EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT NO. 2) REGULATIONS 2010

2010 No.2496

THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT NO. 2) REGULATIONS 2010

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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

These statutory instruments make changes to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the PAYE Regulations) and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (the CIS Regulations), respectively, following the introduction of additional statutory paternity pay. They substitute references to "statutory paternity pay" in the existing legislation with references to "ordinary statutory paternity pay" and "additional statutory paternity pay".

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

None.

4. Legislative Context

4.1 The Work and Families Act 2006 (c.18) and the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I.16)) were introduced to make provision for statutory rights to leave and pay in connection with the birth or adoption of children.

4.2 Additional Statutory Paternity Pay was introduced in Great Britain by regulations made under Part 12ZA of the Social Security Contributions and Benefits Act 1992 (c.4) as amended by the Work and Families Act 2006 and, in Northern Ireland, by regulations made under Part 12ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7) as amended by the Work and Families (Northern Ireland) Order 2006. These regulations also resulted in Statutory Paternity Pay being renamed as Ordinary Statutory Paternity Pay.

4.3 These statutory instruments are being made to substitute references to Statutory Paternity Pay in the PAYE Regulations and the CIS Regulations so

as to include Additional Statutory Paternity Pay and to recognise the change in name of Statutory Paternity Pay to Ordinary Statutory Paternity Pay.

5. Territorial Extent and Application

These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

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 The aim of Additional Statutory Paternity Pay is to give families more choice about their caring arrangements during the first year of a child's life. The policy for this Statutory Payment lies with the Department of Business, Innovation and Skills (BIS).

7.2 These instruments makes changes to the PAYE Regulations and those regulations relating to construction industry workers and are required as a consequence of the legislation referred to in paragraph 4.2.

- ***Consolidation***

7.3 These Regulations make only small amendments to the PAYE Regulations and the CIS Regulations and HMRC has no current plans to consolidate.

8. Consultation outcome

8.1 The changes introduced by these instruments are consequential to the introduction of Additional Statutory Paternity Pay. As a result no consultation has taken place specifically in relation to these instruments.

8.2 BIS undertook consultations in March 2006 on the detail of the Additional Paternity Leave and Pay scheme and in May 2007 on the administration of Additional Paternity Leave and Pay. A further eight-week consultation on the draft regulations introducing Additional Statutory Paternity Pay closed on 20 November 2009 and is available to view at www.bis.gov.uk.

8.3 Similar consultations were carried out by the Department for Employment and Learning in Northern Ireland. The last consultation was during 2009 and it is available to view at www.delni.gov.uk/index/consultation-zone.

8.4 Responses to the 2009 consultations were generally positive.

9. Guidance

Guidance on Additional Statutory Paternity Pay will be available for employees via www.direct.gov.uk and for employers via www.businesslink.gov.uk and www.hmrc.gov.uk. Guidance will also be available on the Employers CD Rom and Employer Help Book produced by HMRC as well as on the HMRC employer helpline.

10. Impact

10.1 These instruments have no impact on business, charities or voluntary bodies.

10.2 These instruments have no impact on the public sector.

10.3 An Impact Assessment has not been prepared for these instruments. An Impact Assessment in respect of the introduction of Additional Statutory Paternity Pay has been prepared and is available from the Employment Relations Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or at www.bis.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.

11. Regulating small business

11.1 This legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken in the legislation which introduced Additional Statutory Paternity Pay was to make administration of the scheme as 'light touch' as possible. In addition small businesses (defined as those paying £45,000 or less in National Insurance Contributions) can claim 104.5% of the payments made.

11.3 The introduction of Additional Statutory Paternity Pay applies to small business as employees of all businesses who meet the relevant criteria can claim. The measures outlined in the previous paragraph will help ensure that the effect on small business is minimised both in terms of administrative burdens and financial impact.

12. Monitoring & review

BIS regularly undertakes evaluations of maternity and paternity rights in conjunction with the Department of Work and Pensions.

13. Contact

Graeme Young at HMRC Tel: 0191 225 9363 or e mail graeme.w.young@hmrc.gsi.gov.uk can answer any queries regarding this instrument.