

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. 2) REGULATIONS
2018
2018 No. 1327

1. Introduction

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

2. Purpose of the instrument

- 2.1 The power to set rates of income tax for Welsh taxpayers is being devolved to the National Assembly for Wales. This statutory instrument will ensure that income tax can be collected from Welsh taxpayers at Welsh rates under the Pay As You Earn system.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument 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 Section 8 of the Wales Act 2014 amended the Government of Wales Act 2006 (c. 38) so as to insert sections 116D to 116K. Section 116D provides that the National Assembly for Wales may set Welsh rates for the purpose of calculating the Welsh basic, higher and additional rates of income tax. The Wales Act 2014 (Commencement No.2) Order 2018 (S.I. 2018/892 (C.70)) brought section 8 of the Wales Act 2014 and sections 116D to 116K of the Government of Wales Act 2006 into force with effect from 6 April 2019.
6.2 This instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE" Regulations"), which make provision for the assessment,

charge, collection and recovery of income tax under the PAYE system, to reflect the new Welsh rates. The changes have effect from 6th April 2019.

- 6.3 These amendments are intended to work alongside other amendments consequential on the introduction of Welsh Rates of Income Tax (WRIT) which are intended to be made to income tax legislation by The Devolved Income Tax Rates (Consequential Amendments) Order 2018 a draft of which has been laid before the House of Commons.

7. Policy background

What is being done and why?

- 7.1 The Wales Act 2014 introduced WRIT. WRIT applies only to income from earnings, pensions and other non-savings sources.
- 7.2 The Welsh basic rate, higher rate and additional rate paid by Welsh taxpayers is calculated by reducing the UK basic, higher and additional rates of income tax by 10 pence in the pound and adding the WRIT set by the National Assembly for Wales.
- 7.3 Employers are required to deduct tax at source under the PAYE system calculated at the WRIT for each employee who is a Welsh taxpayer.
- 7.4 PAYE Settlement Agreements (“PSAs”) are arrangements under which employers can, in a single payment, settle their employees’ income tax liabilities for certain benefits and expenses. Where HMRC and an employer make a PSA, any calculation of tax payable under the PSA must include the WRIT.
- 7.5 These amendments to the PAYE Regulations will enable income tax to be collected at Welsh rates under PAYE or PSAs to be calculated at Welsh rates.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 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 PAYE Regulations.

10. Consultation outcome

- 10.1 A draft statutory instrument was published on GOV.UK for technical consultation on 22 October 2018, alongside a Technical Note explaining the policy intent.
- 10.2 We received seven responses to the consultation. Comments were mostly about clarifying our policy approach. There were no comments on the draft statutory instrument. The consultation was limited in time and scope because the amendments reflect the position already in place for Scottish income tax (which was consulted upon in 2015) and are technical in nature.
- 10.3 A draft statutory instrument was shared and discussed with the Welsh Government, who were content with the provisions.

11. Guidance

- 11.1 A Technical Note setting out the policy positions covered by this statutory instrument was published on 22 October 2018 at

www.gov.uk/government/consultations/clarifying-the-scope-of-the-welsh-rates-of-income-tax-technical-note-and-draft-legislation

- 11.2 More general guidance on the operation of WRIT is available on GOV.UK at www.gov.uk/welsh-income-tax and on defining Welsh taxpayers at www.gov.uk/hmrc-internal-manuals/welsh-taxpayer-technical-guidance

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 An Impact Assessment covering this instrument was published on 10 June 2014 alongside the draft clauses and explanatory notes for the Wales Bill and is available on the website at <https://www.parliament.uk/documents/impact-assessments/IA14-12.pdf>. It remains an accurate summary of the impacts that apply to this instrument.
- 12.4 It is expected to have negligible impact because HMRC will determine whether people are Welsh taxpayers and inform employers of their employees' tax code in the same way as they do now.

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 business (employing up to 50 people), the approach taken is that HMRC will determine whether people are Welsh taxpayers and inform businesses of their employees' tax code in the same way as they do now.
- 13.3 The basis for the final decision on what action to take to assist small business was to mirror the approach already in place for Scottish income tax.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the outcome as appropriate based on experience of administrating the Welsh rates of income tax once they have been introduced.
- 14.2 The regulation does not include a statutory review clause because it is exempt under sub-section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015, which sets out exclusions for tax legislation or legislation related to tax.

15. Contact

- 15.1 Paul Stansfield at HM Revenue and Customs Telephone: 03000 583473 or email: paul.stansfield@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Narmada de Silva, Deputy Director for Strategic and Cross Cutting Policy at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt. Hon Mel Stride MP, The Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.