EXPLANATORY MEMORANDUM TO

THE FRIENDLY SOCIETIES (MODIFICATION OF THE CORPORATION TAX ACTS) (AMENDMENT) REGULATIONS 2008

2008 No. 1937

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Description

The Regulations amend the Friendly Societies (Modification of the Corporation Tax Act) Regulations 2005 (SI 2005/2014) to take into account an extension of the power in section 463 of the Income and Corporation Taxes Act 1988 ("ICTA") made in Schedule 18 to the Finance Act ("FA") 2008 and changes made to the tax legislation applying to insurance companies by Schedule 17 to that Act.

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

3.1 These Regulations have effect in relation to periods of account beginning on or after 1st January 2008: and are accordingly capable of having retrospective effect in certain circumstances. Authority for the retrospective effect made by these Regulations is conferred by section 463(4) of the Income and Corporation Taxes Act 1988.

3.2 The explanatory note to this Instrument explains that:

"A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen."

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department's Better Regulation and Policy team has confirmed that
  - there are no disproportionate impacts on any business or sector; and
  - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes."

4. Legislative Background

4.1 Friendly societies carrying on life assurance business are required by section 463 of ICTA to be charged to corporation tax in the same way as mutual life assurance companies. But the corporation tax provisions applying to such companies cannot be applied without modification. The Friendly Societies (Modification of the Corporation Tax Act) Regulations 2005 (SI 2005/2014) as subsequently amended provide for these modifications.

4.2 Each year following the passing of the Finance Act, regulations need to be made to amend SI 2005/2014 to reflect changes made to the corporation tax provisions relating to life assurance business. In addition section 463 is extended by Schedule 18 to the Finance Act 2007 to cover the new possibility of a society having at the same time taxable and tax exempt PHI business (see also the Friendly Society (Transfers of Other Business) (Modification of the Corporation Tax Acts) Regulations 2008).

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Much of the corporation tax code for life assurance companies is based on entries in the regulatory return made by such companies to the Financial Services Authority. The rules relating to that return are in the Interim Prudential Sourcebook (Insurers). These rules also apply to directive friendly societies (those societies large enough for the EC Consolidated Life Insurance directive to apply to them). But for non-directive societies, the relevant Sourcebook is the Interim Prudential Sourcebook (Friendly Societies). Thus a number of references to the Sourcebook for Insurers in the life assurance tax rules have to be modified to refer to the Sourcebook for Friendly Societies.

7.2 In addition, unlike a life assurance company, some of a friendly society's business may be exempt from tax. Thus the rules that apportion income and gains between categories of business have to be modified to cater for the fact that there are both taxable and tax exempt categories.

7.3 As the life assurance legislation is amended year by year by the Finance Act, it is necessary to make regulations under section 463 amending SI 2005/2014 so as to take into account any amendments made by the Finance Act.

7.4 These Regulations arise as a result of legislation in FA 2008 amending the tax law relating to companies carrying on life assurance business in the United Kingdom. The Regulations have been circulated in draft to interested bodies and to the Public Bill Committee on the Finance Bill.

7.5 Guidance on the taxation of friendly societies and the effect of the Regulations will be included in HMRC's Life Assurance Manual.

8. Impact

8.1 A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

8.2 There is no impact on the public sector.

9. Contact

Richard Thomas at HM Revenue and Customs Tel: 020 7147 2558 or e-mail: Richard.Thomas@hmrc.gsi.gov.uk can answer any queries regarding the instrument.