

**TAX LAW REWRITE**

**RESPONSE DOCUMENT**

**to consultation on draft**

**PAYE REGULATIONS**

**OCTOBER 2003**

This document is available on the Internet at [www.inlandrevenue.gov.uk/rewrite](http://www.inlandrevenue.gov.uk/rewrite)  
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## **Introduction**

1. The purpose of this document is to summarise comments made in response to the draft PAYE Regulations and, where applicable, to indicate how we have followed them up.

## **Background**

2. The draft Income Tax (Pay As You Earn) Regulations were published on 16 April 2003. Most of the draft Regulations had benefited from comments on earlier drafts.

3. We issued 640 copies of the draft Regulations and accompanying commentary and table of origins to individuals and bodies. In addition the Inland Revenue's internet site had over 3,000 "hits" on the consultative document.

4. 13 bodies, firms and individuals responded to the draft. Excluding those who requested that their responses be treated in confidence they were:

- Thorn Baker Ltd
- The Low Incomes Tax Reform Group
- The London Society of Chartered Accountants Taxation Committee
- The Institute of Payroll and Pensions Management
- The Institute of Chartered Accountants of Scotland
- The Institute of Chartered Accountants in England and Wales
- The Confederation of British Industry
- The Chartered Institute of Taxation
- MENCAP
- Keith Gordon
- John Jeffrey-Cook
- A Gillingham & Co

5. We are very grateful for all the comments made and input to the consultation by whatever means. Time and space do not allow us to deal with every individual comment, especially the numerous minor drafting suggestions for the draft Regulations or the commentary on them. But they have all been considered carefully.

## **Key questions**

6. We asked five specific questions in the summary on page 10 of the consultative document.

***Q1. Do you find the draft Regulations make the law clearer and easier to understand?***

7. The response to this was, in summary, a qualified yes.

8. *Yes* in as much as earlier drafts of the majority of the draft Regulations had been welcomed as an improvement; those drafts had been revised in the light of comments on them; and the revisions were welcomed. Eg:

"Generally, the drafting of the Regulations first contained in Paper SC/CC(02)11 has been improved in the context of the further work on them and consultation since July 2002."

“We would also like to commend the Project Team for the clear style of the Regulations and particularly the clarity of the commentary underlying the Regulations, which details the history regarding the Regulations and the rationale for the changes.”

“The material in the existing regulation 25 [of SI 1993/744] has been subdivided, so that the various possible situations are covered by separate regulations. This has considerably improved the clarity of what was a very densely written regulation.”

9. But a *qualified* yes in two respects. First, some of the draft Regulations were felt still to be unclear. Eg:

“Regulation 25<sup>1</sup>: We were very disappointed with the draft of this regulation. We appreciate that it covers oddities but in the present form it lacks clarity and it is difficult to identify its application. We suggested this is revisited and improved.”

“Regulation 80: This regulation and in particular the detail of notional payments contained in subsection 2 lacks clarity and needs to be revisited.”

10. We have revised the draft Regulations in response to these comments – sometimes quite substantially. We comment further on some of these revisions later in this document.

11. Second, some responses felt our work should have gone wider and/or deeper. Eg:

“We think that they do [*make the law clearer and easier to understand*] but, as we have said previously, we would have preferred a more integrated approach to the rewriting of the regulations for employers generally, with a consolidation of the rules on National Insurance, student loans and tax credits, or, at the very least, a more overt recognition that these other regulations exist, by means of cross-referencing etc.”

“It is also disappointing that the opportunity was not taken to examine whether all of the regulations remain necessary in the present fiscal environment. It is difficult to understand why the additional complications of special rules to deal with councillors' allowances, the reserve forces and holiday pay funds need to be retained. It would appear even more bizarre that Chapter 4 should retain a mechanism to collect tax from direct collection when we have a self-assessment tax regime that should make it more sensible to abolish such complications and ensure that the individual is held responsible for his own Schedule E liability rather than having to operate a direct collection mechanism.

By a similar process, it seems that the opportunity has not been taken to consider whether the complexity of dealing with Jobseeker's Allowance, Incapacity Benefit and Income Support remain necessary.”

“Regulation 2: We have had many occasions to be frustrated (along with the Revenue officer concerned) with the lack of flexibility caused by the "overriding limit" as it applies to K codes. When as a pensioner you have a number of small occupational pensions you want to have a simple way of dealing with the various codes on different sources. Often the best way is to take all the tax due from one source. But then we hit against the limit. What we would like to see is this provision with a rider to the effect that ‘the Inland Revenue may disapply this limit with the agreement of the taxpayer’.”

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<sup>1</sup> All such references are to the draft regulations as published in April 2003

12. We offer 3 general comments in reply:

13. First, we appreciated from the start of our work that some were looking for integrated/aligned legislation for PAYE, NICs, student loans, tax credits and other things which bear on employers' payrolls. When our work started<sup>2</sup> we explained why we could not deliver that. In summary:

- the project did not have the resources to rewrite all the other regulations in addition to the rewrite Bills; and
- even if we had had more resources with the necessary skills, other regulations are variously made under other primary legislation, by persons other than the Board, and subject to different Parliamentary procedures which makes integrated regulations impossible without new (and radically different) primary legislation.

14. Second, the PAYE Regulations would indeed be simpler without the special provisions mentioned. But there would be consequences. Eg:

- special provisions for incapacity benefit were introduced because of the impossibility of operating PAYE in the normal way when claimants are paid by means of order books. It is not clear what other approach the response envisaged. But leaving the claimants involved to self-assess and pay tax in lump sums direct to the Inland Revenue would generally be seen as worse service to them;
- "direct collection" is (as the draft Regulations make clear) a voluntary arrangement for employees whose employers do not operate PAYE – eg some embassy employees. The costs and benefits of denying those individuals the opportunity to "pay as they earn" like other employees were not part of our remit. But we would expect the admittedly few employees involved might well feel the legislation for them does no harm to others and should be left in place until they can be given an alternative.

15. Assessing such advantages and disadvantages would require an exercise of a different kind entirely from that we were asked to undertake.

16. Third, the proposal for K codes mentioned in paragraph 11 is one of a small group which we received too late to consider fully; and certainly too late to implement from 6 April 2004 as they would involve changes to both the Inland Revenue's systems and employers' payroll systems. (In the particular example, a new indicator code would be needed to indicate it was a K code but not subject to the 50% limit on deductions.) We have however passed all the suggestions to Revenue Policy colleagues and recorded them in Appendix 1 to this document.

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<sup>2</sup> Committee paper CC(01)03 (Pay as You Earn – Scope of work)

***Q2. Do you agree the proposed changes in the law are appropriate for this purpose?***

17. The answer was, in summary, yes save for a few exceptions where individual responses resisted or questioned individual changes. These are dealt with later in this document.

***Q3. Do you find helpful the term “relevant payment” in place of “payment of emoluments”? If not what label would you suggest?***

18. There was general support for the proposed label as the best way to reconcile the conflicting pressures.

19. There was only one suggestion for a different label. That was “relevant PAYE income”. That is indeed more meaningful. But as the Regulations deal with payments it would mostly need to be expressed as “payment of relevant PAYE income” where the draft Regulations had “relevant payment”. That would add to the length of the legislation and might be slightly misleading. All PAYE income is relevant for PAYE; it is some *payments* which are not. The Regulations could use “relevant payment of PAYE income”. But we have not adopted that in view of the way it adds to the length of sentences.

***Q4. Do you agree with the way we have set out which regulations apply, and with what modifications, to persons other than “real” employers and employees? If not how could we better make clear the way the Regulations apply to pensioners and pension payers, agencies and agency workers, and to others?***

20. This was accepted. As one response noted:

“If this does represent a change in the law it is in principle probably adverse to the "employer", since it increases his administrative burden. There are however compelling arguments in its favour, in terms of maintaining the workability of the system, and if only a small number of "employers", if any, is affected there is no reason to object.”

21. We confirm that no employers have objected. And naturally any objections which emerge later will be considered. We do not expect the Regulations to remain unchanged for future years any more than they have in the past.

***Q5. Is the change to require information about pay and tax (Form P60) to be given to some employees, even if no tax was deducted, appropriate given the importance of this information for tax credits, and the fact that many employers already do it in practice?***

22. This proposal was resisted by some responses because, as we recognised in the commentary and partial regulatory impact assessment it would increase burdens on some employers. Others however felt payroll systems would provide the extra P60s readily. In addition, one response urged that there should be end of year certificates for everyone who receives payments of PAYE income, including the state pension.

23. It also emerged after the end of the consultation period that various interested parties had not seen the proposal because they had taken it that the project would be making no such changes. Some of them were concerned by it and/or by the timetable (that is, that the change would apply from 2004 for P60s in respect of payments made in 2003-04).

24. In the light of those comments we have removed the change from the Regulations. It will be considered further but not with a view to changes with effect from 2004.

### **Glossary**

The document uses the same abbreviations as in the commentary on the draft regulations.

### **Part 1: Introduction**

#### **Draft regulation 2: Interpretation**

25. One response expressed reservations about the term "taxable payments" which has a different meaning from the normal sense of the word "taxable". But it went on to accept it was a familiar term; and to note our concern that a change now could risk creating an inconsistency when the income tax provisions for what is currently called "total income" is rewritten. So the conclusion was that "taxable payments" should be used for the time being.

26. Referring to the Income Tax (Earnings and Pensions) Act 2003 as "the 2003 Act" was seen as unhelpful by one respondent. It has been replaced with the acronym "ITEPA".

27. One response asked why Parts 2 and 3 of Form P45 were defined but not Parts 1 and 1A. The intention was to cater for the fact that Parts 2 and 3 of Form P45 are identical whether created on the application of either draft regulation 28 (Cessation of employment: Form P45) or draft regulation 147 (Cessation of award: Form P45U). We have revised the definition to make this clearer. But Parts 1 and 1A have not been defined. There is no need to do so and they differ between the P45 and P45U (see draft regulations 28 and 147 respectively).

#### **Draft regulation 4: Relevant payments**

28. One response objected to the inclusion of an anti-avoidance rule in the new provisions in this draft regulation to exclude certain payments from PAYE. The rules were seen as potentially controversial because of the element of subjectivity which they introduce. The response suggested it should be a matter for primary legislation.

29. We accept that these provisions are novel in the context of the PAYE Regulations. But we think that there is good justification for them which the draft commentary may not have conveyed adequately. There are three main reasons for saying this:

- the new provisions are "relieving" in the sense of taking things out of PAYE which would in law be subject to deduction of tax;
- the new provisions deal with substantial amounts (at least in the case of business expenses). It is not a matter of round sum expenses which are usually subject to PAYE now and will remain so. There were (in 1998-99) some £1 billion of other payments. They include such things as mileage allowances for which there is no dispensation (possibly because they exceed the statutory rates). Although dispensations are very much encouraged by the Inland Revenue not all employers have them for all their expenses payments;

- the new provisions are a good deal simpler than they might be without the anti-avoidance rule. Eg the response argued that with notional payments the requirement that the asset in question has to be acquired on behalf of the employer should suffice as there would be a separate notional payment if the asset were transferred to the employee. That is a fair comment. But we were keen to avoid getting into (and requiring users to get into) the complexities of distinguishing between an employee who acts as the agent of the employer and an employee who acquires an asset. We wished to avoid distinctions of the kind which led to the *Overdrive*<sup>3</sup> case and the “litany” recited by employees buying petrol with company credit cards.

30. We have revised the commentary to bring these points out more clearly. But the only practical alternative if the provisions are not acceptable would have been to revert to the position in SI 1993/744 – ie leave the payments (actual and notional) subject in law to PAYE.

31. The same response pointed out that difficulties arose from the way "relevant payments" are defined to include notional payments; and that the draft Regulations left readers without a basis for deducting tax in respect of notional payments. We were very grateful for these points which were entirely correct. We have introduced a new regulation (new regulation 62) to make clear the treatment of notional payments and revised the other draft regulations accordingly.

**Draft regulation 7: Meaning of “code” etc**

32. We have revised the definition of “code” to meet a helpful suggestion about combinations of letters and numbers.

**Draft regulation 9: PAYE threshold**

33. We have revised this draft regulation in line with some helpful suggestions to make clearer the categories covered by rules 3 to 5, and what is meant by the “corresponding proportion” of the PAYE threshold.

**Draft regulations 10 – 12: Application to payers and payees**

34. These draft regulations made clear which regulations do and do not apply to pension payers and pensioners, agencies and agency workers, and other payers and payees. This involved making clear what was at best implicit in SI 1993/744. We were pleased that this met with support. As one response commented:

The team's general approach has been to assume that equivalent rules should apply to all categories of payer apart from particular rules which are clearly not relevant in a particular case. In particular the requirements regarding forms P45, P46 and P60 are applied in all cases, and this is said to represent existing practice so far as it is known.

If this does represent a change in the law it is in principle probably adverse to the "employer", since it increases his administrative burden. There are however compelling arguments in its favour, in terms of maintaining the workability of the system, and if only a small number of "employers", if any, is

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<sup>3</sup> Regina v DSS ex parte Overdrive Credit Card Ltd [1991] STC 129

affected there is no reason to object. If, contrary to the rewrite team's belief, a significant number of agencies are adversely affected they will presumably make their views known.

35. We have had no such contrary views. And if they emerge later when more employers become aware of the Regulations the arguments for change will of course be looked at.

36. Draft regulation 10 included a further change (Change 8) to provide for an agency to issue Forms P45 to agency workers when the workers stop doing work for the agency or when the agency has not paid them for 3 months. One response suggested 3 months was too long a period on the basis that:

- agency workers who have not been paid for several weeks generally have gained work elsewhere; and
- issuing the Form P45 earlier saved agencies time and money as the Inland Revenue had the information about the worker to deal with a Form P46 from their new agency or employer, and so did not need to ask the agency for it (using Form P43(T)).

37. We have not revised the draft regulation to provide that an agency can issue Forms P45 after a period of less than 3 months. We see nothing in the draft regulation to stop an agency issuing Forms P45 after less than 3 months without a payment if it considers that the worker has, for example, gained other employment. The “relationship” between agency and worker would then seem to be at an end.

## **Part 2: Codes**

### **Draft regulation 13: Determination of code by Inland Revenue**

38. One response pointed out that the draft regulation did not do what the commentary said it did: remove the requirement that the employee must have title to a relief before it can be taken into account in a code. We have revised the draft regulation to maintain existing law and practice. The point we were seeking to deal with – that codes can anticipate deductions such as expenses – is already dealt with by regulation 7 of SI 1993/744.

39. Another response questioned whether it was right to provide that the Inland Revenue “may” take the “following matters” into account as that implied discretion to ignore some of them. A related point was mentioned briefly in the judgment in *Blackburn v Keeling*<sup>4</sup>. We have revised the draft regulation for this and – as the response also suggested – to make clear the factors can only be taken into account so far as known to the Inland Revenue.

### **Draft regulation 14: Flat rate codes**

40. One response suggested that the second circumstance in which a nil tax code can be set should be put positively – ie change it from “the Inland Revenue are not satisfied that there will be...” to “the Inland Revenue are satisfied that there will not

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<sup>4</sup> [2003] EWCA Civ 1221

be...”. We have not done so as it would restrict the ability to use nil tax codes. The draft regulation allows a nil tax code to be set on the basis of a provisional view. If changed as suggested it would require the Inland Revenue to take a firm view.

**Draft regulation 15: Continued application of employee’s code**

41. One response asked that these Regulations require the Inland Revenue to issue notices of coding to any employee with two concurrent codes, even if the code changes only because of Budget changes to allowances,. This was intended to help people with multiple codes who get confused when asked to check codes for which they do not have up to date notices. We have not made this change as, leaving aside its possible benefits and disbenefits, it would not be possible for the Inland Revenue to implement it from April 2004. It is also not a new suggestion. But the Inland Revenue will discuss it further with the respondent.

**Draft regulation 16: Notice to employee of code**

42. One response sought the addition to this draft regulation of the blind person’s allowance so codes which include it would be updated without a coding notice to the employee, and those who may have trouble reading are not bothered by paper from the Inland Revenue.

43. This point was made in response to an earlier draft of the regulation. We have apologised to the respondent for not covering it in the commentary in April and explained why we did not feel it appropriate to make the change:

- the Inland Revenue’s PAYE records show that two out of three of some 38,000 people with the blind person’s allowance in their PAYE codes also have income from a state pension;
- the amount of the state pension changes each year, so the Inland Revenue would still need to send coding notices to at least two out of three of those people (and, of course, to their employers or pension payers);
- the extra suffixes which would be needed to allow employers automatically to update codes for the minority (less than a third, and possibly much less) would not be justified.

44. We were also conscious that some at least of the people potentially affected might prefer to receive notices of coding.

45. But we have logged the proposal in Appendix 1 so it is not forgotten.

**Part 3: Deduction and repayment of tax**

46. Part 3 contains the “core” provisions for deduction and repayment of tax. It received comments on what it does, the way it is expressed, and on policy.

47. Most of the policy changes requested would, while *relatively* minor, have required changes to systems and procedures for employers and/or the Inland Revenue. Implementing those from April 2004 would be difficult. So we have noted them for

separate consideration (and as usual similarly noted them in the commentary on the Regulations).

48. As regards the way the draft regulations in this Part were expressed, several responses pointed out that changes made to bring regulations 17 to 19 of SI 1993/744 into line with practice had made them more complex; and that as a result some of the provisions lacked clarity to the point where their effect could not be seen.

49. In order to meet those comments we have recast substantially the material based on those regulations. There are now separate sets of provisions for the cumulative and non-cumulative bases. In each we have set out more fully the way some payments are treated as made at various dates.

50. This has involved some modification to changes proposed in earlier drafts and some minor additional changes in order to arrive at a coherent set of rules. As usual, they seek to align law with practice. Details are in the commentary which accompanies the Regulations. They are mentioned in summary in this document.

**Draft regulation 22: Deduction and repayment: cumulative basis**

51. We have revised the drafting to make clearer, as suggested by one response, that the overriding limit is relevant only if the employee's code is a K code.

52. The same response asked about circumstances in which this draft regulation requires a tax deduction of 90% (not involving a K code) of a relevant payment in respect of which National Insurance Contributions of 11% are also due. We do not see that as a practical problem. It seems most likely to arise in connection with a notional payment. There are then provisions for the employer to deduct tax from other actual payments made later in the same income tax period.

**Draft regulation 23: Deduction: flat rate codes**

53. Several responses commented on the way this draft regulation dealt with the higher rate and nil tax codes but left unclear the position with a basic rate code. We have met that by splitting it into separate regulations dealing with the higher rate and nil tax codes.

**Draft regulation 24: Deductions: non-cumulative basis**

54. One response noted the complexity of the draft regulation, while accepting this followed from changes to reflect practice. We have sought to make it easier to see what is going on as part of the revisions mentioned in paragraphs 48 to 50.

**Draft regulation 25: Employee not paid weekly or monthly**

55. Several responses commented that this draft regulation was disappointing. Again, we have sought to make it easier to see what is going on as part of the revisions mentioned in paragraphs 48 and 50. This has involved a new change to apply the rules in regulation 18 of SI 1993/744 only to the main regular payments an employer makes to an employee, and not to regular payments made at intervals of less than a week. The regulation could not otherwise be reconciled with regulations 19 and 21 of SI 1993/744. Details are in the commentary.

**Draft regulation 26: Subsidiary PAYE income of employee paid weekly or at greater intervals**

56. This draft regulation has been revised both as part of the general revisions and to make its effect clearer.

57. The revisions also meet a particular point. It was suggested that the special provisions for “extra pay days” ought to apply only if there is an extra pay day in the short period at the end of the tax year after normal payment intervals. We have gratefully adopted that suggestion as it fits the practice on “week 53” pay days and makes things simpler all round.

**Draft regulation 27: Simplified deduction scheme for personal employees**

58. One response asked that the simplified scheme be extended to employees earning more than £700 per month or £160 per week so domestic employers and similar employers are not required to file PAYE returns electronically. There is in fact no link between the new requirements for electronic filing and the simplified scheme. The new requirements apply only to employers with 50+ employees until 2009. We have accordingly logged this as a suggested change to be considered separately.

59. Another response suggested the change to extend simplified schemes to cover personal assistants employed by disabled persons (paragraph (9)(b) of the draft regulation) should be made wider. It was suggested it should also cover any member of the family or household of a disabled person who “for administrative convenience” is the “legal employer” of a personal assistant of a disabled person. We have not made this further change as (in contrast to the change already made) we know of no such circumstances. In addition it is of course already possible, for administrative convenience, for a member of the family of a disabled person to act as agent for PAYE (and other) purposes.

60. A third response pointed out that the way the draft Regulations dealt with tax in respect of notional payments was at best unclear and arguably did not achieve the intended results. We agree. We have provided a new regulation (new regulation 62 in the revised Regulations) which explicitly sets out what employers must do if unable to deduct tax in respect of a notional payment from other payments made at the same time.

**Draft regulation 28: Cessation of employment: Form P45**

61. Two responses argued strongly that the draft regulation should recognise the practice of employers issuing Forms P45 after the last day of the employment. We have done so by providing for the P45 to be issued later if – and only if – it is not practicable to do it on the last day of the employment.

62. One response argued against the way this and other draft regulations set out in detail the information required on Forms P45, P46 etc on the basis that doing so would constrain the Revenue in changing the design of forms, as any amendment to, or removal of, information to be supplied would require legislation. That is true. But we doubt if in practice the Inland Revenue would change the requirements at very short notice given the need to change employers’ payroll systems and forms (and to change Inland Revenue systems for electronic filing). That would leave time to amend the Regulations.

63. We have also revised the drafting of the provisions which specify the information required on Form P45 to meet comments. In particular one response pointed out that employers may not know an employee's national insurance number (and nor might the employee). We have accordingly provided here and in other regulations for the employer to give the National Insurance number *if known*.

**Draft regulation 29: PAYE income paid after employment ceased**

64. One response suggested there should be a provision as to when an employer must give an ex-employee information about payments and tax deducted. We agree that some such provision is needed technically but did not want to impose on employers given there is no evidence of practical problems. We have provided for the employer to do so "without unreasonable delay".

**Draft regulation 30: Death of employee**

**Draft regulation 31: Death of pensioner**

65. One response sought a change to provide for the employer or pension payer to treat the employee or pensioner as alive for payments made after death but before the Form P45 is issued. Now that we have provided for Forms P45 to be issued later than the last day of the employment (see paragraph 61) this seems a sensible further change. We have made it.

66. We have also responded to a point from Department of Work and Pensions colleagues by providing for the regulations to apply when the employer or pension payer learns of the death (which may be some time after it occurs).

**Draft regulation 34: Procedure if employer receives Form P45**

67. This draft regulation has been revised so that it now indicates, as requested by one response, that it may also apply when an employee presents Form P45 after the start of the employment.

**Draft regulation 35: Form P45 for current tax year**

68. One response queried the way this regulation and draft regulations 40, 41, 42, 45, 46 and 48 required employers to record "in the deductions working sheet" a figure for total payments to date when draft regulation 59 only required that employers *either* to record total payments to date in deductions working sheets *or* to keep such records as enable their production. The reason for the difference is that certain figures of total payments to date (for example, those taken from the Form P45) are different from the figures of (real) total payments to date which the employer works out as they go along from their own (real) payments. For example, if an employer uses a simple PAYE calculator, their deductions working sheets may show week by week just the payments and tax deducted. There will be no figures for total payments to date. But the figure from the Form P45 is "raw data" like the payments. That needs to be recorded to show what has been done.

69. However the draft Regulations did wrongly refer to certain amounts as being recorded in deductions working sheets which employers can *either* record in deductions working sheets *or* keep other records to produce. We have revised the Regulations to correct this.

70. We have also revised the draft Regulations to make clearer the way amounts employers take from Forms P45 or from notices of coding feed into the calculation of deductions or repayments on the cumulative basis. This is in part a response to comments about the lack of clarity of earlier draft regulations and in part correction of slips made on the introduction of K codes which have previously not been noticed. See the commentary on new regulation 23.

**Draft regulation 38: Information to be provided in Form P46 if code not known**

71. One response asked if this draft regulation should require employers to complete the Form P46 on the first day of the employment. We had indicated in the commentary that this was intended. That commentary was a bit misleading. We think it is good practice for employers to do so. But, as the response noted, it would be an extra burden on employers to *require* it in all circumstances. So long as the Form P46 is completed in time to send to the Inland Revenue when required it does not have to be completed on the first day of employment.

72. We have also revised the wording of paragraph (2) in response to a comment about the draft's use of "in receipt of a pension".

**Draft regulation 40: Employee taking up employment after full-time education**

73. We have met a response on this and draft regulation 41 by removing the requirement to "enter as nil" certain figures in deductions working sheets.

**Draft regulation 41: Employee taking up only or main employment**

74. We have met a response which suggested that we omit as unnecessary the requirement in this and other draft regulations that the employer keep records in accordance with draft regulation 59. That followed automatically from the way draft regulations 43 and 53 treated a code as issued for the purposes of draft regulation 59.

**Draft regulation 45: Late presentation of Form P45: employer's duties**

75. One response raised two points on this draft regulation (in addition to that mentioned above in connection with draft regulation 35). The first was that it should make clearer whether or not the employer was required to take account of payments the employer had made in arriving at the figures required under paragraph (4) of the draft regulation. Paragraph (9) of the revised regulation makes clear the figures are to be found solely from information in the Form P45.

76. Second, it was suggested that paragraph (6)(b) of the draft regulation needed to provide that the figures for total additional or free pay and total taxable payments from the old employment are to be treated as if they related to the new employment when it comes to calculating the cumulative totals in subsequent periods. We do not agree that precise change is necessary. But we agree the draft regulation did not achieve the right result (in terms of restoring cumulative deductions). Nor does regulation 34 of SI 1993/744. This is a missed consequential from the introduction of K codes. We have repaired this with a minor change in revised regulations 52(12), and also in revised regulations 23(10), 43(10), 53(4), and 61(4).

**Draft regulation 48: PAYE pension income paid by former employer**

77. We have revised this draft regulation to remove, as suggested, a mistaken reference in paragraph (4)(f) to the deductions working sheet.

78. We were also asked in one response what sanctions there were to protect a pensioner if the pension payer failed to do the things required by the draft regulation. Section 98 of TMA provides for penalties if an employer fails to furnish any information in accordance with PAYE Regulations. In addition pensioners (and employees generally) have rights to take action if they suffer as a result of their pension payer's or employer's actions. In practice matters tend to be resolved less formally. For example, if an individual cannot get from the employer or pension payer information to which they are entitled they may approach the Inland Revenue. The employer's statutory duties can then be explained and the matter often resolved without the need for further action (such as a review of the employer's compliance more generally).

**Draft regulation 57: Trade disputes**

79. One response suggested the definition of "trade dispute" should be given in the draft regulation. We have not done so here or in revised regulation 2 (where it is now defined for this purpose) for the reasons discussed with the Consultative and Steering Committee in the course of work on the Capital Allowances Bill. In summary, doing so makes it harder for readers to know that definitions in different bits of legislation are the same; risks the definitions drifting apart; and saves ever less time for readers as more and more access legislation electronically (often with hyperlinks to defined terms). But we omitted to give the definition in the commentary on the draft regulation in line with our usual practice. We have now done so.

80. Another response suggested two of the circumstances which allow an employee on strike to get a repayment of tax should be deleted or rewritten to make their purpose clearer:

(c) the employee has become genuinely employed elsewhere in the occupation which the employee usually follows,

(d) the employee has become regularly engaged in some other occupation,

81. This was on the basis that they seemed only to cover an employee who is moonlighting elsewhere to support himself during the strike – something the original employer would generally not even be aware of.

82. We cannot agree that we should delete them. An example (from our personal knowledge) may help.

An employee taking part in an official strike remains on amicable terms with his employer. He gets another job. His employer does not end his employment. Apart from anything else, it would not help settle the strike to be seen to sack an employee on strike (and that is how it would probably be seen). But the employer can and does make the tax repayments due.

83. It is possibly true that not all employers would be aware of the facility to do this. And equally true that the circumstances arise very rarely. But we do not feel we should, for the sake of the marginal simplification of this draft regulation, decide that

employees in such circumstances must wait until the end of the strike or after the end of the tax year to get a repayment. If we were to do so and an actual case arose we can well envisage being asked to authorise repayment by concession.

**Draft regulation 58: Repayment after becoming unemployed**

84. Two responses suggested the title of this draft regulation should be changed to recognise that it covered not just people who are out of work but also people who have become self-employed, left the United Kingdom or whatever. We have done so.

85. Another response made more substantive points on the draft regulation. In summary these were that:

- by taking account of only the lower of the employee's total tax to date or the tax deductible according to the tables employees were denied the full amounts of in-year repayments;
- the way the draft regulation provided for future income to be taken into account was not in line with the Inland Revenue's practice;
- the draft regulation failed to define how much tax is to be repaid.

86. On the first point, the commentary in April was mistaken in pointing to over-deductions by employers. The provision to take account of the lower of the two figures is needed more to take account of K codes.

87. On the second point, the Form P50 used for claiming repayments asks (in the case of an application for a "cessation repayment") for information about any pension (including state pension) the person will be receiving before the end of the tax year. This is taken into account when making a repayment. Otherwise the Inland Revenue might over-repay and leave the individual with an underpayment of tax at the end of the year. It is true a new employer receiving a Form P45 at the start of a new employment would not be able to take that other income into account. But the Inland Revenue might be able to do so by amending the employee's code. And it is better service to employees (in keeping with the objective of PAYE) not to repay tax if doing so is likely to leave an employee with an underpayment at the end of the year.

88. On the third point we agree the draft failed to require a repayment. We have revised the draft regulation substantially for this. It now requires a repayment to be made having regard to the employee's code, total payments to date, and total net tax deducted. But we have not attempted to set out a complete method of calculating the repayment.

89. It was suggested a precise method could be defined for "unemployment repayments" by requiring the Inland Revenue to act as if it were the applicant's new employer. In order to maintain present attempts to avoid over-repayments (and then underpayments at the end of the year) that would require the regulation to:

- require what an employer does on getting a P45 (deeming the Inland Revenue to be the new employer);

- cater for the fact that the employee might have had multiple jobs by requiring the Inland Revenue to aggregate relevant payments and total net tax deducted. This might be on the basis of multiple Forms P45 presented with the claim or information obtained previously from P45 (Part 1) from earlier employments;
- provide for the Inland Revenue to take into account any other earnings (eg casual earnings) declared by the employee on the Form P50 or P52;
- convert monthly paid employees to weekly paid for the purposes of working out the total tax to date corresponding to the total payments to date on the P45 (to get into the 4 week cycle of repayments);
- deem the Inland Revenue to make a payment of nil to the employee every 4 weeks; and
- deem the Inland Revenue to have been issued with a code for the employee.

90. We do not think that complexity is justified given the way the repayments process works in practice.

**Draft regulation 59: Deductions working sheets**

91. One response questioned the reference in paragraph (5)(b) to "the taxable payments" on the basis that there can only be one payment to be taken into account on the non-cumulative basis. There can in fact be more than one payment to be taken into account (because of the aggregation of payments required by regulation 21 of SI 1993/744). We have made this clearer in revised regulation 29.

**Draft regulation 60: Information to employees about payments and tax deducted (Form P60)**

92. Responses to this draft regulation mainly concerned the proposal to require employers to give Forms P60 to more (but not all) of their employees at the end of the year. As indicated in paragraphs 22 to 24 of this document this proposal has been dropped.

93. We have also met a comment about the requirement to include the employee's address on Form P60. That was included by accident in the draft and has been deleted.

**Part 4: Payments, returns and information**

**Draft regulation 61: Periodic payments to and recoveries from the Revenue**

94. One response asked that paragraph (4) make clearer that "A" is the total of the two amounts in (a) and (b) of the definition. And said the same point applied to draft regulation 63(5). We have revised the definition to clarify this.

**Draft regulation 62: Quarterly tax periods**

95. One response asked if this draft regulation needed to guard against a distorted (low) calculation of average payments in certain cases. That could happen where a person starts or stops operating PAYE during a tax year. The divisor for calculating average payments is based on twelve months rather than the period for which PAYE

has to be operated. We have not introduced any new (possibly complex) rules to deal with such cases.

96. The response also suggested that the definition of “S” in the PAYE regulations is wrong because it does not include a reference to regulation 7(2) of the Working Tax Credit regulations. We agree and have corrected this.

**Draft regulation 63: Modification of regulation 61 in case of trade dispute**

97. One response said that there should be commas inserted after “B” in draft regulation 63(2)(b) (and similarly for 63(3)(b)). That would clarify that it was (A-B) that was being reduced (not B). We agree and have made this clarification.

98. Another response said that the definition of “Q” would be easier to follow if the amount of cross-referencing involved were reduced. And suggested replacing “reduce amounts included in A” by “are set off against tax due to be deducted”. We agree and have adopted this suggestion.

99. But some responses also observed that most people would not be able to follow this complex regulation unless they were also reading the commentary. They asked us to revisit this draft regulation and try to improve its clarity. We have expanded the opening paragraph to give a better indication of what this provision is doing. And introduced a table to deal with the adjustments set out in paragraphs (2) and (3).

**Draft regulation 64: Recovery from employee of tax not deducted by employer**

100. One response commented that draft regulation 64(2) was one of the two instances where the draft Regulations failed to be “very clear”. We agree and have amended the draft regulation to meet the point.

101. Another response commented on draft regulation 64(7) (and similarly in relation to draft regulation 73(6)) :

If paragraph (6) applies, tax payable by an employee as a result of a direction carries interest, as if it were unpaid tax due from an employer, in accordance with regulation 74 from the reckonable date until whichever is the earlier of–

(a) the date on which payment is made, or

(b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of TMA.

102. It was suggested that the comma after the words “an employer” should be moved so that the comma comes after the words “regulation 74”.

103. We have not taken up this suggestion because this draft regulation applies the rules in draft regulation 74 in the same way as those rules apply to *unpaid tax due from an employer*. Taking up the suggestion might give questions as to how there can be *unpaid tax due from an employer in accordance with draft regulation 74*.

**Draft regulation 65: Annual return of relevant payments liable to deduction of tax (Form P35 and P14)**

104. We have, as requested, corrected the draft regulation to require the employee's address *if known*. We have done likewise in other draft regulations – except the regulations for employers taking on new employees where employers have long been required to give the new employees address on Form P45 Part 3 or Form P46. The employer is then collecting other information from employees and, in the case of the Form P46, the employee actually completes part of the form

**Draft regulation 66: Annual return of relevant payments not liable to deduction of tax**

105. One response thought that this draft regulation lacked clarity and would be improved by signposting. We agree and have changed this draft regulation so that it better reflects the information required by Form P38A. And “Form P38A” is now added in the heading.

**Draft regulation 68: Certificate if tax in regulation 65 return is unpaid**

106. One response remarked that it was not immediately obvious here, or in draft regulations 69 to 71, why the Inland Revenue should prepare a certificate. And suggested that signposting to draft regulation 187, from say draft regulation 76, would be helpful. We agree and have made revisions to meet the point.

**Draft regulation 69: Return and certificate if tax may be unpaid**

107. One response suggested that we make clearer that action should not be taken under this draft regulation until 14 days had elapsed after the tax period ended. We have clarified this.

**Draft regulation 71: Certificate after inspection of PAYE records**

108. One response suggested that it would be helpful to set out that an inspection must have taken place before a certificate is issued. We have made revisions to meet the point.

**Draft regulation 73: Employee liability if tax unpaid after regulation 72 determination**

109. We have adopted the suggestion of one response that the words “under these regulations” be omitted from paragraph (2). It was pointed out that those words are not needed in draft regulation 64(6). And those words were also omitted from draft regulation 61 as unnecessary.

**Draft regulation 74: Interest on tax overdue**

110. One response said that the phrase “total net tax payable” needed a definition. We have provided one.

111. Another response queried why draft regulation 74(2) differed from draft regulation 104(2) in apparently having nothing equivalent to draft regulation 104(4):

Paragraph (2) applies even if the due date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882.

112. We have made revisions to achieve better alignment.

113. Another response suggested that the draft regulation could be improved if there was some signposting to explain the reckonable date. This point is also met by the revisions made.

**Draft regulation 76: Recovery of tax and interest**

114. One response asked if it was possible to issue a certificate under draft regulation 70 when a return was required under draft regulation 69. There is nothing to prevent action under draft regulation 70 if no return, or an unsatisfactory return, is made in response to a notice under draft regulation 69.

**Draft regulation 78: Information employer must provide for each employee**

115. One response suggested replacing, in paragraph (3) (and also in draft regulation 79(3)), “in subsection (1)(a) of that section” with “section 577(1)(a)”. We have done so.

116. Another response thought that it might help employers if the draft regulation prescribed more fully the information that must be given in relation to living accommodation (and made a similar point about cars in draft regulation 81). We have not done this as we are conscious that the introduction of further prescribed information might be seen as burdensome by some employers.

**Draft regulation 80: Annual return of other earnings: supplementary**

117. One response said that this draft regulation lacked clarity and needed revisiting. We agree and have broken up the disparate material contained in this provision.

**Draft regulation 81: Quarterly return if a car becomes available or unavailable**

118. We have added “Form P46(Car)” to the heading of this draft regulation as one response suggested that those words were helpful in draft regulation 185(2) and would be equally helpful here.

**Draft regulation 82: Termination awards: information to be provided**

119. One response thought it anomalous, in the context of self assessment, that this draft regulation required the total value of an award to be reported once and for all (in most cases) rather than reporting the value of payments and benefits provided year by year. However the response, no doubt mindful of the risk of imposing extra obligations on employers and the lack of time for consultation, did not call for any action on this observation.

120. The response also commented that paragraph 3(a)’s omission of the words “calculated as mentioned in paragraph (1)(c)” from regulation 46ZA(2)(a)(i) of SI 1993/744 arguably changed the effect of the paragraph and made its intention less clear. The response wondered if the view had been taken that paragraph (5)’s requirement, to have regard in calculating the amount of payments and benefits to the provisions of Chapter 3 of Part 6 of ITEPA, said all that was needed. If so, this view was considered to be wrong. Reason – the rule on aggregation with other awards in Chapter 3 of Part 6 is not there expressed as part of the process of calculating the amount of the payment or benefit; it only comes in at a later stage when calculating the amount which counts as employment income.

121. We agree that the amount of payments or other benefits is calculated in Chapter 3 of Part 6 before considering how much, if any, of those amounts counts as employment income. But the information required by paragraph (3)(a) is also about the amount of payments or other benefits – not how much of each payment or other benefit counts/will count as employment income.

122. An example may help here. Assume that an earlier “termination payment” of £40,000 had been paid to the employee by the employer in a previous year. Also assume that a separate “termination award” (containing some “other benefits”) is made in the current year and the award is estimated, in accordance with Chapter 3 of Part 6 of ITEPA, to total £15,000. It is paragraph (2)(c), rather than a provision of Chapter 3 of Part 6 of ITEPA, which asks the employer to aggregate payments and other benefits, not included in the award for the current year, to see if the £30,000 threshold is exceeded. And when the employer comes to paragraph (3)(a) the employer is required to return the estimated amount of £15,000 rather than the amounts that are estimated to count as employment income (although in this example that would also have been £15,000).

123. For that reason we do not think the law has been changed by omitting from paragraph (3)(a) words along the lines of “calculated as mentioned in paragraph (2)(c)”. The amount of the award is the same for both paragraph (2)(c) and (3)(a) and both are calculated having regard to Chapter 3 of Part 6 of ITEPA.

**Draft regulation 83: Termination awards: return if award changes**

124. One response said that paragraph (1) should strictly say it also applies if both of sub-paragraphs (a) and (b) apply. Certainly paragraph (1) could say that but we were not persuaded that it would be an improvement to do so (and regulation 46ZA(5)(a) of SI 1993/744 on which it is based does not).

125. We have amended sub-paragraph (2)(b) to meet a response that adding a comma after “solely of other benefits” would make the paragraph clearer.

126. The response also remarked that it was unclear whether a change in legislation, for example an increase in the scale charge on car benefits, could of itself trigger the requirement to make a return under draft regulation 83. We do not think it would trigger the requirement – because a change in legislation would not count as a change in the award (as defined in draft regulation 83(2)) in a subsequent year. But as this is a significant point we have added an extra paragraph to make the point more explicit.

**Draft regulation 84: Termination awards: return if more than one employer**

127. One response remarked that the commentary did not address the question of what rights an employer had to get necessary information from another employer. This draft regulation, and Chapter 3 of Part 6 of ITEPA, does not give an employer such rights. But since aggregation applies where the employers are associated (as defined in section 404 ITEPA) it seems unlikely that such rights are needed.

**Draft regulation 87: Termination awards: information to employees**

128. One response thought that there should also be an obligation on employers to notify the employee of any report that they make to the Inland Revenue under draft regulation 83(4) (as well as under draft regulation 83(3)). We have taken no action on that comment, as there is no such obligation in SI 1993/744. But the matter could be looked at again if there are problems in practice and which might be overcome by additional reporting requirements.

**Draft regulation 88: Retention and inspection of employer's PAYE records**

129. One response queried what the words "For the purposes of this regulation" in paragraph (8) added to the meaning of the paragraph. The response presumed that they meant "in order to enable them to be produced if required in accordance with this regulation" but wondered why this needed to be said. We have kept those words as they might help some readers to appreciate that some of the PAYE records could be subject to a different, and longer, record retention period.

**Part 5: Employers**

**Draft regulation 90: Tips: special arrangements**

130. We have revised the wording of this draft regulation to meet the suggestion that it make clear that, if the principal employer is required to operate PAYE, the employer must be given the information to do so before the employer passes the money to the person who shares it among employees.

**Draft regulation 91: Death of employer**

**Draft regulation 92: Succession to a business etc**

131. One response pointed to potential conflict between draft regulations 91 and 92. We have removed that and also dealt with the interaction in a separate regulation. This also serves to make clearer that a person may wear two hats for the purposes of the regulations.

**Draft regulation 93: Succession to a business: trade disputes**

132. One response felt it was unclear what this draft regulation required; and expressed concern about the way the new employer would (or would not) get "advance relief" for repayments not made by the old employer. We have revised the draft regulation to make clearer that it requires nothing so complex. The commentary gives the details of what is met rarely (if ever) in practice.

**Part 6: PAYE settlement Agreements**

**Draft regulation 101: Commencement of PSA**

133. One response asked if the time limit here (*before* 6 July) should be brought into line with that for variations of PSAs (up to and including 6 July). We have not acted on this point as the time limits were framed slightly differently to recognise that a variation could not occur until after a PSA had been entered into.

**Draft regulation 106: Inspection and retention of records**

134. One response suggested this draft regulation was not clear on what the "named officer" could do and what other officers of the Inland Revenue could do and queried why such distinctions were present. It was suggested we follow draft regulation 88 and refer to "authorised officer" throughout. We agree and have acted on this suggestion.

**Part 7: Special cases**

135. Some responses questioned the need for these special schemes at all (see paragraph 11 of this document). Another suggested (as in response to an earlier draft) the schemes might be amalgamated. But yet another accepted that the three schemes should be left separate. We have left them separate. As the draft commentary in April sought to explain, each was devised for its particular users. Merging them would make for shorter and simpler legislation but also transitional costs for users and sub-optimal arrangements for the payments.

**Draft regulation 107: Interpretation of Chapter 1**

136. One response queried whether the definition of allowances makes clear that only the attendance part of an allowance is subject to the provisions in this Chapter. We think it does with sight of the legislation referred to – which we have now added to the commentary.

**Draft regulation 109: Local council to keep records**

137. One response suggested making the heading clearer and that suggestion has been adopted here and in draft regulation 121.

**Draft regulation 122: End of year certificate**

138. One response queried why the certificate required by this draft regulation was so much simpler than the Form P60 employers are required to provide. This is because the Ministry does not deal with pay and tax in respect of earlier employments (from Forms P45) or codes. And the certificate identifies the Ministry as the employer.

**Draft regulation 127: Certificate of tax deducted**

139. One response queried why there is no requirement on a holiday pay fund to give recipients an end of year certificate. The reason is that holiday pay funds do not have an on-going relationship with recipients in the same way as ordinary employers. That is why a certificate is required with each payment. In very broad terms, each payment can be seen as a separate employment with the certificate taking the place of the Form P45. Looked at in those terms, there is no more need for an end of year certificate than there is with an employee who leaves employment before the end of the year.

**Draft regulation 131: Provisions for direct collection and special arrangements**

140. One response queried whether it was right for paragraph (b) of this draft regulation to say “by reference to the tax tables” and suggested using “by an employer” in their place. The view was expressed that the employee does use tax tables if direct collection applies (draft regulation 132(4)). Draft regulation 131(b) essentially follows what is presently in regulation 102(3)(b) of SI 1993/744. And we think that SI 1993/744 is right on this point because it is considering “*deduction of tax by reference to the tax tables*”. Whilst an employee may use tax tables under arrangements within draft regulation 132, the employee will not be deducting tax.

141. Another response expressed dissatisfaction with the rewrite of this regulation. The response said that the draft regulation should make clear that the Inland Revenue cannot use this draft regulation to dictate that an employer complies with arrangements that are oppressive. And suggested that perhaps it should be a

requirement that any arrangements must be agreed with the employer. We don't think it would be right, or helpful, to ask each and every employer to come to an agreement before applying an arrangement that is available. For instance that might mean that no one could apply the rules on harvest casuals in CWG 2 (2003) at paragraph 114 without first reaching an individual agreement. We have responded to the concerns expressed by providing that an employer can choose not to apply an arrangement – provided of course that it is not one that the employer has agreed with the Inland Revenue. In that way the revised regulation itself will make it clearer that the Inland Revenue cannot act in a unilateral fashion.

## **Part 8: Social security benefits**

### **Chapter 1: Jobseeker's allowance: normal cases**

#### **Draft regulation 140: Deductions working sheet for all claimants to taxable jobseeker's allowance**

142. It was suggested that “all” should be dropped from the heading. This has been done.

143. A drafting suggestion was received for paragraph (1). That suggestion has been largely adopted. And to achieve better clarity the paragraph has been redrafted as two paragraphs.

#### **Draft regulation 145: End of year**

144. One response asked if the heading might be expanded to “Obligations of Department at end of year”. This has been partially adopted. The Chapter is almost wholly concerned with the application of procedures by the Department. So the heading has been changed to “Obligations at end of tax year”.

## **Part 9: Assessment and self-assessment**

### **Draft regulation 173: Adjusting total net tax deducted for purposes of sections 59A(1) and 59B(1) TMA**

145. One response suggested that there should be provision to repay to an employee tax that was never deducted from the employee – as long as the employer actually pays the tax that should have been deducted. But that suggestion runs counter to the changes made in 1973 “to exclude tax not suffered by an employee from the calculation of any repayment of tax due to him” (explanatory note to SI 1973/334).

146. That response also pointed out that this draft regulation did not quite tie in with sections 59A(10) and 59B(8) of TMA because some consequential changes, in relation to what had been section 203 ICTA, had not been made by ITEPA. Finance Act 2003 subsequently made the necessary consequential changes to those sections of TMA.

### **Draft regulation 175: Assessments other than self-assessments**

147. One response expressed dissatisfaction that the commentary gave no commitment to amend TMA so that this draft regulation could then be amended and made to work even if a “discovery assessment” includes income that is not PAYE income. And said that failing such a commitment, the draft regulation should be changed so that it would work without it being necessary to amend TMA. We are not aware of this issue being a problem in practice and do not think we can meet the point without a change to TMA.

148. The response also thought that there was a problem in paragraph (2) defining “B” unambiguously even though it is subject to adjustment under paragraph (3). We agree and have altered the drafting to meet the point.

149. The response also questioned why paragraph (3)(b) referred only to “any necessary adjustment” when the seeming counterpart in draft regulation 173(4) had additional words “to the extent that it was taken into account in determining the taxpayers code for the relevant year”. We have not made a change here. The two provisions are not exact counterparts because draft regulation 173(4) is looking solely at an addition whereas paragraph (3)(b) is looking at something that could be either an addition or a subtraction. The words “necessary adjustment” in paragraph (3)(b) covers the direction of the adjustment and the coding aspects.

150. Another response asked if the employee should be given a right to object to coding out of an underpayment resulting from a discovery assessment. In principle the answer is yes. But the provision for coding out here is essentially just a hangover from when this regulation applied generally in the context of normal Schedule E assessments. We did not propose to remove the facility to code out an underpayment even though it seemed, and still seems, extremely unlikely that coding out would be proposed in the context of a “discovery assessment”. And the prospect of the Inland Revenue coding out a “discovery” underpayment against the wishes of the taxpayer seems even more remote. Allied to the request from another response for more fundamental alterations to this draft regulation we have not made this minor change.

## **Part 10: Supplementary Provisions**

### **Draft regulation 176: Electronic communications: interpretation**

151. One response asked for a general provision here or elsewhere for persons who have a conscientious objection to the use of computers in their businesses. We do not think that is necessary or appropriate. But we have maintained the provisions to that effect in the new Regulations which require e-filing.

### **Draft regulation 177: Whether information has been transmitted electronically**

152. One response suggested the draft regulation should include an obligation on the Inland Revenue to give, at the request of the sender, confirmation that information transmitted or delivered has been accepted by the official computer system. All the Inland Revenue’s online services already provide an online acknowledgement to the sender of the message. Senders also get a confirmatory e-mail if they have provided an e-mail address. This is one of the main selling points for the e-services. The Inland Revenue will also, if asked, tell someone whether their return has been received and accepted.

### **Draft regulation 178: Proof of content of electronic transmission**

153. The same response sought a right for the sender to call for a certified print-out to prove that the official computer system had accepted a transmission or delivery. We have not acted on that suggestion as electronic returns are stored and managed in ways that would satisfy the courts that the material stored could not have been altered. Producing certified copies from the archive is accordingly expensive and is done only where needed for formal proceedings.

154. The thrust of the point should be met however by the development of an "Inland Revenue Mark" for all e-services. This is a unique string of characters that can be incorporated into the return and that will change each time a change is made to the return. It will appear on each page of a printed out copy of the return. It will also be included in the online receipt sent to the sender.

155. This will give the sender certainty that the information the Inland Revenue received is the same as that on the hard copy. If there were later a dispute about what was sent the sender would be able to produce their hard copy and receipt as evidence of what was sent and accepted.

**Draft regulation 181: Proof of delivery of information sent electronically**

156. One response pointed out that the Inland Revenue system only records the time information is sent to employers, not the time of receipt by the employer which with the internet might be later. We have revised the draft regulation to make clear what may be recorded may be the time of despatch, although the on-line services are not subject to delays of the kind found with e-mail.

**Draft regulation 182: Proof of payment sent electronically**

157. One response suggested this draft regulation should make provision for employers to assure themselves of the appropriate record of payments in an official computer system. We have not revised the regulation to provide for this as the Inland Revenue would always answer an enquiry about what payments we had recorded. If the customer thought we were wrong they would be able to produce evidence to that effect. In addition the facility for employers to view their liabilities and payments online (as companies already can) is being developed.

**Draft regulation 184: Modifications for electronic version of Form P160**

158. One response suggested the different requirements for information sent electronically (under this draft regulation) or on paper (under draft regulation 48) were purely a matter of history and that they should be aligned. As this would involve a change in practice for some employers (and require them to provide additional information) we have not done so in the revised regulations. We have logged the point for further consideration.

**Draft regulation 185: Information to be sent in form provided or approved by the Board**

159. One response expressed the opinion that the list would be of limited use, and if less than comprehensive would be "worse than useless". Another response welcomed the concept but also requested that the list should be complete. The same respondent asked whether the list could not be made to align more closely with the entries in Table 7 in draft regulation 183 (information which may be sent to the Inland Revenue electronically). We have completed the list and have now combined it with that table in a new regulation 211.

## **APPENDIX 1: CHANGES NOT MADE IN THE REGULATIONS**

The list below records changes to the PAYE system put to the project in the course of consultation but not made in the Regulations. The reasons for not making the change were given in the response document and/or earlier reports available from the Inland Revenue. In general this was because the proposals were more than minor changes and could lead to one or more of:

- more work for employers
- less good service to employees
- changes to employers' and Inland Revenue systems which could not have been implemented for 6 April 2004

### ***K codes***

The change sought was to allow the Inland Revenue to disapply the overriding limit on deductions with K codes with the agreement of the taxpayer in order to allow all the tax on multiple pensions to be collected from one pension.

### ***Notices of coding***

One change sought was to require the Inland Revenue to issue notices of coding every year to an employee, even if the only change is due to a Budget increases in allowances, if:

- the employee has asked the Inland Revenue to do so; or
- the employee has two or more concurrent codes.

Another change sought was to remove the need to issue notices of coding to employees with the blind person's allowance in their code solely as a result of changes in that allowance. New suffixes to the codes would be introduced to allow the Inland Revenue to instruct employers to update them automatically.

### ***P60s***

The change suggested was that there should be an end of year certificate of taxable income for all recipients of all taxable social security income.

### ***Simplified deduction scheme***

It was suggested that the simplified deduction scheme should be made available for:

- employees paid more than £8,500 a year; and
- personal assistants employed for disabled people where a member of the family or household of the a disabled person is, for administrative convenience, the legal employer

***Threshold at which employer can choose to make payments quarterly***

It was suggested that the threshold of less than £1,500 should be will not exceed £1,500.

***Advance or early reimbursement in cases where trade dispute refunds exceed amounts deductible in the income tax period***

Make it explicit that repayments can be made to an employer before the income tax period has ended as suggested in CWG2 (2002) paragraph 50.

***Setting off repayments withheld under the trade dispute provisions against National Insurance Contributions***

Bring into the regulations the procedure at CWG2 (2002) paragraph 49 third bullet for offset against National Insurance Contributions due.

***Appeal rights against directions***

New rights of appeal were sought. (Note: the Inland Revenue issued in April 2003 a discussion document on proposals to introduce new rights of appeal against directions under regulations 42 and 49 of SI 1993/744. Discussions are continuing with a view to amending the PAYE regulations.)

***P11D/P9D information on cars and living accommodation***

The regulations should prescribe more fully the information that is required in relation to cars and living accommodation

***Termination awards***

The employer should be required to notify the employee in all cases where the employer sends a return to the Inland Revenue.

***Amalgamation of basic rate schemes (for councillors, reservists, and holiday pay funds)***

It was variously suggested that these three special schemes should be (i) amalgamated or (ii) abolished altogether leaving tax to be deducted under the normal PAYE system.

***Repaying tax to employees where it has not been deducted from them***

It was suggested that an employee should be allowed a repayment of tax not deducted in cases where the employer has paid to the Inland Revenue the tax that was not deducted.

***Discovery assessments that relate to both PAYE income and other income***

TMA should be amended so that this situation can be dealt with in a manner similar to that which applies for self-assessments.