EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2009 (CONSEQUENTIAL AMENDMENTS) ORDER 2011

2011 No. 1583

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) (NO. 3) REGULATIONS 2011

2011 No. 1584

THE INCOME TAX (EARNINGS AND PENSIONS) ACT 2003 (SECTION 684(3A)) ORDER 2011

2011 No. 1585

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.

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

2. Purpose of the instruments

2.1 The Order and Regulations amending the Finance Act 2009 and the PAYE Regulations (SI 2003/2682) complete the statutory framework to permit HMRC to collect the majority of debts owed to it ("relevant debts") through an adjustment to the tax code, where the debtor is in employment or in receipt of a UK pension. The Order made under the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") raises the threshold for recovering relevant debts through a code adjustment from £2,000 to £3,000.

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

3.1 None.

4. Legislative Context

4.1 Section 110 and Schedule 58 Finance Act 2009 make provision for recovery of "relevant" debts from PAYE income. A "relevant" debt is a sum owed to the Commissioners of HMRC under or by virtue of an enactment or under a contract settlement, and can be recovered from PAYE income at HMRC's discretion and without the debtor's consent. Tax credit debts are excluded from these provisions, but can be recovered from PAYE income with the claimant's agreement.

4.2 This secondary legislation amends the existing legislation governing the operation of PAYE to ensure all of the PAYE provisions apply equally to relevant debts as they apply to income tax. Consequential amendments are also made to ITEPA to incorporate references to "relevant debts".

5. Territorial Extent and Application

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Exchequer Secretary to the Treasury, Mr David Gauke MP has made the following statement regarding Human Rights:
"In my view the provisions of the Finance Act 2009 (Consequential Amendments) Order 2011 and the Income Tax (Earnings and Pensions) Act 2003 (Section 684(3A)) Order 2011 are compatible with Convention rights.".

6.2 As the Income Tax (Pay As You Earn) (Amendment) (No.3) Regulations 2011 are subject to negative resolution procedure and do not amend primary legislation, no statement is required in respect of that instrument.

7. Policy background

7.1 The purpose of these instruments is twofold: firstly to complete the statutory framework to permit HMRC to collect through PAYE income, at its discretion, all debts where the debtor is employed or in receipt of a UK-based pension; and secondly to increase the threshold above which these sums cannot be collected from PAYE income.

7.2 Increasing the coding out threshold will permit more debts and underpayments to be collected in this relatively simple, cheap and less intrusive way. It also minimises the compliance burden on the taxpayer. Completing the legislative framework to permit HMRC to code out most tax debts at its discretion will ensure HMRC has an additional tool available to collect debts, and so help reduce the tax gap.

7.3 Increasing the maximum amount that can be coded out from £2,000 to £3,000 will ensure more people with small debts and underpayments can benefit from this collection method, and HMRC can direct more resources towards those who deliberately choose not to pay tax. Coding out debts is at HMRC's discretion rather than at the debtor's request. It will not be routinely available to debtors as an alternative to paying HMRC in full or to agreeing a time to pay arrangement.

7.4 The limit for coding out self assessment debts in respect of earlier years is raised from £2,000 to £3,000, ensuring taxpayers within self assessment can take advantage of the facility to have such debts coded out to the higher limit.

8. Consultation outcome

8.1 Consultation on these regulations closed on 12 May 2011 and a response document will be published on HMRC's website in due course. All respondents were supportive of increasing the threshold from £2,000 to £3,000, and some useful comments were made on how to improve the regulations to ensure it was clear the amendments related to "relevant" debts. Suggestions were also made for improving HMRC processes, and these will be considered as part of the work to implement this measure.

9. Guidance

9.1 Draft guidance is available on the HMRC website, and this will be updated in due course.

10. Impact

10.1 An impact assessment was published alongside the 2009 legislation; this covers the impacts of extending recovery through PAYE income to all debts owed to HMRC. A Tax Impact and Information Note was published with the consultation on this secondary legislation, and covers the impact of increasing the coding threshold from £2,000 to £3,000. Both of these documents are available on the HMRC website.

11. Regulating small business

11.1 The legislation will apply to small businesses that employ individuals who owe HMRC tax debts. But the legislation places no additional burden on such businesses as they will already be subject to the provisions of the PAYE regulations. However, it may be that a proportion of the employees and pensioners likely to be affected by this measure query their tax codes, and the employer or pension provider may have to spend more time addressing these questions or directing the payee to HMRC's website or helplines.

11.2 A publicity programme is in place for this work aimed at ensuring taxpayers, employers and their advisers are aware of the extended use to be made of collecting tax debts via PAYE coding out. Full information will be available on HMRC's website, and additional detail and contact numbers for queries will be included on the P2 coding notices to be issued early in 2012.

12. Monitoring & review

12.1 HMRC will monitor the use of the increased coding out limit through information captured within its operational and tax administration systems.

13. Contact

13.1 Stephanie Allistone at HM Revenue & Customs Tel: 020 7147 2394 or email: Stephanie.Allistone@hmrc.gsi.gov.uk can answer any queries regarding the instrument.