs 4.2 to 4.8 below.

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4.2 Under the SSCR 2001, employers are required to report payments to employees and the deduction of tax to HMRC each time a payment is made. These returns are also used to report changes in employment.

4.3 These Regulations make provision for the tax years 2014-15 and 2015-16 for certain employers to make one return in respect of all the relevant payments in a tax month. The employers to whom this revised filing date applies are those who are existing employers at 5 April 2014 who employ no more than 9 employees at 6 April 2014 and 6 April 2015.

4.4 This instrument provides that an employer will not be liable for a late payment penalty under paragraph 6 of Schedule 56 of the Finance Act 2009, where the difference between the total amount due to HMRC for a tax period and the sum paid over for that period is no more than £100.

4.5 This instrument clarifies that where an employer which is exempt from on-line filing (a paper filer) files returns electronically, that employer will be required to make returns on or before making a payment to an employee. The instrument also extends the period within which paper filers are required to submit information to HMRC from 14 days of the end of the tax month to 14 days after the end of the tax quarter.

4.6 The instrument also makes amendments to the provisions relating to the direct collection of NICs from those employees who are required to report their earnings, including requiring such employees to deliver an end of year return for the tax year 2013-14 by 19th May 2014.

4.7 The collection of NICs depends on the PAYE system. Amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) are being made by HMRC at the same time as these Regulations.

ESC A4 - Travelling expenses of directors' and employees earning £8,500 a year or more

4.8 This instrument also makes changes to NIC's disregards for certain types of travelling expenses by amendment to Part 8 of Schedule 3 (travelling, relocation an other expenses and allowances) of the Social Security Contributions Regulations 2001 (S.I. 2001/1004) (the Principal Regulations"). It mirrors the introduction of new Sections 241A, 241B and 340A of the Income Tax (Earnings and Pensions) Act 2003 (2003 c.1; "ITEPA"), which were inserted by S.I. 2014/211. The changes take effect from 6th April 2014.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

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7.1 HMRC piloted RTI during the 2012-13 tax year. The SSCR 2001 was amended with effect from 6 April 2012 to facilitate its introduction. Further amendments were introduced to reflect changes to employers' obligations as a consequence of RTI from 6 April 2013, at which date the vast majority of employers were required to report payments on or before making them.

7.2 Employers will not be liable for a late payment penalty under paragraph 6 of Schedule 56 of the Finance Act 2009 where the difference between the amount due to HMRC for the tax period and the sum paid over is no more than £100.

7.3 HMRC is putting in place a two year relaxation to the core RTI reporting rules for micro employers, allowing existing employers, that is employers for whom at 5 April 2014 HMRC has issued an employer's PAYE reference, with 9 or fewer employees as at 6 April 2014 and 6 April 2015 to make a return covering all relevant payments to its employees in the tax month on or before the last relevant payment in that tax month. The existing relaxation for reporting, which applies to employers with up to 49 employees, will end as planned on 5 April 2014.

7.4 This relaxation will only apply for the tax years 2014-15 and 2015-16 and is a further transitional arrangement to assist the smallest employers to transition to more frequent reporting without incurring a late filing penalty. As from 6 April 2016 these employers will be required to file on or before the making of the payment to an employee.

7.5 Some employers (paper filer employers) are not required to file electronically. These paper filer employers are not only permitted to file on paper but are permitted to file less frequently. As from 6 April 2014 they will be required to file the required information within fourteen days of the end of the tax quarter. However, if a paper filer employer files electronically that employer will be required to file on or before making a relevant payment rather than at the end of a tax quarter.

7.6 The legislation makes amendments relating to the employees who pay NICs direct to HMRC. Those employees have to deliver a return to HMRC by 19 May 2014 that includes the total amount of earnings and NICs payable in the 2013-14 tax year.

ESC A4 - Travelling expenses of directors' and employees earning £8,500 a year or more

7.7 ESCs have been a feature of the UK's tax system for decades and will continue to be made and withdrawn as necessary. For this purpose the term "ESC" refers to any statement made by the Commissioners of HMRC made before the passing of the FA 2008 on 21 July 2008, and having effect at that time, that they will treat persons as if they were entitled to a reduction to tax or duty, or any other concession relating to tax or duty to which they are not, or may not be, entitled in accordance with the law. Such statements might comprise ESCs described as such in the former Inland Revenue booklet IR1 and the former HM Customs and Excise booklet Notice 48, or otherwise as a statement of practice, press release or a statement made in any other way.

7.8 The House of Lords' decision in the Wilkinson case clarified the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position.

7.9 In light of that decision, HMRC is reviewing each of its published concessions. The indications are that most ESCs will be able to continue in their current form as they are within the scope of HMRC's administrative discretion. However, where an existing ESC exceeds the scope of that discretion, where it is appropriate to do so, its effect will be maintained by putting it on to a legislative basis. While the aim is to retain as many ESCs as possible, some may be withdrawn either because they are no longer required or because they do not fall within HMRC's administrative discretion and it is not possible to legislate for their effect.

7.10 This instrument introduces three new disregards into Part 8 of Schedule 3 of the Principal Regulations. These mirror changes made to ITEPA by S.I. 2014/211, which inserted new sections 241A, 241B and 340A into ITEPA. Section 241A (travel by unpaid directors of not for profit companies), 241B (travel where directorship is held as part of a trade or profession) and 340A (travel between linked employments) of ITEPA provide that no liability to income tax will arise (or, in the case of section 340A, that a deduction is allowed for income tax purposes) in relation to travel expenses which meet the criteria set out in those sections.

7.11 These Regulations provide that such travel expenses are to be disregarded in the calculation of earnings from employed earners employment when computing liability for Class 1 National Insurance Contributions. The consultation document referred to in section 8 sets out further details in relation to ESC A4.

- ***Consolidation***

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

8. Consultation outcome

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8.1 HMRC has consulted widely on the impact of employers reporting PAYE in real time on or before payment of earnings to employees. Analysis of the evidence from April to autumn 2013 indicates that the majority of employers are able to file 'on or before' and that they believe they will experience a reduction in their administrative burden when the changes to end-of-year processes are taken into account. However, there were some concerns that 'on or before' reporting could increase costs for some small businesses. A report of the HMRC findings is available at https://www.gov.uk/government/publications/real-time-information-rti-assessment-of-impact-of-on-or-before-reporting

8.2 HMRC recognises that new technologies and processes could help minimise the cost of processing payroll but that these may take some time to develop and adopt.

8.3 These Regulations form part of a package, developed with employers, agents, payroll software providers, representative bodies and the Department for Work and Pensions, to help micro employers as they move towards full reporting of PAYE information in real time. These regulations to change the RTI reporting rules for small employers were published in draft for consultation on 9 December until 24 January 2014.

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8.4 Although these regulations have not been subject to consultation the equivalent tax provisions (set out in S.I. 2014/211) were subject to consultation.

8.5 A consultation document, entitled 'Extra statutory concessions: sixth technical consultation on draft legislation was published on 21 December 2012, and covered the legislation in S.I. 2014/211.

8.6 The purpose of the consultation was to seek views on whether the legislation accurately translated the effect of the ESCs concerned. HMRC received three responses and changes were made to reflect the points made regarding the definition of a 'not-for-profit company', and how the concept of an 'associated company' was reflected in the legislation.

9. Guidance

9.1 Extensive guidance has been published on HMRC's website for employers using RTI and this will be updated to reflect these changes. With regard to ESC A4 appropriate amendments will be made to existing guidance but as these Regulations in most cases simply confirm existing treatment only minor changes are required.

10. Impact

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10.1 All employers including charities or voluntary bodies are required to report using RTI.

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 was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (SI 2012/822) and the Social Security (Contributions) (Amendment No. 3) Regulations (SI 2012/821). This was updated as a result of changes to the impacts following the year long RTI pilot and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to the RTI changes.

10.4 In relation to the regulation which introduces the £100 tolerance a Tax Information and Impact Note was published on 20 March 2013 alongside the Budget documentation and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

ESC A4 - Travelling expenses of directors' and employees earning £8,500 a year or more

10.5 In line with government commitments, a Tax Information and Impact Note has not been prepared for this regulation as there has been no change in policy. This instrument simply puts existing ESCs onto a statutory footing and there is no change to the NICs, administrative or other impacts.

11. Regulating small business

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11.1 The legislation applies to small business.

11.2 RTI aims to reduce administrative burdens for all employers, including small employers and the amendments in this instrument are intended to help achieve that aim.

ESC A4 - Travelling expenses of directors' and employees earning £8,500 a year or more

11.3 The legislation may apply to small business but a Small Firms Impact Test has not been undertaken on these Regulations because the legislation does not alter the existing NICs effect.

12. Monitoring & review

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12.1 RTI has been piloted from April 2012 to April 2013. The operation of RTI has been monitored since April 2013 and HMRC will continue to monitor the operation of RTI, in particular the interaction with Universal Credit and consider further amendments as necessary.

ESC A4 - Travelling expenses of directors' and employees earning £8,500 a year or more

12.2 The legislation contained within these Regulations will be monitored and reviewed as appropriate within the context of the wider legislative schemes relating to the relevant NICs regime.

13. Contact

The following can answer specific queries on the regarding these Regulations:-

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