EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2026

2026 No. 189

1. Introduction

1.1 This Explanatory Memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 Dan Tomlinson MP, Exchequer Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Lucy Morgan, Deputy Director for Income Tax Administration Directorate, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sarah Reardon and Demi Abeynayake at HMRC can be contacted by email at the following addresses with any queries regarding the instrument: sarah.reardon@hmrc.gov.uk and demi.abeynayake@hmrc.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Firstly, this legislation puts into statute a filing concession for employers who cease to trade during the tax year (or Insolvency Practitioners acting on their behalf), (hereafter described as "ceased employers").

4.2 Employers are required to submit P11D returns to report their employee's taxable benefits to HMRC. Since 2023, it has been mandatory for employers who are not digitally exempt under current legislation to submit these forms electronically.

4.3 The concession allows affected employers to file paper returns with HMRC if they choose to submit these forms before the end of the tax year. Without the concession, ceased employers would have to wait until the tax year ends, and the online filing window opens, to be able to file the return forms electronically.

4.4 This instrument amends Regulation 207 of The Income Tax (Pay As You Earn) Regulations 2003 ("the PAYE Regulations"), a similar amendment is being made to Regulation 80 of The Social Security (Contributions) Regulations 2001 (2001/1004) ("The NICs Regulations") for the P11D(b) return, maintaining consistency for both Income Tax and National Insurance contributions (NICs).

4.5 Secondly, in order to enable mandatory real-time reporting of benefits in kind from 6 April 2027, a further amendment is required. This legislation removes the legal right for employers to voluntarily report the benefits in kind, to HMRC, from 6 April 2026.

4.6 These Regulations make amendments to the Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) (the PAYE Regulations).

Where does the legislation extend to, and apply?

4.7 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.8 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

P11D

5.1 Legislation mandates that employers that are not exempt submit the required P11D returns electronically.

5.2 Currently, ceased employers are permitted to submit paper P11D return forms to HMRC in the final year of trading, by concession.

5.3 If the ceased employers wish to file their return forms before the tax year ends, a change in legislation is required to give them the statutory right to submit paper return forms.

5.4 Due to the small number of employers affected, on average less than 100 per year over the last three years, the IT costs involved to allow earlier electronic filing would be disproportionately expensive.

5.5 This instrument will amend the PAYE Regulations to provide for ceased employers, to submit paper P11D returns to HMRC in the final tax year of trading.

5.6 A legislative change is sought because the issue is expected to continue for a small minority of ceased employers each year and amending legislation provides transparency and certainty.

Benefits in Kind

5.7 From 6 April 2027, Mandatory Payrolling of Benefits in Kind (MPBIKs) will be introduced for businesses who provide employment related benefits to their employees. This means that employers will need to report benefits in kind in real-time, throughout the tax year, using payroll software.

5.8 Currently employers have until 5 April, in any tax year, to register to voluntarily report benefits in kind in real-time. Due to the introduction of MPBIKs, a legislative change is sought to take effect from 6 April 2026 to remove the option for employers to voluntarily register from this date onwards.

5.9 Not removing the legal ability to voluntarily register will undermine the introduction of the mandatory process. It will also cause confusion amongst employers and may lead to the issuing of penalties if employers do not comply with mandatory payrolling rules from April 2027. This measure will ensure that mandatory real-time reporting and collection of tax on benefits in kind can be delivered successfully in April 2027.

5.10 This instrument will amend the PAYE regulations to prevent employers from legally being able to voluntarily register to payroll benefits in kind.

What was the previous policy, how is this different?

P11D

5.11 Under a filing concession ceased employers have been able to submit paper P11D return forms to HMRC.

5.12 The instrument codifies this concession and puts on a statutory footing an exemption for ceased employers from having to file the P11D return forms electronically from 6 April 2026.

Benefits in Kind

5.13 Previously employers had the option of voluntarily payrolling benefits in kind and reporting them throughout the year. If they did not choose this option, they would report benefits in kind to HMRC after the end of the tax year using a P11D for Income Tax and a P11D(b) for Class 1A NICs.

5.14 If an employer wanted to voluntarily report benefits in kind in real-time to HMRC throughout the tax year, they had to register to do so before the start of the relevant tax year.

5.15 This instrument legislates for the removal of the option to voluntarily register to report benefits in kind they provide to their employees in real time from 6 April 2026 onwards when the deadline expires for registering for the 2026/27 tax year. Reporting benefits in kind in real-time will be mandatory from 6 April 2027.

6. Legislative and Legal Context

How has the law changed?

6.1 The legislation has changed through an amendment to Regulation 207 of the PAYE Regulations, to allow ceased employers to file paper P11D returns to HMRC if they submit them during their final tax year of trading.

6.2 Similar legislation is being laid in respect of Regulation 80 of the NICs Regulations, maintaining consistency for Income Tax and NICs.

6.3 For voluntary registration to report benefits in kind in real-time, the legislation has changed through an amendment to Chapter 3A of Part 3 of the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682).

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 For ceased employers a consultation was not undertaken as this legislation puts into statute an easement that is already in place by concession, there will be no change in the operational processes undertaken by ceased employers.

7.2 For voluntary registration to report benefits in kind in real-time, no consultation was undertaken. HMRC announced the introduction of mandatory real-time reporting of benefits in kind and has carried out stakeholder engagement to explain the change. There will be a change in the operational processes undertaken by employers as they will no longer have the option of voluntarily reporting benefits in

kind in real-time. This is consequential to the introduction of MPBIKs from 6 April 2027.

8. Applicable Guidance

8.1 Guidance will be available on the gov.uk website for ceased employers on the submission of P11D forms.

8.2 There is existing guidance for employers on how to voluntarily register to report benefits in kind in real-time on gov.uk. The guidance will be removed to reflect the changes.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument will be published on the gov.uk website.[1]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies for this legislation. The operational process in place for ceased employers is unchanged.

9.3 Since the introduction of voluntary registration for real-time reporting of benefits in kind in 2016, only circa 16,000 businesses have registered to do so. Businesses previously had the option of reporting benefits in kind after the end of the tax year or in real-time throughout the year.

9.4 Although these changes impact small and micro businesses, for ceased employers their obligations will be unchanged.

9.5 There is no, or no significant, impact on the public sector for this legislation. There are no new obligations being imposed on public bodies.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring the instrument is through normal compliance activity and regular communications with representative bodies.

10.2 The instrument does not include a statutory review clause because in accordance with the requirements of the Small Business, Enterprise and Employment Act 2015, it is made in relation to the imposition of a tax, duty, levy or other charge.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

[1] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").