EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2022, SCHEDULE 10 (PUBLIC INTEREST BUSINESS PROTECTION TAX) (SUBSTITUTION OF DATE) REGULATIONS 2022

2022 No. 1321

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations extend the period during which the Public Interest Business Protection Tax (PIBPT) could apply when a public interest business enters special measures. The tax has effect in prescribed circumstances where the relevant business becomes subject to special measures within a defined period of time. These Regulations extend that period of time so that it will expire on 30 April 2024, instead of 28 January 2023 as previously planned.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 Victoria Atkins MP, Financial Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of The Finance Act 2022, Schedule 10 (Public Interest Business Protection Tax (Substitution of Date) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The PIBPT was established in law in Schedule 10 of the Finance Act 2022. Section 41 of that Schedule concerns how regulations can be made under the Schedule.

6.2 Section 43(2) of Schedule 10 of the Finance Act 2022 sets out that the Treasury may, before the expiry date, substitute the expiry date with any new expiry date before 29 January 2025. The power in section 43(2) may be exercised on more than one occasion but may not be exercised on or after 29 January 2025.

6.3 This instrument extends the expiry date of the PIBPT by 15 months and is the first occasion that the Treasury exercises the power granted in section 43(2).

7. Policy background

What is being done and why?

7.1 The PIBPT is a temporary 75 percent tax on profits that could arise where a business undertakes arrangements that realise a valuable asset for its own benefit and the benefit of its shareholders, and as a result precipitate or exacerbate the collapse of an energy supply business. The tax applies in respect of assets held for the benefit of energy supply businesses and is intended to deter businesses or persons entering into such arrangements.

7.2 The tax was implemented on 28 January 2022 in Schedule 10 of the Finance Act 2022 and is due to cease to have effect from 28 January 2023. This instrument extends the tax by 15 months to 30 April 2024.

7.3 By way of background, energy supply businesses often enter into forward purchase contracts to pay for energy at a fixed rate over a period of time. This helps protect them against price rises in the wholesale market which could lead to significant losses if rises are higher than the energy price cap (the highest price that energy can be sold to the consumer).

7.4 With the rise in global energy prices, companies that entered into such forward contracts hold a valuable asset as the opportunity to buy energy at the lower price in the contract is not available to companies buying energy on the wholesale market.

7.5 In late 2021, The Office of Gas and Electricity Markets (Ofgem) and the Department for Business, Energy and Industrial Strategy (BEIS) identified that there could be a structural risk relating to hedging positions taken out for energy supply businesses. This risk involved businesses potentially exploiting the situation of high wholesale energy prices and realising their hedges, so that shareholders could make a substantial financial windfall, whilst leaving their energy supply business to become insolvent and fail and leaving the government to pick up the costs of that.

7.6 When a regulated energy supplier faces insolvency there are two main routes available that help to ensure that consumers in the United Kingdom continue to be supplied, which are operated by BEIS (referred to here as Special Measures): the Supplier of Last Resort (SoLR) route and the Special Administration Regime (SAR).

7.7 The SoLR and SAR mechanisms are designed to protect the customers of failed suppliers but are intended as a safety net rather than being for the convenience of shareholders. In cases where the supply business is already in special measures, monetising the relevant assets could significantly increase the costs of the business continuing to supply energy to customers.

7.8 Ofgem was developing new regulations to prevent companies entering into such arrangements, however there was a growing risk that energy supply companies could realise relevant assets which could cause the companies to become insolvent before new regulations could be implemented. The government has, therefore, decided to take more immediate action by implementing the PIBPT as a temporary back stop to deter entry into such arrangements.

7.9 Since the implementation of the PIBPT, Ofgem has made some progress on addressing the risks from a regulatory perspective. It, however, requires more time to explore further options to address those risks and time for the sector to adapt to existing regulatory changes.

7.10 The extension of the PIBPT will also ensure that there continues to be a backstop in place to deter persons from entering into the arrangements which could, if they were carried out, lead to an energy supplier becoming insolvent at significant cost to the taxpayer.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not consolidate any other legislation.

10. Consultation outcome

10.1 No formal consultation has taken place. His Majesty's Treasury and HMRC will continue to liaise with industry in the usual way as part of the policy making process.

11. Guidance

11.1 A technical note was published on 28 January 2022 when the PIBPT was implemented. This can be found on the Gov.uk website at: https://www.gov.uk/government/publications/finance-bill-2021-2022-report-stage

11.2 No new guidance will be issued as this instrument only changes the length of time that the tax applies.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering the PIBPT was published on 28 January 2022. This can be found at the Gov.uk website at: https://www.gov.uk/government/publications/finance-bill-2021-2022-report-stage

13. Regulating small business

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

14. Monitoring & review

14.1 The measure will be monitored to ensure the legislation is operating as intended and kept under review through regular communication with affected taxpayer groups and relevant government departments.

14.2 The instrument does not include a statutory review clause because it does not relate to a qualifying activity as specified by section 29 of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Matthew Weightman at HMRC Telephone: 03000 562 380 or email: matthew.weightman@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Martyn Rounding, Deputy Director for Business, Assets and International, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.