STATUTORY INSTRUMENTS

2008 No. 2601

INCOME TAX

The Income Tax (Pay As You Earn) (Amendment) (No.2) Regulations 2008

Made - - - -	*3rd October 2008*
Laid before Parliament	*6th October 2008*
Coming into force - -	*27th October 2008*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers in section 684 of the Income Tax (Earnings and Pensions) Act 2003(**a**), and now vested in them(**b**):

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) (No.2) Regulations 2008 and shall come into force on 27th October 2008.

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

2. The Income Tax (Pay As You Earn) Regulations(**c**) are amended as follows.

3. In Part 8 (Social Security Benefits), after Chapter 4 (Income Support) insert—

"CHAPTER 5

EMPLOYMENT AND SUPPORT ALLOWANCE

Interpretation of Chapter 5

184A. In this Chapter—

"award" means an award of employment and support allowance;

"claim" means a claim for employment and support allowance;

"claimant" means a person who has made a claim;

(**a**) 2003 c. 1. Section 684 was amended by section 145 Finance Act 2003 (c. 14), section 50, Schedule 4, paragraph 117 of the Commissioners for Revenue and Customs Act 2005 (c. 11) ("the CRCA") and section 94 of the Finance Act 2006 (c. 25).

(**b**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the CRCA. Section 50 of that Act provides that insofar as it is appropriate in consequence of section 5 a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**c**) S.I. 2003/2682, amended by S.I 2007/2969; there are other amending instruments but none is relevant.

"Department" means the Department for Work and Pensions or, in Northern Ireland, the Department for Social Development";

"employment and support allowance" means benefit payable under—

(a) the Welfare Reform Act 2007(**a**), or

(b) in Northern Ireland, the Welfare Reform Act (Northern Ireland) 2007(**b**);

"taxable employment and support allowance" means any amount of employment and support allowance which is chargeable to income tax under Chapter 2 of Part 10 of ITEPA (tax on social security income).

Application of other regulations

184B.—(1) The following regulations apply to payments of employment and support allowance made to a claimant with the modifications mentioned in paragraphs (2) to (4)—

regulation 2	interpretation
regulation 14	matters relevant to determination of code
regulation 15	flat rate codes
regulation 16	continued application of employee's code
regulation 17	notice to employee of code
regulation 18	objections and appeals against employee's code
regulation 19	amendment of code
regulation 20	notice to employer of amended code
regulation 21	deduction and repayment of tax by reference to employee's code
regulation 97	inspection of employer's PAYE records
regulation 98	multiple PAYE schemes
regulation 102	succession to a business etc
regulation 185	adjusting total net tax deducted for purposes of sections 59A(1) and 59B(1) TMA
regulation 205	mandatory use of electronic communications
regulation 206	specified employers
regulation 207	specified information
regulation 208	e-filing notice and appeals
regulation 209	standards of accuracy and completeness
regulation 210	penalties and appeals
regulation 211	how information must or may be delivered by employers
regulation 214	how information must be provided by employees
regulation 216	service by post.

(2) In the application of those regulations, the expressions listed in column 1 of Table 7A have the meanings shown in column 2 of the table.

Table 7A

Meaning of expressions in application of other regulations

(**a**) 2007 c. 5.
(**b**) 2007 c. 2.

1. Expression	*2. Meaning for purposes of this Chapter*
Employee	claimant
Employer	Department
Employment	award
Relevant payments	taxable employment and support allowance

(3) In the application of regulations 20 (notice to employer of amended code) and 21 (deduction and repayment of tax by reference to employee's code), any reference to the deduction or repayment of tax shall be read as a reference to the tax calculation which the Department is required to make at the end of the tax year or on the cessation of an award (by virtue of regulation 184I(2)(a) and 184K(2).

(4) In the application of regulation 207 (specified information) the reference to specified information shall be read as including references to—

(a) the return and accompanying information required by regulations 184G (return in respect of all claimants to taxable employment and support allowance) and 184J (annual return),

(b) Part 1 of Form P45ESA, and

(c) the information required under regulation 184E(9).

Obtaining the claimant's Form P45

184C.—(1) A claimant who has Parts 2 and 3 of Form P45 must deliver them to the Department on making a claim for employment and support allowance which includes taxable employment and support allowance.

(2) If on making a claim, the claimant declares that the claimant's last employer did not provide Parts 2 and 3 of Form P45, the Department may require the employer to deliver them to a specified officer of the Department.

Deductions working sheet for claimants awarded taxable employment and support allowance

184D.—(1) The Department must prepare a deductions working sheet in respect of each claimant whose award includes taxable employment and support allowance.

(2) If the Department obtains Parts 2 and 3 of Form P45 relating to the claimant, it must immediately prepare the deductions working sheet using the information shown in Parts 2 and 3 of Form P45 in accordance with regulation 184E.

(3) If the Department does not obtain Parts 2 and 3 of Form P45 relating to the claimant, it must prepare the deductions working sheet in accordance with regulation 184F.

Form P45: deductions working sheet and return

184E.—(1) If Parts 2 and 3 of Form P45 relate to the current tax year, the Department must record in the deductions working sheet the total payments to date shown in Parts 2 and 3 of Form P45.

(2) If Parts 2 and 3 of Form P45 relate to the current tax year and show that the cumulative basis has been used, the Department must also—

(a) record the following information from Parts 2 and 3 of Form P45 in the deductions working sheet, or

(b) keep such records as enable production of the information.

(3) If the code shown in Parts 2 and 3 of Form P45 is a K code, the information is—

(a) the code show,

(b) the total additional pay to date,

(c) the total taxable payments to date, and

(d) the lower of the total tax to date as at the week or month shown in Parts 2 and 3 of Form P45 or the total net tax deducted shown in them.

(4) In any other case, the information is—

(a) the code shown,

(b) the total free pay to date,

(c) the total taxable payments to date, and

(d) the corresponding total tax to date as at the week or month shown in Parts 2 and 3 of Form P45.

(5) Paragraph (6) applies if—

(a) the claim is made by 24th May in a tax year, and

(b) Parts 2 and 3 of Form P45 show that the last relevant payment was made in the preceding tax year.

(6) The Department must complete the deductions working sheet but without recording the total payments to date or total net tax deducted (if any) shown in Parts 2 and 3 of Form P45.

(7) In cases falling within paragraphs (1) and (6), the code shown in Parts 2 and 3 of Form P45 must be treated as the claimant's code for the purposes of these Regulations.

(8) If, in a case not falling within paragraph (6), Parts 2 and 3 of Form P45 show that the last relevant payment was made in a tax year preceding that in which the claim was made, the Department—

(a) must complete the deductions working sheet but without recording the total payments to date or total net tax deducted (if any) shown in parts 2 and 3 of Form P45, and

(b) must record the emergency code as the claimant's code.

(9) The Department must supply the information recorded under this regulation to HMRC together with such further information as may be required for the purposes of these Regulations.

No Form P45: deductions working sheet and return

184F. In a case falling within regulation 184D(3) (no Form P45), the Department must—

(a) prepare the deductions working sheet within 14 days of the award of a taxable employment and support allowance, and

(b) record the emergency code as the claimant's code.

Return in respect of all claimants to taxable employment and support allowance

184G.—(1) When the Department first makes a payment of taxable employment and support allowance to a claimant it must deliver a return to HMRC containing the following information.

(2) The information is—

(a) the claimant's name,

(b) the claimant's address,

(c) the claimant's date of birth, if known,

(d) the claimant's national insurance number,

(e) the date on which the claimant's entitlement to taxable employment and support allowance began,

(f) the weekly rate of taxable employment and support allowance being paid to the claimant,

(g) if the payment was preceded by a payment of employment and support allowance which was not taxable, the date that benefit was first paid, and

(h) the claimant's tax reference, if known.

(3) But the return need not be delivered if the claimant certifies that the claimant—

(a) is undergoing a course of full-time education and has not had regular employment since the previous 6th April, or

(b) has not had regular employment since finishing full-time education.

Further return required in certain cases

184H.—(1) On making a subsequent payment of taxable employment and support allowance to the claimant, the Department must deliver a further return in accordance with regulation 184G as if that subsequent payment were the first payment, if the condition set out in paragraph (2) is met.

(2) The condition is that the subsequent payment is the first payment to be made at a different rate from the rate subsisting at the time of that determination.

(3) In addition to providing the information listed in regulation 184G(2), the Department must indicate in the further return that the weekly rate of taxable employment and support allowance being paid to the claimant represents a revised amount.

Obligations at the end of the year

184I.—(1) This regulation applies in respect of each award which includes taxable employment and support allowance and which continues beyond the end of a tax year.

(2) Before 1st June following the end of the tax year the Department must—

(a) make a tax calculation in accordance with regulation 184N if the claimant's code is used on the cumulative basis; and

(b) subject to paragraph (3), issue a certificate to the claimant.

(3) The Department need not issue a certificate if—

(a) no taxable employment and support allowance has been paid, and

(b) a tax calculation in accordance with regulation 184N is not required.

(4) The certificate must show—

(a) the tax year to which it relates,

(b) the total employment and support allowance for the tax year excluding any amounts previously notified under regulations 184L(4) and 184Q(2)(a),

(c) the taxable employment and support allowance included in the total employment and support allowance,

(d) the claimant's code,

(e) the claimant's national insurance number,

(f) the claimant's address (if known),

(h) any previous relevant payments and any tax deducted from those relevant payments which the Department was required to take into account under regulation 184N,

(i) any total payments to date recorded by the Department in accordance with regulation 184E(1) plus the total taxable employment and support allowance for the tax year, and the corresponding total net tax deducted, and

(j) the amount of tax refunded by the Department.

Annual return

184J.—(1) This regulation applies in respect of each award which includes taxable employment and support allowance.

(2) Before 1st June following the end of the tax year, the Department must deliver a return to HMRC.

(3) The return must show—

(a) the particulars specified in regulation 184I(4), and

(b) if a calculation is required under regulation 184N any amount of tax outstanding.

When an award ceases

184K.—(1) For the purposes of these Regulations an award ceases when entitlement to an employment and support allowance ceases.

(2) When an award of a taxable employment and support allowance ceases, the Department must make a tax calculation in accordance with regulation 184N.

(3) The relevant date for the purposes of that calculation is the date on which the award ceases.

(4) The date on which the award ceases is the last day for which benefit was paid and was not recoverable, except that if the last day is 4th or 5th April the date is the preceding 3rd April.

(5) But the Department need not amend a tax calculation solely because the date used for the purposes of the calculation is subsequently shown to be incorrect.

Cessation of award: Form P45ESA

184L.—(1) When an award of a taxable employment and support allowance ceases, the Department must immediately complete Form P45ESA.

(2) The Department must then—

(a) send Part 1 of Form P45ESA to HMRC; and

(b) provide Part 1A of P45ESA and Parts 2 and 3 of Form P45 to the claimant.

(3) The information listed in column 1 of Table 7B must, subject to the conditions set out in column 2, be provided in Parts 1 and 1A of Form P45ESA and Parts 2 and 3 of Form P45 as indicated in columns 3 to 5.

Table 7B

Information which must be provided in Form P45ESA

1	*2*	*3*	*4*	*5*
Information to be provided	*Conditions*	*Form P45ESA*	*Form P45ESA*	*Form P45*
		Part 1	*Part 1A*	*Parts 2 and 3*
1. the tax reference as shown in the deductions working sheet		yes	yes	yes
2. claimant's national insurance number		yes	yes	yes
3. claimant's name		yes	yes	yes
4. the date on which the award ceased		yes	yes	yes
5. the claimant's code or, if		yes	yes	yes

more than one, the latest code for the tax year during which the award ceased				
6. whether the claimant's code is used on the cumulative basis		yes	yes	yes
7. the tax week or month in which the award ceased	if the claimant's code is used on the cumulative basis	yes	yes	yes
8. the total payments to date (including taxable employment and support allowance) at the date the award ceased, and the corresponding total net tax deducted	if the claimant's code is used on the cumulative basis	yes	yes	yes
9. the taxable employment and support allowance paid during the tax year by virtue of the award in question	if the claimant's code is used on the cumulative basis, and if different from the information supplied under item 8	yes	yes	no
10. the taxable employment and support allowance paid during the tax year in question by virtue of the award in question	if the claimant's code is not used on the cumulative basis	yes	yes	no
11. any amount of tax outstanding	if the claimant's code is used on the cumulative basis	yes	no	no
12. whether the claimant was self-employed immediately before the claim was made.		yes	no	no
13. whether the claimant is receiving a pension by reason of a former employment.		yes	no	no
14. the claimant's address	if known	yes	no	no
15. the address of the benefit office		yes	yes	no
16. the date the form is completed		yes	yes	no

(4) The Department must also give notice to the claimant of—

(a) the total employment and support allowance for the tax year excluding any sums previously notified under this regulation and regulation 184Q(2)(a), and

(b) the taxable employment and support allowance included in that total.

(5) Expressions used in Parts 2 and 3 of Form P45 have the following meanings—

(a) "employee" means "claimant";

(b) "leaving date" means "date the award ceased"; and

(c) "pay" means "employment and support allowance".

(6) Regulation 184M (death of claimant) modifies the requirements of this regulation if an award of taxable employment and support allowance has ceased on the death of the claimant.

(7) If Form P45ESA has not come into use when the award of taxable employment and support allowance ceases, the Department must complete form P45U and any references to form P45ESA in these regulations shall be read as a reference to form P45U.

Death of claimant

184M.—(1) On being informed of the death of a claimant whose award included taxable employment and support allowance, the Department must send HMRC the completed Form P45ESA indicating in Part 1 that the claimant has died.

(2) If the Department knows the name and address of the claimant's personal representative the Department must send the notice referred to in regulation 184L(4) to the personal representative.

(3) But if the Department has not been notified of the name and address of the claimant's personal representative within 30 days of the claimant's death, the Department is not required—

(a) to make a tax calculation under regulation 184N, nor

(b) to issue the notice under regulation 184L(4).

Tax calculation

184N.—(1) This regulation applies, subject to regulation 184O, if the Department is required by regulation 184I or 184K to make a tax calculation.

(2) The Department must calculate in respect of the claimant as at the relevant date—

(a) the total payments to date, and

(b) the claimant's total tax.

(3) If the recorded tax exceeds the claimant's total tax, the Department must repay the excess to the claimant.

(4) But if the recorded tax is less than the claimant's total tax—

(a) the difference is tax outstanding for the purposes of regulation 184J(3)(b) or item 11 of table 7B in regulation 184L(3), and

(b) the Department must treat the claimant's code as issued by HMRC on the non-cumulative basis from the relevant date.

(5) In this regulation—

"claimant's total tax" means—

(a) if the claimant's code is a K code, the lesser of—

(i) 50% of the claimant's total payments to date, and

(ii) the tax due in accordance with the appropriate tax tables in respect of the claimant's total taxable payments to date at the relevant date,

(b) in any other case, the tax due in accordance with the appropriate tax tables in respect of the claimant's total taxable payments to date at the relevant date;

"recorded tax" means the total tax to date or (as the case may be) the total net tax deducted which was recorded in accordance with regulation 184E(3) or (4) when the claim was made;

"relevant date" means—

(a) the end of the tax year, if the calculation is required by regulation 184I,

(b) the date used for the purposes of the calculation, if the calculation is required by regulation 184K;

"total payments to date" means any payments to date recorded by the Department in accordance with regulation 184E(1) plus the total taxable employment and support allowance.

No tax calculation required in certain cases

184O.—(1) A tax calculation made under regulation 184N is not required in any of the following cases—

(a) if the claimant does not give the Department Parts 2 and 3 of form P45 and does not certifiy in accordance with regulation 184G(3) (students etc),

(b) if the claimant gives the Department Parts 2 and 3 of Form P45 but they do not relate to the claimant's last employment or award before the present award, whichever is the later,

(c) if the claimant is in receipt of a pension in respect of a former employment,

(d) if it appears to the Department on the occasion of a claim that a previous award should have been treated as having ceased in accordance with regulation 184K (when an award ceases), or

(e) if the claimant's code is a nil tax code, basic rate code or higher rate code.

(2) Those cases are treated as if HMRC had made a direction that the claimant's code must be used on the non-cumulative basis.

(3) Those cases are subject to a notification from HMRC under regulation 184P that revised particulars are to be substituted and used.

Claimant's code etc to be used for calculations

184P.—(1) This regulation applies if, in respect of a claimant, the Department receives notification from HMRC of—

(a) a code or amended code,

(b) total payments to date, or

(c) total net tax deducted.

(2) The Department must record that notification in substitution for any previous record and use it for the purpose of all calculations required under this Chapter.

Notification of taxable employment and support allowance

184Q.—(1) Paragraph (2) applies if—

(a) after a certificate under regulation 184I(2)(b) has been issued (or would have been issued but for regulation 184I(3)), or

(b) after a notice has been issued under regulation 184L(4) or this regulation,

further taxable employment and support allowance is paid to, or taxable employment and support allowance overpaid is recovered from, the claimant.

(2) The Department must—

(a) give notice to the claimant of the revised figure of total employment and support allowance and the taxable employment and support allowance included in that revised figure in accordance with the relevant regulation, and

(b) notify HMRC of the sums paid or refunded.

Recording the amount of taxable employment and support allowance

184R. Whenever a payment of employment and support allowance is made, the Department must record the taxable employment and support allowance included in the payment.

Finance

184S.—(1) HMRC must advance monies to the National Funds of Great Britain and Northern Ireland at intervals to be agreed with the Department for use in making repayments of income tax under these Regulations.

(2) The Department must provide HMRC with a quarterly statement of receipts and payments made under this Chapter.".

4.—(1) Regulation 211 (how information must or may be delivered by employers) is amended as follows.

(2) In paragraph (4), at the end of Table 10 (after the reference to regulation 164(2)) insert—

"184D	deductions working sheet for claimants awarded taxable ESA	Form PB8	yes	no
184E(9)	Department's return for claimant who delivers form P45	Forms PB8 and P45 Part 3	yes	yes
184(G)(1)	Department's return for claimant who does not deliver form P45	Form PB3	yes	yes
184I(2)(b)	claimant's end of year certificate	Form P60ESA	yes	no
184J(2)	Department's end of year return	Form P14U	yes	yes
184L(1)	cessation of award of ESA	Form P45ESA	yes	yes
184Q(2)(b)	Department's notification of taxable ESA adjustment	Form P180	yes	no
184S(2)	Department's quarterly statement to HMRC of receipts and payments in respect of taxable ESA		yes	no".

(3) After paragraph (5) insert—

"(6) For the purposes of this regulation "ESA" means employment and support allowance.".

5.—(1) Regulation 214 (how information must be provided by employees) is amended as follows.

(2) In paragraph (2), at the end of Table 12 after the reference to regulation 154(3), insert—

"184G(3)	claimant's certificate of full-time education	Form P187".

6.—(1) Regulation 215 (meaning of Form P45 and P46) is amended as follows.

(2) In the definition of "Parts 2 and 3 of Form P45"—

(a) at the end of paragraph (a), omit the word "or",

(b) at the end of paragraph (b), insert the word "or", and

(c) after paragraph (b), insert—

"(c) the Parts 2 and 3 of the Form P45 provided to the claimant in accordance with regulation 184L (cessation of award: Form P45ESA);".

(3) After the definition of "Parts 2 and 3 of Form P45" insert—

""Form P45ESA" means the form required to be completed in accordance with regulation 184L;".

(4) In the definition of "Form P45U" for the words "regulation 159", substitute the words "regulation 159 or 184L".

Dave Hartnett
Steve Lamey
3rd October 2008 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE Regulations").

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments.

Regulation 3 inserts a new Chapter 5 into Part 8 of the PAYE Regulations. This Chapter contains provisions relating to the operation of PAYE on the employment and support allowance ("ESA") which was introduced by the Welfare Reform Act 2007 and, in Northern Ireland, the Welfare Reform Act (Northern Ireland) 2007. The conditions for entitlement to ESA are contained in the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) and, in Northern Ireland, the Employment and Support Allowance (Northern Ireland) Regulations 2008 (S.I 2008/280).

Regulation 4 amends regulation 211 of the PAYE Regulations (how information must or may be delivered by employers). The regulation inserts new entries into table 10 containing specific provisions relating to ESA.

Regulation 5 amends regulation 214 of the PAYE Regulations (how information must be provided by employers). The regulation inserts an entry in table 12 setting out the form that an ESA claimant who is certifying that he or she is in full time education must use.

Regulation 6 amends regulation 215 of the PAYE Regulations (meaning of Form P45 and P46) to include references to the regulations relating to ESA.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An assessment of the impact of the Employment and Support Allowance Regulations 2008 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: http://www.dwp.gov.uk/resourcecentre/ria.asp.

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