

EXPLANATORY MEMORANDUM TO
THE ENFORCEMENT BY DEDUCTION FROM ACCOUNTS (IMPOSITION OF
CHARGES BY DEPOSIT-TAKERS) REGULATIONS 2016

2016 No. 44

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument specifies the circumstances in which a deposit-taker may charge a fee in respect of administrative costs it has incurred in complying with an obligation under Schedule 8 to the Finance (No.2) Act 2015 (c.33) (“Schedule 8”) and the maximum fee that may be charged.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Schedule 8 to the Finance (No.2) Act 2015 allows HMRC to enforce the collection of debt directly from the accounts of the relevant debtor – the “direct recovery of debt” (“DRD”). The process involves HMRC sending an information notice to a deposit-taker (e.g. financial institutions) to determine what assets are held by the debtor with the deposit-taker (and in which accounts). Subsequently, HMRC may issue a hold notice to the deposit-taker requiring a hold to be placed on assets for transfer to HMRC pending statutory rights of objection (to HMRC) and appeal (to the County Court) by the debtor.

- 4.2 These regulations specify, firstly, the circumstances in which a deposit-taker is permitted to impose a charge upon an account holder in respect of administrative costs it has incurred in carrying out any obligation required of it under the DRD process, and, secondly, the maximum charge which a deposit-taker may impose.

5. Extent and Territorial Application

- 5.1 This instrument extends to England, Wales and Northern Ireland.
5.2 This instrument applies to England, Wales and Northern Ireland.

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**

What is being done and why

- 7.1 At Budget 2014 the Chancellor announced the Government's intentions to introduce new powers to allow HMRC to secure payment of tax and tax credit debts directly from debtors' bank and building society accounts in credit – the direct recovery of debt (DRD). This is to make the tax system fairer by targeting those who have the means to pay what they owe but choose not to do so, despite repeated contact from HMRC.
- 7.2 Following public consultation, the Government introduced a number of additional safeguards to strengthen the measure and ensure that it only affected the intended minority of debtors with the means to pay what they owe. These safeguards were set out in the Government's consultation response of 21 November 2014 and included a guaranteed face-to-face visit with every debtor whose debts are considered for recovery through the measure.
- 7.3 HMRC will only take action against debtors who owe at least £1,000 of tax or tax credit debt. HMRC will always leave a minimum aggregate of £5,000 across debtors' accounts, and will only put a hold on funds in affected accounts up to the value of the debt.
- 7.4 This instrument prevents the deposit-taker from charging a fee in respect of administrative costs incurred by it during the DRD process, apart from in certain specified circumstances which are summarised below:
- the deposit-taker has agreed with the account holder (or account holders), that a fee can be charged;
 - the DRD process has concluded, and the final payment has been made to HMRC;
 - the deposit-taker has not previously imposed a fee in respect of those costs;
 - the fee charged does not exceed the amount of the administrative costs reasonably incurred by the deposit-taker, and, in any event, is not more than £55.

8. **Consultation outcome**

- 8.1 A public consultation document for DRD was published on 6 May 2014. The formal consultation ran until 29 July 2014. The Government published its response on 21 November 2014, and draft primary legislation was published on 10 December 2014 for further consultation. A consultation document for these regulations was published on 10 December 2015. The consultation ran until 8 January 2016. The Government received two responses, both raising technical points, and neither required changes to the draft legislation.

9. **Guidance**

- 9.1 The Government will publish guidance on DRD to help debtors affected by the measure, deposit-takers in receipt of an information or hold notice, and other

interested organisations, understand the processes involved. This will include an explanation of the responsibilities a deposit-taker has in carrying out instructions received from HMRC, and the rights of objection and appeal available to a debtor to whose accounts DRD has been applied.

10. **Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be negligible. If deposit-takers choose to pass on an administrative fee this may have a small impact on non-compliant individuals and businesses with debts over £1,000 who have not complied with their legal obligations. These regulations ensure however that any such fee shall not exceed £55 in respect of any single use of the DRD powers.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 8 July alongside Financial Bill 2015 and is available on the HMRC website at <https://www.gov.uk/government/publications/direct-recovery-of-hm-revenue-and-customs-debts-from-debtors-bank-and-building-society-accounts>, a copy is submitted with this Memorandum. It remains an accurate summary of the impacts that apply to this instrument.

11. **Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. **Monitoring & review**

12.1 DRD will be kept under review through regular communication with affected taxpayer groups and businesses. The Government has committed to an HMRC-led review of the measure after two years of operation, to be laid before Parliament.

13. **Contact**

13.1 Ademola Adetosoye at HM Revenue and Customs Telephone: 03000 586040 or email: Ademola.adetosoye@hmrc.gsi.gov.uk can answer any queries regarding the instrument.