EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) REGULATIONS 2014

2014 No. 474

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

2.1 This instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) ("PAYE regulations") to provide details of who is eligible to apply for a certificate in respect of UK Continental Shelf (UKCS) workers and what duties they must undertake to be issued with and maintain a certificate.

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

3.1 This is the first use of the power. The power allows HMRC to make regulations for, and in connection with, the issuing of certificates to deemed employers of Oil and Gas workers where those liabilities are being met by another person. The certification process for the oil and gas industry recognises the unique nature of the industry and the complexity of the contractual arrangements within it.

3.2 The laying of this instrument before the House of Commons breaches the '21 day rule'. The instrument has been made by the Commissioners for HMRC in exercise of powers which are contained within a resolution under the Provisional Collection of Taxes Act 1968. The instrument is subject to annulment in pursuance of a resolution of the House of Commons. The instrument implements measures contained in the Budget. Those measures are to take effect from 6 April 2014. Consequently it has not been possible to lay this instrument before the House of Commons 21 days before commencement.

4. Legislative Context

4.1 The instrument provides for a system of certification, so that the offshore employer can discharge the obligations under PAYE regulations on behalf of the deemed employer for tax purposes, where the deemed employer is the oil field licensees.

5. Territorial Extent and Application

5.1 This instrument applies to 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 To recognise that a licensee is removed from the operation of an oil rig, the instrument introduces a system of certification where the licensee is the deemed to be the employer

for tax purposes. A certificate can be issued where the employer of the mariner is paying in full all tax and NICs through RTI and is undertaking all the duties of an employer under PAYE regulations.

7.2 Whilst a certificate is in place the oil and gas licensee cannot be held liable for any underpayment of tax or NICs. A certificate can be withdrawn if the employer of the worker does not comply with all of the duties of an employer under tax and NICs legislation. Once a certificate has been withdrawn the licensee is responsible for all the duties of an employer under the PAYE regulations.

- ***Consolidation***

7.3 There are currently no plans to consolidate the instruments that are being amended.

8. Consultation outcome

8.1 The consultation on offshore employment intermediaries ran from 30 May to 8 August 2013. HMRC received 50 written responses during the consultation period. HMRC have held meetings with the oil and gas industry and the maritime industry throughout the consultation period and following it. Copies of the consultation documents, the proposed draft legislation, and a formal summary of responses to the consultation can be accessed at:
https://www.gov.uk/government/consultations/offshore-employment-intermediaries

9. Guidance

9.1 HMRC is developing detailed guidance taking into account the comments made by respondent to both the off shore and onshore intermediaries consultations. This will be published on the HMRC website.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument was published on 10 December 2013 alongside the draft legislation and is available on the Gov.uk website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins#finance-bill-2014-10-december-2013. An updated Tax Information and Impact Note will be published on that website.

11. Regulating small business

11.1 The legislation changes will apply to all employers equally irrespective of their size. There is therefore no impact that is specific or unique to small businesses.

12. Monitoring & review

12.1 HMRC will continue to monitor the impact of the changes being effected.

13. Contacts

Sarah Radford at HM Revenue and Customs (telephone number: 03000 586474 or email: sarah.radford@hmrc.gsi.gov.uk) can answer any queries regarding the provisions in the instrument.