

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) (No. 2) REGULATIONS**  
**2008**  
**2008 No. 2601**

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

**2. Description**

This Instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE Regulations") to provide for modified Pay As You Earn ("PAYE") arrangements to apply to the payment of the new social security benefit, Employment and Support Allowance (ESA), by the Department for Work and Pensions (DWP) in Great Britain and the Department for Social Development (DSD) in Northern Ireland. ESA will be payable for all new claims arising on or after 27th October 2008.

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

None

**4. Legislative Background**

4.1 Regulation 3 inserts a new chapter (chapter 5) into Part 8 (Social Security Benefits) of the PAYE Regulations. The new chapter makes provision in new regulations 184A to 184R for DWP and DSD (referred to as "the department" for the purposes of the chapter) to pay claimants of taxable ESA without deduction of income tax. These new regulations provide for the department to record PAYE codes and payments of taxable ESA; and generally also to make tax calculations at the end of the tax year or the claim and make any tax repayments due. They also require the department to submit returns of information to HM Revenue and Customs (HMRC) when first making payments of ESA to a claimant; when the rate of benefit changes; and at the end of the tax year. New regulation 184S makes provision for HMRC to advance monies to the department for the purposes of making tax repayments to claimants and also for the department to provide HMRC with quarterly statements of receipts and payments made.

4.2 Regulations 4, 5 and 6 make consequential amendments to regulations 211, 214 and 215 of the PAYE Regulations so that provision is made for how ESA related information is to be provided by the department, and certain claimants, to HMRC.

**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**

- 7.1 The Welfare Reform Act 2007 and the Welfare Reform Act (Northern Ireland) contain provision for a key element of the Government's Welfare Reform proposals – the creation of a new social security benefit, Employment and Support Allowance (ESA).
- 7.2 ESA will be paid to new claimants assessed as having “limited capacity for work” because of a health condition or disability from 27 October 2008. It replaces the contributory Incapacity Benefit and Income Support on the basis of incapacity. The conditions for entitlement to ESA are set out in the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) and the Employment and Support Allowance (Northern Ireland) Regulations 2008 (S.I. 2008/280).
- 7.3 ESA will have a contributory strand accessible via a National Insurance contribution test and an income strand accessible via an income-test. The contributory strand will be a taxable UK social security benefit falling within the meaning of “PAYE social security income in the Income Tax (Earnings and Pensions) Act 2003. The income strand will be non-taxable.
- 7.4 In making payments of ESA, as payers of “PAYE social security income”, DWP and DSD would, without specific alternative provision, be required to operate the standard PAYE procedures in accordance with the PAYE Regulations. However, as weekly payments of ESA will, in most cases, be made below the PAYE threshold, and claimants will not typically be in receipt of significant other income, the operation of standard PAYE procedures is not necessary. These regulations therefore provide for modified PAYE arrangements to apply to payments of ESA. The modified arrangements are very similar to those currently applied to payments of taxable Jobseeker's Allowance by DWP and DSD.

## **8. Impact**

- 8.1 An impact assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.
- 8.2 An assessment of the impact of the Employment and Support Allowance Regulations has been made. Copies of this impact assessment may be obtained from the Better Regulations Unit of the Department for Work and Pensions, Level 4, The Adelphi, 1-11 John Adam Street, London WC2N 6HT or from the DWP website: [www.dwp.gov.uk/resourcecentre/ria.asp](http://www.dwp.gov.uk/resourcecentre/ria.asp).

## **9. Contact**

- 9.1 Pete Robinson at HM Revenue & Customs, Tel: 020 7147 2423 or e-mail: [Peter.W.Robinson@hmrc.gsi.gov.uk](mailto:Peter.W.Robinson@hmrc.gsi.gov.uk) can answer any queries regarding this instrument.