



HM Revenue
& Customs

Review of employee benefits and expenses – draft legislation

**Consultation on draft legislation
8 July 2015**

Draft legislation: The Income Tax (Pay As You Earn) (Amendment No *, *, *) Regulations 2016; The Income Tax (Approved Expenses) Regulations 2016

Detail:

Finance Act 2015 included a package of measures that, from the start of the 2016-17 tax year, will give effect to a number of recommendations made by the Office of Tax Simplification (OTS) in its 2014 Report "Review of employee benefits and expenses: second report". The measures were:

- the abolition of the £8,500 threshold for benefits in kind;
- allowing employers to voluntarily report and deduct tax on benefits in kind in real time (known as 'payrolling');
- introducing an exemption for qualifying business expenses.

To deliver the details of these changes, a number of Regulations are required:

- The Income Tax (Pay As You Earn) (Amendment No *) Regulations 2016 remove the requirement for employers to make end of year returns on forms P9D;
- The Income Tax (Pay As you Earn) (Amendment No *) Regulations 2016 allow authorised employers to payroll many benefits in kind and removes the requirement for such employers to make annual returns for each employee they provide a benefit to;
- The Income Tax (Approved Expenses) Regulations 2016 set out the approved rates that employers can use under the new exemption for qualifying business expenses, without the need to contact HMRC for approval;
- The Income Tax (Pay As You Earn) (Amendment No *) Regulations 2016 remove the requirement for employers to report expenses paid to employees (whether deductible or not) on form P11D at the end of the tax year.

The regulations that set out the statutory framework for payrolling BiKs have been extended to include all BiKs other than accommodation, beneficial loans and credit tokens and vouchers. Please note that additional reporting requirements for employers payrolling cars will be introduced from April 2017.

HM Revenue and Customs has published draft regulations, together with draft Explanatory Memorandum, for a period of technical consultation that will close on 2 September 2015.

Any comments on the drafts should be sent to:

employmentincome.policy@hmrc.gsi.gov.uk.

The draft regulations and supporting explanatory memorandum are in the following pages.

Tax Information and Impacts Notes (TIINs) were published alongside the draft clauses and explanatory notes for Finance Bill 2015 on 10 December 2014.

2016 No. ****

INCOME TAX

**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. *)
REGULATIONS 2016**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	6th April 2016

The Commissioner’s for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by section 684(2) of the Income Tax (Earnings and Pensions) Act 2003⁽¹⁾ and now exercisable by them⁽²⁾.

Citation, commencement and effect

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. *) Regulations 2016 and come into force on 6th April 2016.

2. These regulations have effect in relation to any returns and information provided for the tax year 2016-17 and subsequent tax years.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

- 3.—(1) The Income Tax (Pay As You Earn) Regulations 2003⁽³⁾ are amended as follows.
- (2) In regulation 85 (employers: annual return of other earnings (forms P11D and P9D)—
- (a) in the heading, for “forms P11D and P9D” substitute “form P11D”.
 - (b) in paragraph (3) omit “which is not an excluded employment under section 216(1) of ITEPA (lower-paid employment and certain types of company director)”.
- (3) In the heading to regulation 94 (employers: information to employees of other earnings (forms P11D and P9D), for “forms P11D and P9D” substitute “form P11D”.

⁽¹⁾ 2003 c. 1. Section 684 was amended, so far as relevant, by paragraphs 101, 102 and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (“CRCA”) and by section 17 of the Finance Act 2015 (c.11). There are other amendments but none is relevant to these Regulations.

⁽²⁾ Paragraph 102 of Schedule 4 to CRCA amended section 684 so that the Commissioners for Her Majesty’s Revenue and Customs have the power to make Regulations. The functions of the Commissioners of Inland Revenue under sections 132 and 133 of the Finance Act 1999 were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(1) of CRCA. Section 50(1) of CRCA provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty’s Revenue and Custom.

⁽³⁾ S.I. 2003/2682 (“the principal Regulations”); relevant amending instruments are [

(4) In paragraph (3)(b) of regulation 97 (retention by employer of PAYE records), for “forms P11D and P9D” substitute “form P11D”.

(5) In paragraph (7)(b) of regulation 107 (effect of PSA), for “forms P11D and P9D” substitute “form P11D”.

(6) In table 10 in regulation 211 (how information must or may be delivered by employers), omit the entries contained in columns 1 to 5 relating to regulation 85(1)(a) (employers: annual return of other PAYE income) (form P9D).

(7) In Schedule A1⁽⁴⁾ (real time returns)—

(a) in sub-paragraph (e) of paragraph 7, for “forms P11D and P9D” substitute “form P11D”, and

(b) in paragraph 26 for “forms P11D and P9D” substitute “form P11D”.

Signatory text

Address	Parliamentary Under Secretary of State	<i>Name</i>
Date		Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. X)
REGULATIONS

2016 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 Section 13 of Finance Act 2015 amended the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) by repealing Chapter 11 of Part 3 of ITEPA (Taxable benefits: exclusion of lower-paid employments from parts of the benefits code) from 2016/17 onwards. As part of this change employers are no longer required to make returns of their employee's benefits in kind and expenses to HMRC on form P9D.

2.2 These Regulations give effect to consequential changes required to the PAYE Regulations governing the report of earnings to HMRC on forms P9D and P11D.

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

3.1 None

4. Legislative Context

4.1 Employees in an employment with an earnings rate of less than £8,500 for the tax year (known as an 'excluded employment'), were previously exempted by Chapter 11 of Part 3 of ITEPA from a charge to tax on certain benefits in kind or expenses. Where such employees were provided with taxable benefits or expenses, employers were required to report these to HMRC on form P9D.

4.2 The repeal of Chapter 11 of Part 3 means that from April 2016 onwards, the £8,500 threshold no longer applies and all employees will be taxable in the same way on benefits in kind and expenses, regardless of their earnings rate (subject to an exception for ministers of religion). Returns of such payments will need to be made to HMRC on form P11D and form P9D will be withdrawn. Changes are required to the PAYE Regulations to remove references to 'form P9D' and to 'excluded employment'.

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 In its second report on employee benefits and expenses, the Office of Tax Simplification (OTS) made suggestions about how the rules could be simplified to reduce employer burdens. As part of this work they recommended the removal of the £8,500 threshold for benefits in kind and taxable expenses so that all employees would be liable to tax on their benefits and expenses in the same way. This recommendation was accepted by the Government and section 13 of Finance Act 2015 removes the threshold with effect from 6 April 2016.

7.2 Removing the threshold means that all employees are chargeable to tax in the same way on any taxable benefits in kind or expenses they receive, regardless of their earnings rate (except for ministers of religion), and employers no longer have to use different forms to return information about such payments to HMRC. Instead, all returns are made on form P11D only.

7.3 This instrument makes the necessary changes to the PAYE Regulations that govern the P9D and P11D forms so that employers no longer need to submit form P9D.

8. Consultation outcome

8.1 In accordance with the Government's Tax Consultation Framework, draft Regulations will be published on the HMRC website for comment from 8 July 2015 to 2 September 2015.

9. Guidance

9.1 Guidance will be made available when the Regulations come into effect.

10. Impact

10.1 The administrative burden will reduce for employers as they will no longer need to continually monitor an employee's earnings and benefits in kind to see if they fall below or above the £8,500 threshold. It is estimated that these savings will outweigh the additional cost of submitting forms P11D for the small number of benefits in kind received by employers whose earnings are below the threshold.

10.2 A Tax Impact and Information Note (TIIN) was published on 10 December 2014 alongside the draft clauses and explanatory notes for Finance Bill 2015 and is available on the website at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385129/Abolition_of_the_8_500_threshold_for_benefits_in_kind.pdf

It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business who will benefit from the same administrative savings as other businesses.

12. Monitoring & review

12.1 The Regulations will be monitored and reviewed as appropriate within the context of the wider tax framework.

13. Contact

Michael Adams at HM Revenue and Customs Tel: 03000 589313 or email: employmentincome.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

2016 No. ****

INCOME TAX

**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. X)
REGULATIONS 2016**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	6 th April 2016

These Regulations are made by the Commissioners for Her Majesty’s Revenue and Customs in exercise of the powers conferred by section 113(1) of the Taxes Management Act 1970⁽⁵⁾, section 133(1) of the Finance Act 1999⁽⁶⁾ and section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003⁽⁷⁾, and now exercisable by them⁽⁸⁾.

Citation and commencement

4. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. X) Regulations 2016 and come into force on 6th April 2016.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

5. The Income Tax (Pay As You Earn) Regulations 2003⁽⁹⁾ are amended as follows.

6. In Part 3 (Deduction and repayment of tax) after Chapter 3 (New Pensioners: Forms P45 and P46) insert—

⁽⁵⁾ 1970 c. 9.

⁽⁶⁾ 1999 c. 16.

⁽⁷⁾ 2003 c. 1. Section 684 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) has been relevantly amended by section 145 of the Finance Act 2003 (c. 14), paragraphs 102(2) and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (“CRCA”), section 94(3) of the Finance Act 2006 (c. 25), paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c. 10), section 225 of the Finance Act 2012 (c. 14) and by section 17 of the Finance Act 2015 (c.11).

⁽⁸⁾ The powers of the Board of Inland Revenue under section 684 of ITEPA were transferred to the Commissioners for Revenue and Customs by paragraph 102(2) of Schedule 4 to CRCA. The functions of the Board of Inland Revenue under section 113(1) of the Taxes Management Act 1970 and section 133 of the Finance Act 1999 were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(1) of CRCA. Section 50(1) of that Act provides that, in so far as appropriate, in consequence of section 5 a reference in an enactment, instrument or other document to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

⁽⁹⁾ S.I. 2003/2682 (“the principal Regulations”); relevant amending instruments are 2005/2691, 2007/1077, 2007/2969, 2008/728, 2009/588, 2011/729, 2011/1584, 2012/1895, 2012/822, 2013/521, 2013/2300, 2014/472, 2014/1017, 2014/2689, 2015/2 and 2016/XXX.

“CHAPTER 3A BENEFITS IN KIND

Interpretation

61A. In this Chapter—

“authorised employer” has the meaning given by regulation 61C;

“main relevant payment” means the relevant payment normally made to the specified employee at regular intervals of a week or more;

“making good payment” means the payment referred to in regulation 61E(2) or 61G(2)(b);

“specified benefit” means any benefit treated as earnings under Chapter 6 (cars, vans and related benefits) or Chapter 10 (residual liability to charge) of Part 3 of ITEPA 2003⁽¹⁰⁾ (employment income: earnings and benefits etc. treated as earnings);

“specified employee” means an employee to whom an authorised employer provides a specified benefit;

“taxable amount of the benefit” has the meaning given in regulation 61D(1).

PAYE: benefits in kind

61B.—(1) This Chapter applies where during a tax year an authorised employer provides a specified benefit to a specified employee.

(2) Where this Chapter applies—

- (a) the specified benefit is to be treated as a payment of PAYE income for the purposes of these Regulations; and
- (b) any reference (howsoever expressed) in these Regulations to relevant payment includes an amount in respect of the provision of a specified benefit, such amount to be determined in accordance with regulations 61D, 61H, 61I, 61J, 61K, 61L or 61M, as the case may be.

but this is subject to paragraph (3).

(3) An amount determined in accordance with regulation 61D, 61H, 61I, 61J, 61K, 61L or 61M, as the case may be, is not to be included as a relevant payment for the purpose of regulations 23(5) or 28(5) (deductions on cumulative or non-cumulative basis not to exceed the overriding limit)⁽¹¹⁾.

Authorised employer

61C.—(1) An employer is an authorised employer for a tax year for the purposes of this Chapter if—

- (a) HMRC has authorised that employer to make—

⁽¹⁰⁾ ITEPA is defined in the principal Regulations as meaning the Income Tax (Earnings and Pensions) Act 2003. Chapter 6 of Part 3 of ITEPA has been amended by Schedule 14 and Schedule 42 to the Finance Act 2004 (c. 12); section 54 of, and Schedule 28 to, the Finance Act 2009 (c. 10); section 58 and section 59(2) of the Finance Act 2010 (c. 13); section 51(1) of the Finance Act 2011 (c. 11); section 14 and section 17(1) of the Finance Act 2012 (c. 14); SI 2012/266; section 23 of the Finance Act 2013; section 23(1) and section 25 of the Finance Act 2014 (c. 26); SI 2014/2896 and sections 9(1) and 10 of the Finance Act 2015 (c. 11). Chapter 10 of Part 3 of ITEPA has been relevantly amended by section 17 of the Finance Act 2005 (c. 2).

⁽¹¹⁾ Regulations 23(5) or 28(5) have been amended by SI 2014/2682.

- (i) deductions of income tax in respect of the provision of a specified benefit from payments which that employer actually makes of, or an account of, PAYE income of a specified employee; or
 - (ii) repayments of such income tax; and
- (b) HMRC has not notified the employer that such authorisation has been withdrawn.
- (2) An employer will be authorised by HMRC if that employer has made an application to HMRC—
- (a) before the start of the tax year identifying each employee and specified benefit or benefits which will be provided to that employee; or
 - (b) during a tax year identifying—
 - (i) each employee who will be provided with a specified benefit or benefits for the first time during that tax year; or
 - (ii) each employee whose employment commences during that tax year and the specified benefit or benefits that will be provided to that employee.
- (3) If the authorised employer notifies HMRC that —
- (a) a specified benefit is no longer being provided to the specified employees, or
 - (b) the employer is withdrawing the application made under paragraph (2),
- the employer will cease to be an authorised employer from the end of the tax year in which notice is given to HMRC.
- (4) If—
- (a) the relevant payments actually made by the employer to an employee are insufficient to enable an employer to deduct the full amount of tax due in respect of those payments; and
 - (b) the employer has notified HMRC that the application made under paragraph (2) in respect of that employee is being withdrawn,
- then the employer will cease to be an authorised employer in respect of that employee with immediate effect.
- (5) Any application or notice must be made to HMRC using an approved method of electronic communication⁽¹²⁾ unless the employer is one to whom regulation 67D applies.

Deduction and repayments of tax: general rule

61D.—(1) Where this Chapter applies an authorised employer must take the following steps—

Step 1

Before making the first main relevant payment to a specified employee in a tax year, the cash equivalent of the specified benefit or benefits for that tax year must be determined in accordance with regulation 61E, 61F or 61G (methods of calculating the cash equivalent of specified benefits).

Step 2

Determine the number of main relevant payments to be made to the specified employee in the tax year.

Step 3

Divide the amount obtained from step 1 by the number obtained from step 2.

The resulting amount is the taxable amount of the benefit.

⁽¹²⁾ Approved method of electronic communications is defined by regulation 189 of the principal Regulations. The Commissioners for HMRC will issue a general direction under regulation 189 approving a method of electronic communication for the delivery of an application or notice required to be made under regulation 61C.

Step 4

Add the taxable amount of the benefit to the first main relevant payment.

Step 5

Deduct or repay tax on the amount obtained at step 4 in accordance with these Regulations by reference to the employee's code if the employer has one for the employee, even if the code is the subject of an objection or appeal.

(2) On making any subsequent main relevant payment in that year the authorised employer must add the taxable amount of the benefit to that payment and apply step 5 to that amount.

(3) This regulation is subject to regulations 61H, 61I, 61J, 61K, 61L and 61M (modifications to the general rule).

Method of calculating the cash equivalent of the benefit of a car or van

61E.—(1) The cash equivalent of the benefit of a car or the benefit of a van is to be calculated in accordance with either section 121 or 155 of ITEPA (cash equivalent of the benefit)⁽¹³⁾, as the case may be.

(2) For the purposes of paragraph (1), the employer may take into account payments that the employee is required to make in the tax year as a condition of the car or van being available for the employee's private use.

Method of calculating the cash equivalent of the benefit of fuel

61F.—(1) The cash equivalent of the benefit of car fuel or van fuel is to be calculated in accordance with section 150 or 161 of ITEPA (car fuel and van fuel: cash equivalent)⁽¹⁴⁾, as the case may be.

(2) For the purposes of paragraph (1), the employer may take into account payments that the employee is required to make during the tax year in connection with the provision of fuel for the employee's private use.

Method of calculating the cash equivalent of employment-related benefits

61G.—(1) The cash equivalent of an employment-related benefit is to be calculated in accordance with section 203 of ITEPA (cash equivalent of benefit treated as earnings).

(2) For the purposes of paragraph (1), the employer may make reasonable assumptions about:

- (a) the cost of the benefit to be incurred in a tax year where the cost is not known at the start of the tax year; and
- (b) payments that the employee is expected to make in the tax year to make good any part of the cost incurred in providing the benefit to that employee.

Modification of the general rule: continuing benefit where employment has ceased

61H.—(1) This regulation applies instead of regulation 61D if during a tax year the employment of a specified employee ceases but the employee but continues to receive the specified benefit.

(2) Before making any remaining main relevant payments for that year the employer must take the following steps—

Step 1

⁽¹³⁾ Section 121 has been amended by section 54(3) of, and Schedule 28 to, the Finance Act 2009 and SI 2012/266.

⁽¹⁴⁾ Section 150 has been amended by SI 2014/2896.

Where the cost to the employer of the benefit has changed, the employer must redetermine the cash equivalent in accordance with sections 150, 161 or 203 of ITEPA, as the case may be. In all other cases the employer must use the cash equivalent of the benefit determined under step 1 of regulation 61D(1).

The result is the revised taxable amount of the benefit provided in relation to the employment.

Step 2

Multiply by the number of main relevant payments made to date by the taxable amount of the benefit obtained under step 4 of regulation 61D(1).

The resulting is the taxable amount of benefit provided to date.

Step 3

Subtract the taxable amount of the benefit provided to date (the amount obtained from step 2) from the revised taxable amount of benefit (the amount obtained from step 1).

Step 4

Determine the number of remaining main relevant payments to be made in the employment.

Step 5

Divide the amount obtained from step 3 by the number obtained at step 4.

The result is the adjusted taxable amount of the benefit.

Step 6

Add the adjusted taxable amount of benefit to the next final main relevant payment and apply step 5 of regulation 61D(1) to that amount.

(3) On making any subsequent main relevant payment the employer must add the adjusted taxable amount of the benefit to that payment and apply step 5 to that amount

(4) If the amount to be deducted under step 6 of paragraph (2) would exceed the overriding limit⁽¹⁵⁾ then the employer ceases to be an authorised employer in respect of that specified benefit provided to that specified employee with immediate effect.

Modification of the general rule: in-year adjustments: change to the benefit during the year

61I.—(1) This regulation applies if during a tax year there is a change to the specified benefit provided to an employee and, for the purposes of calculating the cash equivalent of that benefit under ITEPA, that change has effect from the date the revised benefit is provided to the employee.

(2) Where this regulation applies, paragraph 61D(2) no longer applies and before making the next main relevant payment the employer must calculate the taxable amount of the benefit for the remainder of the year in accordance with steps 1 to 3 of paragraph 61D(1) as if references to the first main relevant payment were to the next main relevant payment following the change to the specified benefit.

(3) The employer must add the amount obtained in paragraph (2) to the next main relevant payment, and all subsequent main relevant payments the employer makes in that year, and apply step 5 of regulation 61D(1) to that amount.

Modification of the general rule: in-year adjustments: other

61J.—(1) This regulation applies if during a tax year:

- (a) there is a change to the specified benefit provided to an employee and, for the purposes of calculating the cash equivalent of that benefit under ITEPA, that change has effect from the start of the tax year; or

⁽¹⁵⁾ Overriding limit is defined by regulation 2(1) of the principal Regulation.

(b) the employer becomes aware that the cash equivalent of the specified benefit determined at the start of the year in accordance with regulation 61E, 61F or 61G (method of calculating the cash equivalent) is no longer accurate.

(2) Before making the next main relevant payment the employer must take the following steps—

Step 1

Determine the cash equivalent of the revised benefit (Amount B)

Step 2

Subtract the cash equivalent of the specified benefit as determined at the start of the tax year (Amount A) from Amount B.

The result is the revised value of the cash equivalent to be brought into account.

Step 3

Determine the number of main relevant payments remaining in the tax year.

Step 4

Divide the revised value of the cash equivalent to be brought into account by the number obtained from step 2.

The result, where Amount A is less than Amount B, is the added value.

The result, where Amount A is greater than Amount B, is the reduced value.

Step 5

Take the taxable amount of the benefit obtained at step 3 of regulation 61D(1) and either add to that amount the added value or subtract from that amount the reduced value.

The result is the adjusted taxable amount of the benefit.

Step 6

Add the adjusted taxable amount of benefit obtained under step 5 to the next main relevant payment and apply step 5 of regulation 61D(1) to that amount.

(3) On making any subsequent main relevant payment in that year the authorised employer must add the adjusted taxable amount of the benefit to that payment and apply step 5 of regulation 61D(1) to that amount.

Modification of the general rule: insufficient income

61K.—(1) Where, on making a main relevant payment to an employee, the payment is not sufficient to enable the employer to deduct the full amount of tax due in respect of that relevant payment, the taxable amount of the benefit to be added to the main relevant payment in respect of a specified benefit provided to the employee, is nil.

(2) If during the year a main relevant payment made to the employee is sufficient to enable the employer to deduct the full amount of tax due in respect of that relevant payment together with the tax that would have been collected had paragraph (1) not applied, immediately before that relevant payment is made the employer must take the following steps—

Step 1

Determine the number of main relevant payments where the taxable amount of the benefit was nil.

Step 2

Determine the number of main relevant payments remaining in the tax year.

Step 3

Add the number obtained in step 1 to the number obtained in step 2.

Step 4

Multiply the number obtained at step 3 by the taxable amount of the benefit.

Step 5

Divide the amount obtained at step 4 by the number obtained at step 2

The result is the adjusted taxable amount of the benefit following a period of insufficient income.

Step 6

Add the adjusted taxable amount of the benefit following a period of insufficient income obtained under step 5 to the next main relevant payment and apply step 5 of regulation 61D(1) (deduction and repayments of tax: general rule) to that amount.

(3) On making any subsequent main relevant payment in that year the employer must add the adjusted taxable amount of the benefit following a period of insufficient income to that payment and apply step 5 of regulation 61D(1) to that amount.

Modification of the general rule: making good

61L.—(1) This regulation applies instead of regulation 61D where immediately before making the final main relevant payment the specified employee has not made any or all of the making good payment.

(2) Before making the final main relevant payment the employer must—

(a) ascertain the difference between:

(i) the amount the employer expected the employee to pay to make good the employer's expense at the start of the year; and

(ii) the amount the employee has actually paid at that time;

(b) add the amount obtained under sub-paragraph (a) to the final main relevant payment and

(c) apply step 5 of regulation 61D(1) to that amount.

(3) If the amount to be deducted under step 5 of regulation 61D(1) would exceed the overriding limit then—

(a) the amount obtained under paragraph (1)(a) is to be treated as nil, and

(b) before making the first main relevant payment to that employee in the following tax year ("tax year 2") the employer must take the steps set out in paragraph (4).

(4) The steps are—

Step 1

Redetermine the cash equivalent of the benefit of car or van or employment-related benefit in tax year 1 in accordance with section 121, 155 or 203, as the case may be, taking into account only the making good payments that have been made.

Step 2

Determine the number of main relevant payments to be paid to the employee in tax year 2

Step 3

Divide the amount obtained at step 1 by the number obtained at step 2.

The result is the outstanding taxable amount of the benefit for tax year 1.

Step 4

Add the outstanding taxable amount of the benefit for tax year 1 to the first main relevant payment in tax year 2 and apply step 5 of regulation 61D(1) to that amount.

(5) On making any subsequent main relevant payment in tax year 2 the employer must add the outstanding taxable amount of the benefit to that payment and apply step 5 of regulation 61D(1) to that amount.

(6) Where paragraph (3) applies in relation to a specified benefit provided to a specified employee in tax year 1, the employer may not take into account making good payments for the purposes of calculating the cash equivalent of the same specified benefit provided to the same specified employee in tax year 2.

Modification of the general rule: failure to make good fuel benefit

61M.—(1) This regulation applies if the employee has not made the payment referred to in regulation 61F(2) within 30 days of the end of the tax year (“tax year 1”).

(2) Before making the first main relevant payment after the period referred to in paragraph (1) (“the first main relevant payment in tax year 2”) the employer must take the following steps—

Step 1

Redetermine the cash equivalent of the benefit of fuel received in tax year 1 in accordance with section 150 or 161 of ITEPA on the basis that Condition A in section 151 or 162 has not been met, as the case may be.

Step 2

Determine the number of main relevant payments remaining in tax year 2.

Step 3

Divide the amount obtained at step 1 by the number obtained at step 2.

The result is the outstanding taxable amount of the fuel benefit for tax year 1.

Step 4

Add the outstanding taxable amount of the fuel benefit for tax year 1 to the first main relevant payment in tax year 2 and apply step 5 of regulation 61D(1) to that amount.

(3) On making any subsequent main relevant payment in tax year 2 the employer must add the outstanding taxable amount of the fuel benefit to that payment and apply step 5 of regulation 61D(1) to that amount.

(4) Where this regulation applies, regulation 61F(2) does not apply for the purposes of calculating the cash equivalent of the benefit of car fuel provided in tax year 2.

(5) In the application of paragraph (4), if—

- (a) it was not known before the start of tax year 2 that the employee would not make the payment referred to in regulation 61F(2) within 30 days of the end of tax year 1; and
- (b) the employer has already taken the steps set out in regulation 61D(1) in respect of the benefit of car fuel to be provided in year 2 with reference to regulation 61F(2),

then the employer is required to take the steps set out in regulation 61I(2) as if the employer has become aware that the cash equivalent of the specified benefit determined at the start of year 2 is no longer accurate and apply.”

7. In regulation 85 (Employers: annual return of other earnings (Form P11D)) after paragraph (3) insert

“(4) But this regulation does not apply where Chapter 3A of these Regulations applies.”.

8. In regulation 90 (Quarterly return if a car becomes available or unavailable (Form P46 (Car)) for paragraph (1A) substitute —

“(1A) This regulation does not apply if—

- (a) the reason a car becomes available or unavailable is that one is replaced with another; or
- (b) Chapter 3A of these Regulations applies.”.

9. In Schedule A1 (Real Time Returns) after paragraph 22C⁽¹⁶⁾—

“**22D.** If applicable, the amount treated as a payment of PAYE income under regulation 61B (PAYE: benefits in kind).”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (“the principal Regulations”) (S.I. 2003/2682) which make provision for the assessment, charge, collection and recovery of income tax in respect of pay as you earn income (“PAYE income”).

These Regulations amend the principal Regulations to introduce a scheme to authorise employers to deduct tax from employees’ pay in respect of certain benefits in kind that they provide to their employees through PAYE (“payrolling benefits”) from the 2016-17 tax year.

Regulation 2 inserts new Chapter 3A: Benefits in Kind, consisting of new regulations 61A to 61L, into Part 3 of the principal Regulations (Deductions and repayments of tax).

New regulation 61A defines several terms used in Chapter 3A.

New regulation 61B provides that Chapter 3A applies to employers who are authorised by HMRC, in accordance with the procedure set out in regulation 61C and who provide specified benefits to employees. Where Chapter 3A applies, the provision of a specified benefit is treated as a payment of PAYE income for the purpose of the principal Regulations. New regulation 61B provides that any reference in the principal Regulations to ‘relevant payment’ includes an amount that is to be payrolled in accordance with Chapter 3A. But an amount to be payrolled will not be taken into account for the purposes of the overriding limit (see regulations 23(5) and 28(5) of the principal Regulations). As a result the rule that employers may not deduct more than 50% of an employee’s pay is unaffected by any provision made in these Regulations.

New regulation 61C defines who is an authorised employer for the purposes of Chapter 3A. An employer must apply to HMRC identifying each employee and the specified benefit (defined in new regulation 61A) or benefits which will be provided to that employee. The application must be made before the start of the tax year in which the employer wants to payroll benefits except where the specified benefit or benefits is provided for the first time during that tax year or a new employee is added to the payroll. Provision is also made for the circumstances in which an employer ceases to be an authorised employer.

New regulation 61D contains the general rule for calculating amounts of tax to be deducted in respect of the specified benefit or benefits provided to an employee. The employer must, at the start of the tax year, calculate the cash equivalent of the benefit for the tax year in accordance with existing rules set out Part 3 of the Income Taxes (Earnings and Pensions) Act 2003 (c. 1) in respect of the benefit of: a car (section 121), car fuel (section 150), a van (section 155), van fuel (section 161) and employment-related benefits (section 203). The employer must then divide the cash equivalent of the benefit by the number of pay periods in a year. The resulting amount is to be added to the employee’s pay and the employer must then deduct tax on that total pay by reference to the employee’s tax code.

New regulations 61E to 61G deal with how to calculate the cash equivalent of the benefit. New regulation 61E is concerned with cars and vans. New regulation 61F is concerned with fuel. New regulation 61G is concerned with other employment related benefits.

The general rule is subject to modification in situations where: the employee leaves an employment but the effect of the benefit continues (new regulation 61H); there is a change in the specified benefit during the tax year that affects only the remainder of the tax (new regulation 61I); there is a change in the specified benefit during the tax year which affects the whole tax year or an error has been made in reaching

⁽¹⁶⁾ Schedule A1 was inserted by SI 2012/822 and amended by SI 2013/521 and SI 2016/XXX [new paragraph 22C]

the cash equivalent at the start of the year (new regulation 61J); the overriding limit prevents deductions from being made (new regulation 61K); the employee has not paid the full amount expected to made good the cost of a car, van or other employment related benefit within the tax year (new regulation 61L); and the employee has not paid the full amount expected to made good the cost in providing fuel benefit within 30 days of the end of the tax year and (new regulation 61M).

Regulations 4 and 5 amend regulation 85 and 90 of the principal Regulations, respectively to disapply the requirement to submit a Form 11D or Form 46 (Car) where new Chapter 3A applies.

Regulation 6 amends Schedule A1 to the principal Regulations so that an authorised employer is required to report the amount of a specified benefit that is treated as a payment of PAYE income under new regulation 61B on or before making a payment to an employee.

A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside the draft clauses and explanatory notes for the Finance Bill 2015 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO X)

REGULATIONS

2016 No. [XXXX]

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

2.1 This instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (SI2003/2682) (“2003 Regulations”) so that employers can opt to collect income tax on certain benefits in kind through the Pay As You Earn (“PAYE”) system from the 2016-17 tax year.

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

3.1 None

4. Legislative Context

4.1 Section 684 of ITEPA was amended by section 17 of the Finance Act 2015 to provide powers to the Commissioners of HMRC to make regulations to authorise employers to ‘payroll’ specified benefits in kind that they provide to their employees.

4.2 The 2003 Regulations govern the operation of the PAYE system under which employers deduct income tax at source from employees’ pay. As benefits in kind provided by an employer to an employee are not strictly ‘payments’ then, under the 2003 Regulations, they are not directly subject to deductions under PAYE. However, the PAYE system allows for the value of the benefit to be taken into account when calculating an employees’ tax code, so tax is collected through PAYE on both an employee’s pay and benefits in kind.

4.3 This instrument amends the 2003 Regulations to allow authorised employers to deduct (or repay) income tax through PAYE on the benefits that they provide to their employees (payrolling) rather than operating adjusted PAYE tax codes for employees.

4.3 This Instrument also amends the 2003 Regulations so that employers that opt to payroll benefits in kind do not have to make annual returns for each employee to whom a benefit is provided.

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 In their second report on employee benefits and expenses, the Office of Tax Simplification (OTS) made suggestions about how the rules could be simplified to reduce employer burdens. As part of this work, they recommended the introduction of a legislative framework to allow employers to payroll some or all of their benefits and expenses on a voluntary basis. This recommendation was accepted by the government. Legislation to allow HMRC to amend the PAYE Regulations and set out the detailed framework for voluntary payrolling was included in the Finance Act 2015.

7.2 These regulations make the necessary changes to the PAYE Regulations to enable employers to payroll all benefits, except employer provided accommodation, beneficial loans and credit tokens and vouchers, from 2016/17. Where an employer opts to payroll, their obligation to make a return of these benefits and expenses on form P11D will be disapplied and employers will report the value under Real Time Information (RTI).

7.3 An employer who wishes to payroll benefits must make an electronic application for authorisation, using HMRC's payroll registration service unless they are employers who have difficulty in using electronic communications and are already allowed to make RTI returns on paper. The application must set out the employer's employees and the benefit(s) with which they will be provided. If an employer wants to stop payrolling, they can make an application to withdraw from being an authorised employer. Withdrawal will take effect from the end of the tax year in which notification is given to HMRC. But where withdrawal is made in respect of an employee who has insufficient income to cover their tax liability, the withdrawal has immediate effect.

7.4 Where an authorised employer intends to payroll certain benefits, these regulations set out the 'general rule' for calculating the amount of income tax an employer must deduct from, or repay to, an employee in respect of specified benefits. The rule is that they must first calculate the cash equivalent of the benefit (for a tax year). There has been no change to existing methods of calculating the 'cash equivalent' of benefits that are to be payrolled, but these regulations set out how the cash equivalent will then apply for payrolling purposes. Once the cash equivalent has been determined it must then be divided by the number of pay periods in the year. The resulting amount is the taxable benefit. The employer

must add the taxable benefit to the employee's pay (when that payment is made) and then deduct or repay income tax on the total pay by reference to the employees' PAYE tax code.

7.5 The general rule may be modified in certain specified circumstances:

- **Continuing benefit where employment has ceased:** where an employee leaves an employment during the year but the employee continues to receive the benefit, the employer should payroll all remaining benefits in kind in the remaining pay periods.
- **In-year adjustments:** where there is a change to the benefit being provided or the employer becomes aware during the year that the cash equivalent of the benefit calculated at the start of the year is no longer accurate, the monthly amounts included in the payroll should be adjusted accordingly.
- **Insufficient income:** where an employee has insufficient income to enable the deduction of the full amount of tax due, the monthly amount should be reduced to nil, with an appropriate adjustment made to the following monthly amounts.
- **Making good:** where an employer expects an employee to 'make good' any amount of the benefit, the employer can take that into account when calculating the taxable benefit subject to PAYE deductions. If the employee makes good during the year, or is expected to have made good the full amount by the end of the year, the employer does not need to deduct tax in respect of that amount. However if the employee has failed to make good the benefit of a car, van or other employment-related benefit by the final pay period of the year, the employer must deduct tax for the full amount.
- **Failure to make good car fuel benefit:** where an employee has failed to make good the expected amount of fuel benefit within 30 days of the end of the tax year (tax year1), the taxable amount of the benefit not payrolled is to be brought into account in tax year 2. Where an employer cannot factor in making good in tax year 2, the employer is required to recalculate in accordance with the mid-year error provisions.

8. Consultation outcome

8.1 In accordance with the government's Tax Consultation Framework, draft Regulations will be published on the HMRC website for comment from 8 July 2015 to 2 September 2015.

9. Guidance

9.1 Guidance will be made available when the regulations come into effect.

10. Impact

10.1 The administrative burden will reduce for employers who adopt voluntary payrolling as they will no longer have to submit P11Ds in respect of payrolled benefits and their reporting burdens will significantly decrease. Employers who currently payroll on an informal basis will also benefit as they will no longer have to submit P11Ds for the benefits covered by these regulations.

10.2 There will be a one-off cost for employers adopting payrolling as they will need to familiarise themselves with guidance, register with HMRC and make changes to their payroll systems.

10.3 A Tax Impact and Information Note (TIIN) was published on 10 December 2014 alongside the draft clauses and explanatory notes for Finance Bill 2015 and is available on the website at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385148/Voluntary_payrolling_of_benefits_in_kind.pdf

It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

11.1 The legislation applies to small business. Those who adopt voluntary payrolling will benefit from a reduction in their reporting requirements.

14. Monitoring & review

12.1 The Regulations will be monitored and reviewed as appropriate within the context of the wider tax framework

13. Contact

Sarah Radford at HM Revenue and Customs Tel: 03000 586474 or email: employmentincome.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

2016 No.

INCOME TAX

THE INCOME TAX (APPROVED EXPENSES) REGULATIONS 2016

Made - - - - - ***
Laid before the House of Commons ***
Coming into force - - - - - 6 April 2016

The Commissioners for Her Majesty’s Revenue and Customs, in exercise of the power conferred by section 289A(6) of the Income Tax (Earnings and Pensions) Act 2003⁽¹⁷⁾, make the following Regulations:

Citation, commencement, interpretation and effect

10.—(1) These Regulations may be cited as the Income Tax (Approved Expenses) Regulations 2016 and come into force on 6th April 2016.

(2) These Regulations have effect in relation to any payments made in the tax year 2016/17 and any subsequent tax years.

(3) In these Regulations “qualifying travel” means travel for which a deduction from the employee’s earnings would be allowed under Chapter 2 or 5 of Part 5 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”).

Approved way of calculating or reimbursing standard meal allowances

11.—(1) For the purposes of section 289A of ITEPA 2003, a sum paid or reimbursed by a person to an employee in respect of meals purchased by the employee in the course of qualifying travel (“a meal allowance”) is paid or reimbursed in an approved way if it falls within any one or more of the following paragraphs.

(2) One meal allowance per day paid in respect of one instance of qualifying travel, the amount of which does not exceed—

- (a) £5 where the duration of the qualifying travel in that day is 5 hours or more;
- (b) £10 where the duration of the qualifying travel in that day is 10 hours or more; or
- (c) £25 where the duration of the qualifying travel in that day is 15 hours or more and is ongoing at 8pm on that day.

(3) An additional meal allowance not exceeding £10 where a meal allowance specified in sub-paragraph (2)(a) or (b) is paid and the qualifying travel in respect of which that allowance is paid is ongoing at 8pm on that day.

Name

⁽¹⁷⁾ 2000 c. 1. Section 289A was inserted by section 11 of the Finance Act 2015 (c. 11).

Name
Date

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

EXPLANATORY MEMORANDUM TO

THE INCOME TAX (APPROVED EXPENSES) REGULATIONS 2016

2016 No. [XXXX]

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

2.1 These Regulations define the approved way of calculating or reimbursing standard meal allowances for the purposes of the new expenses exemption introduced by section 11 of the Finance Act 2015.

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

3.1 None

4. Legislative Context

4.1 Section 11 of Finance Act 2015 introduced at section 289A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) a new exemption for expenses which are paid or reimbursed by an employer where the employee would be due a deduction under Chapters 2 or 5 of Part 5 of ITEPA. New subsection 289A(6)(a) contains a power enabling HMRC to set out an approved way of calculating or reimbursing standard meal allowances.

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 Where an employer pays or reimburses a qualifying expense to their employee, the payment should be taxed under PAYE and reported to HMRC at the end of the year on a form P11D. Employees are then required to make a claim to HMRC for any tax relief that is due. Where there is no net difference in the amount

the employer reports and the amount their employees can claim, the employer can make an application to HMRC for an agreement known as a 'dispensation'. A dispensation allows the employer to pay specified expenses to their employees without having to report them and without having to deduct tax and National

Insurance contributions (NICs). This ensures employees receive the tax relief that they are entitled to without having to make a separate claim to HMRC.

7.2 Following a recommendation by the Office of Tax Simplification (OTS), section 11 of the Finance Act 2015 introduced a new exemption to replace dispensations. This means that, from 6 April 2016, employers will be able to pay specified expenses to their employees tax and NICs free, without the requirement to obtain a dispensation from HMRC.

7.3 Although many employers will pay or reimburse actual expenses incurred by their employees, where amounts incurred are broadly similar in respect of the same expense, some employers pay or reimburse 'scale rates'. A scale rate is an agreed flat amount that must be no more than a reasonable reimbursement of the expense being incurred and must be evidenced by employers by way of a sampling exercise that has been agreed with HMRC. To relieve the employer of this administrative burden, HMRC introduced a set of 'benchmark' scale rates for subsistence payments which set out the maximum amount an employer can pay or reimburse without the need to conduct a sampling exercise.

7.4 These regulations provide for an approved way of calculating or reimbursing standard meal allowances for the purposes of the new expenses exemption and list the maximum amount of meal allowance payable for each day in respect of qualifying travel on that day.

8. Consultation outcome

8.1 In accordance with the Government's Tax Consultation Framework, draft Regulations will be published on the HMRC website for comment from 8 July 2015 to 2 September 2015.

9. Guidance

9.1 Guidance will be made available when the regulations come into effect.

10. Impact

10.1 These Regulations make provision for consistency, fairness and a reduction in the administrative burden for businesses that pay or reimburse meal allowances for qualifying travel.

10.2 A Tax Impact and Information Note (TIIN) for the Employee Benefits and Expenses Exemption was published on 10 December 2014 alongside the draft

clauses and explanatory notes for Finance Bill 2015 and is available on the website at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385231/Administration_of_employee_expenses.pdf.

It remains an accurate summary of the impacts that apply to this instrument.

15. Regulating small business

11.1 The legislation applies to small businesses who will benefit from the same administrative savings as other businesses.

16. Monitoring & review

12.1 The Regulations will be monitored and reviewed, as appropriate, within The context of the wider tax framework

13. Contact

Viv Howard at HM Revenue and Customs Tel: 03000 586343 or email: employmentincome.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

2016 No. ****

INCOME TAX

**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. *)
REGULATIONS 2016**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	<i>6th April 2016</i>

The Commissioner’s for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by section 684(2) of the Income Tax (Earnings and Pensions) Act 2003⁽¹⁸⁾ and now exercisable by them⁽¹⁹⁾.

Citation, commencement and effect

12. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. *) Regulations 2016 and come into force on 6th April 2016.

13. These regulations have effect in relation to any returns and information provided for the tax year 2016-17 and subsequent tax years.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

14.—(1) The Income Tax (Pay As You Earn) Regulations 2003⁽²⁰⁾ are amended as follows.

(2) In regulation 4 (relevant payments)—

- (a) omit sub-paragraph (1)(d); and
- (b) in paragraph (2) omit the definition of “excluded business expenses”.

(3) Omit regulation 5 (excluded business expenses).

(4) In regulation 87 (information employer must also provide for benefits code employees), omit sub-paragraph (1)(a).

⁽¹⁸⁾ 2003 c. 1. Section 684 was amended, so far as relevant, by paragraphs 101, 102 and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (“CRCA”) and by section 17 of the Finance Act 2015 (c.11). There are other amendments but none is relevant to these Regulations.

⁽¹⁹⁾ Paragraph 102 of Schedule 4 to CRCA amended section 684 so that the Commissioners for Her Majesty’s Revenue and Customs have the power to make Regulations. The functions of the Commissioners of Inland Revenue under sections 132 and 133 of the Finance Act 1999 were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(1) of CRCA. Section 50(1) of CRCA provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty’s Revenue and Custom.

⁽²⁰⁾ S.I. 2003/2682 (“the principal Regulations”); relevant amending instruments are [

Date

Two of the Lords Commissioners of Her Majesty's Treasury

name

name

EXPLANATORY NOTE

(This note is not part of the Regulations)

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO *)
REGULATIONS 2016

2016 No. [XXXX]

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

2.1 These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) (the PAYE Regulations) to remove the requirement for employers to report expenses payments made to employees to HMRC on form P11D.

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

3.1 None

4. Legislative Context

4.1 Amendments were made to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) by section 11 of the Finance Act 2015 to exempt from income tax certain expense payments and benefits in kind provided to employees. The exemption comes into effect from 6 April 2016.

4.2 These Regulations amend the PAYE regulations to omit the definition of “excluded business expenses” and to remove the requirement for expense payments (whether deductible or not) to be reported to HMRC on form P11D after 6 April 2016.

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

7. Policy background

- What is being done and why

7.1 At the end of the tax year employers are currently required to make a return to HMRC on form P11D of any expenses paid or reimbursed to their employees. Where an expense qualifies for tax relief, the employee must make a claim to HMRC unless the employer has agreed a dispensation with HMRC.

7.2 In its second report on employee benefits and expenses, the Office of Tax Simplification (OTS) made suggestions about how the rules could be simplified to reduce employer burdens. As part of this work they recommended replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses. This recommendation was accepted by the Government.

7.3 Section 11 of Finance Act 2015 introduced a new exemption from 6 April 2016 for expenses paid or reimbursed by an employer, or benefits treated as earnings, where the employee would have been entitled to an income tax deduction for that expense. The new exemption also applies to approved scale rate payments in respect of allowable expenses incurred by an employee, and means that almost all allowable expenses payments will be exempt from tax and no longer need to be reported to HMRC.

7.4 There are two exceptions to the new exemption. Firstly, if an employer pays a scale rate that is not an approved scale rate, or they do not operate a suitable checking system, then the scale rate payment will fall outside the new exemption and will be taxable. The second exception is if an employer continues to pay expenses through a salary sacrifice (or similar) arrangement after 6 April 2016.

7.5 Where an employer pays expenses that fall into the exceptions from the new exemption, or pays non-allowable expenses, they will be required to operate PAYE against the payments. This instrument accordingly makes a number of changes to the PAYE regulations to remove the need for such payments to be reported to HMRC on form P11D.

7.6 There will be no change to the requirement for employers to make annual returns on form P11D where they pay an expense on behalf of their employee, or provide an employee with a non-cash benefit in kind.

8. Consultation outcome

8.1 In accordance with the Government's Tax Consultation Framework, draft Regulations will be published on the HMRC website for comment from 8 July 2015 to 2 September 2015.

9. Guidance

9.1 Guidance will be made available when the regulations come into effect.

10. Impact

10.1 These Regulations will reduce the administrative burden for businesses that pay qualifying expenses or provide qualifying benefits in kind to their employees as they will no longer need to report these payments to HMRC on form P11D.

10.2 A Tax Impact and Information Note (TIIN) was published on 10 December 2014 alongside the draft clauses and explanatory notes for Finance Bill 2015 and is available on the website at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385231/Administration_of_employee_expenses.pdf

It remains an accurate summary of the impacts that apply to this instrument

17. Regulating small business

11.1 The legislation applies to small business who will benefit from the same administrative savings as other businesses.

18. Monitoring & review

12.1 The Regulations will be monitored and reviewed as appropriate within the context of the wider tax framework

13. Contact

Travis Woodward at HM Revenue and Customs Tel: 03000 586435 or email: employmentincome.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.