

**EXPLANATORY MEMORANDUM TO
THE INHERITANCE TAX (DELIVERY OF ACCOUNTS) (EXCEPTED
ESTATES) (AMENDMENT) REGULATIONS 2011**

2011 No. 214

1. This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The purpose of this statutory instrument is to amend the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (S.I. 2004/2543) (“the Excepted Estates Regulations”), as amended by S.I. 2005/3230 and 2006/2141. The Excepted Estates Regulations set out the circumstances in which a person or persons are not required to deliver an inheritance tax account to HMRC of the property comprised in the estate of a deceased person.

2.2 The Regulations also make related amendments to the information required to be produced to the relevant court or office in those circumstances where an account is not required to be delivered.

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

3.1 None.

4. **Legislative Context**

4.1 This instrument amends the Excepted Estates Regulations, in exercise of the powers afforded to the Commissioners for HMRC under the Inheritance Tax Act 1984.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of 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

7.1 Representatives administering the estate of a deceased person (the “personal representatives”) need, in all but the smallest cases, a grant of representation (i.e. probate/letters of administration from the Probate Registry in England and Wales, the Probate and Matrimonial Office in Northern Ireland or confirmation from the Sheriff Clerk in Scotland), which is only issued by the relevant court or office once it is satisfied either that any inheritance tax (“IHT”) due in respect of the particular estate has been paid or that none is due.

7.2 For some personal representatives this will involve delivering to HMRC an account of the property comprised in the estate and obtaining a tax certificate. This allows HMRC to examine, and collect any IHT due on, the estate before the assets are distributed to beneficiaries. About 60,000 accounts are submitted each year.

7.3 However, the vast majority of personal representatives are excused from the need to deliver an account to HMRC and obtain a certificate as they fall within circumstances prescribed in the Excepted Estates Regulations where no tax is expected to be due. Instead they submit to the relevant court or office, as evidence that no tax is due, a much shorter and simpler ‘excepted estate’ return of prescribed information. Once the grant of representation has been issued the returns are then passed to HMRC to allow HMRC to carry out its compliance work. About 220,000 excepted estate returns are submitted each year.

7.4 IHT is a tax on transfers of value. In general, IHT is payable on death, although it is also payable in respect of certain lifetime transfers. It is charged at 40 per cent of the value transferred by a deceased person above a nil-rate band, currently £325,000. In general, the value transferred comprises the value of the deceased person’s estate plus certain transfers made within 7 years of the death of the deceased person.

7.5 Since 2007, where a deceased person’s nil-rate band is not fully used, the unused proportion can be transferred to a surviving spouse or civil partner and used against the survivor’s estate when they die. This has reduced the number of estates that are due to pay IHT each year.

7.6 The instrument prescribes for the first time circumstances when the personal representatives of an estate benefiting from transferred unused nil-rate band may submit an excepted estate return to the relevant court or office, as opposed to having to complete a full IHT account. It is expected that the representatives of an additional 20,000 estates each year will as a result be excused from the need to deliver an account to HMRC. This will have the effect of reducing (a) burdens on the taxpayer and (b) HMRC’s costs.

7.7 Two further amendments are being made to the existing prescribed circumstances in which an IHT account is not required to be delivered. These amendments will affect the personal representatives of less than 1,000 estates.

These tighten the circumstances when the excepted estate return can be used in order to ensure that an IHT account is delivered to HMRC in relation to potentially IHT-bearing estates.

7.8 First, the prescribed circumstances allow estates of up to £1m in value to qualify as an excepted estate where there is no IHT to pay because the assets passing under the estate are exempt from IHT by virtue of passing either to a surviving spouse/civil partner, or to charity. However, an error in the current regulations means that the personal representatives of some estates where these exemptions do not apply can nevertheless submit an excepted estate return. The instrument removes this unintended effect.

7.9 Second, there is an exemption from IHT for transfers made as part of normal expenditure out of the income of the transferor. In HMRC's experience, this exemption can be used inappropriately with the consequence that IHT is not paid when it is due. In order to enable HMRC to properly scrutinise the relief, where, in any tax year in the 7 years prior to death, a person has transferred over £3,000 that is considered to be exempt as part of normal expenditure out of their income, the amount transferred will nevertheless be included in the value of that person's estate for the purpose of determining whether the personal representatives are excused from the requirement to deliver an inheritance tax account to HMRC, even though the transfer itself may qualify for the exemption.

8. Consultation outcome

8.1 HMRC consulted on a draft of the instrument with professional representatives and other interested parties between 10th September 2010 and 5th November 2010. Given the specialised nature of this subject, it was considered disproportionate to conduct a formal exercise under the terms of the Code of Practice on Consultation. Five professional bodies and three practitioners responded.

8.2 The proposals were widely supported as removing burdens in relation to the most straightforward estates. Four of the respondents sought to fine tune the requirements in relation to more complex estates.

8.3 The instrument prescribes that an estate benefiting from transferred unused nil-rate band will only benefit from the transferred IHT threshold for the purposes of the Excepted Estates Regulations where all of the first deceased's nil-rate band was unused, for example where the whole estate was transferred exempt of IHT to a spouse or civil partner. Some respondents argued that where only a small amount of nil-rate band had been used against the first deceased's estate, the instrument should prescribe circumstances that would allow the spouse or civil partner's estate to be an excepted estate. In the view of the Commissioners for HMRC, the added complexity would benefit only a relatively small number of estates and increase the risk of errors being made. It is estimated that the instrument will benefit 75 per cent of those estates claiming a transfer of unused nil-rate band. Of the balance, most

will remain taxpaying estates even after taking transferred unused nil-rate band into account.

8.4 The Commissioners for HMRC have accepted representations that transfers by means of normal expenditure out of income which are exempt from IHT, but are nonetheless included in the value of a person's estate for the purpose of determining whether that estate is exempted from the requirement to deliver an inheritance tax account to HMRC, should only be taken into account when made from the estate of a person who has died on or after the date the instrument comes into force. Representations that a level higher than £3,000 per year be used have not been accepted. The £3,000 level is familiar to professional representatives as it also used when an inheritance tax account is delivered to HMRC.

8.5 In accordance with section 256(3A) of the Inheritance Act 1984, HMRC has also consulted the Lord Chancellor, the Scottish Ministers and the Lord Chief Justice of Northern Ireland regarding this instrument.

9. Guidance

9.1 The provisions of these amending regulations will be reflected in the Notes to completing the Excepted Estates forms, which is available on the HMRC website at <http://www.hmrc.gov.uk/inheritancetax/iht-probate-forms/index.htm>

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This is a technical amendment and does not require further review.

13. Contact

Alan McGuinness at HMRC Tel: 020 7147 2766 or email: alan.mcguinness@hmrc.gsi.gov.uk can answer any queries regarding the instrument.