EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2009, SECTIONS 101 AND 102 (INTEREST ON LATE PAYMENTS AND REPAYMENTS) (CONSEQUENTIAL AMENDMENTS) ORDER 2014

2014 No. 1283

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

2. Purpose of the instrument

2.1 This instrument makes consequential amendments to the Social Security Contributions and Benefits Act 1992 (c. 4), the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), the Social Security Administration Act 1992 (c. 5), the Social Security Administration (Northern Ireland) Act 1992 (c. 8), the Income Tax (Trading and Other Income) Act 2005 (c. 5) and the Corporation Tax Act 2009 (c. 4).

2.2 These consequential amendments ensure that payments of interest associated with late payments of Class 1 National Insurance contributions (NICs) and payments under the Construction Industry Scheme (CIS) are not deductible in computing income profits or losses for tax purposes. These amendments also ensure that the correct provisions associated with interest are applied to cases where liability for a company's NICs is transferred to the directors.

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

3.1 The laying of this instrument before the House of Commons breaches the "21 day rule". These consequential amendments were omitted from the Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments) Appointed Days and Consequential Provisions Order 2014 (S.I. 2014/992) ("the Appointed Day Order"). That Order applied sections 101 and 102 of the Finance Act 2009 (c. 10), relating to interest, to Pay As You Earn, Class 1 NICs and CIS payments for the year 2014-15 and for subsequent tax years. The first payments of these sums for the tax year 2014-15 are due and payable by 19th May 2014.

3.2 If this instrument did not breach the 21 day rule then for a short period of time Class 1 NICs and CIS payments would be deductible in computing profits for tax purposes. This would cause confusion as the position before the Appointed Day Order was that such interest payments were not deductible for the purposes of computing income profits or losses for tax purposes. There would be a short period in which the status quo was changed. This would create an administrative burden not only for HMRC but also for employers and contractors as they would account differently for interest payments in that short period. Consequently it has not been possible to lay this instrument before the House of Commons 21 days before commencement.

4. Legislative Context

4.1 This instrument amends primary legislation in connection with the Appointed Day Order. These consequential amendments ensure that payments of interest associated with late payments of Class 1 NICs and CIS are not deductible in computing income profits or losses for tax purposes.

4.2 The instrument also amends the Social Security Administration Act 1992 and the Social Security Administration (Northern Ireland) Act 1992 to reflect that where a personal liability notice is served upon the directors, in a consequence of a company's failure to pay NICs, the interest charged in respect of any Class 1 contribution will be at the rate applicable under sections 101 and 102 of the Finance Act 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury (David Gauke MP) has made the following statement regarding Human Rights:

In my view the provisions of The Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments) (Consequential Amendments) Order 2014, are compatible with the Convention rights.

7. Policy background

7.1 Sections 101 and 102 of the Finance Act 2009 contain provisions for late payment interest on sums due to HMRC and repayment interest on sums to be paid by HMRC.

7.2 These provide for a single set of rules for interest across the taxes and duties for which HMRC has responsibility. The intention is that the rules will apply to all new taxes and to existing taxes over time and will be switched on using an Appointed Day Order.

7.3 In April 2014 the Appointed Day Order was made appointing applying sections 101 and 102 of the Finance Act 2009 to Pay As You Earn, Class 1 NICs and CIS payments for the year 2014-15 and subsequent tax years. The first payments to HMRC are due and payable by 19th May 2014.

7.4 Interest paid on late paid Class 1 NICs and CIS payments is not deductible for tax purposes. This instrument is being made to ensure that the status quo is maintained.

8. Consultation outcome

8.1 This instrument is made in connection with the Appointed Day Order which appointed the day for sections 101 (Late payment interest on sums due to HMRC) and 102 (Repayment interest on sums to be paid by HMRC) of the Finance Act 2009. It gives effect to previously announced policy for Pay As You Earn, NICs and CIS payments. The Government is therefore not consulting about the instrument.

9. Guidance

9.1 Relevant HMRC guidance will be amended to reflect this change.

10. Impact

10.1 The legislation will impact on any business, charity or voluntary body, regardless of its sector.

10.2 The legislation is applicable to employers and contractors who either do not make payment of the sums referred to in paragraph 2 above by the due and payable date or who overpay such sums to HMRC.

10.3 A Tax Information and Impact Note has not been prepared for this instrument as it gives effect to previously announced policy.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The legislation is applicable to employers and contractors who either do not make payment of the sums referred to in paragraph 2 above by the due and payable date or who overpay such sums to HMRC.

12. Monitoring & review

12.1 The legislation contained within this instrument will be monitored and reviewed as appropriate within the context of the wider legislative schemes.

13. Contact

Leon Wong (Tel: 03000 586624 / email: leon.wong@hmrc.gsi.gov.uk) at HMRC can answer any queries regarding the instrument.