

EXPLANATORY MEMORANDUM TO
THE INCOME AND CORPORATION TAXES (ELECTRONIC COMMUNICATIONS) (AMENDMENT) REGULATIONS 2023

2023 No. 221

1. Introduction

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

2. Purpose of the instrument

2.1 The Income and Corporation Taxes (Electronic Communications) Regulations 2003, S.I. 2003/282 (“the 2003 Regulations”) stipulate among other things, the information HMRC may deliver to its customers digitally (in electronic format).

2.2 This instrument amends the 2003 Regulations so that they also provide for the digital delivery and (where appropriate), the withdrawal of a Notice of Simple Assessment and Notices of Daily Penalties (issued for the continued failure to make or deliver a return).

2.3 The instrument will enable HMRC to notify a greater range of tax assessments in digital format where this is appropriate, supporting customers who wish HMRC to communicate digitally.

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 United Kingdom.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 HMRC may give a person a notice of simple assessment, including in cases where a person’s tax affairs are straightforward and they have an underpayment of tax for a tax year, which cannot be recovered via an adjustment in their notice of coding for the next tax year. This notifies the taxpayer of the underpayment, provides a calculation showing how the underpayment arose and states when the tax due must be paid. A taxpayer has a right to query the assessment and then (if necessary) once the query has been finalised, they can formally appeal against the Simple Assessment if they

disagree with the outcome of their query. Simple Assessments prevent HMRC from having to place those taxpayers into the Self-Assessment system, which would require them to complete a self-assessment tax return and pay the tax owing through Self-Assessment.

- 6.2 Taxpayers can elect for HMRC to communicate with them in digital format via their Personal Tax Account. This instrument supports those taxpayers by providing that HMRC may digitally deliver and (where necessary) withdraw a Simple Assessment.
- 6.3 Section 28H of the Taxes Management Act 1970 provides for when HMRC can make and deliver a Notice of Simple Assessment to a person.
- 6.4 Section 28I of the Taxes Management Act 1970 applies the same provisions as Section 28H, to the trustees of a settlement.
- 6.5 Section 28J of the Taxes Management Act 1970 provides that HMRC may withdraw a Simple Assessment by serving a Notice of Withdrawal to the person to which the Simple Assessment relates.
- 6.6 Section 30A of the Taxes Management Act 1970 sets out the assessing procedures HMRC must apply when making an assessment to tax. This includes Simple Assessments.
- 6.7 Where a person fails to make (or deliver) a (tax) return to HMRC by the statutory filing date for that return, HMRC issues a £100 fixed penalty for that compliance failure. If, 3 months after that penalty was issued, the person has still failed to make or deliver the return, HMRC then imposes a daily penalty of £10 per day for a maximum of 90 days (3 months) on that person for the continued failure to make (or deliver) the return.
- 6.8 Those Daily Penalties are notified to persons through the issuing of a Notice of Daily Penalties, under the provisions of Paragraph 4 of Schedule 55 of the Finance Act 2009. Unlike other Penalty Notices, these Notices of Daily Penalties were omitted from the 2003 Regulations. This instrument rectifies that omission and provides consistency for all penalty notices.

7. Policy background

What is being done and why?

- 7.1 The HMRC Outcome Delivery Plan 2021/22 announced that the government wanted to create a tax system fit for the challenges and opportunities of the 21st Century. The plan acknowledged that the rapid growth of information and communications technologies and rising public expectations of world-class customer service mean that the United Kingdom can, and must, have a fully digital tax system able to support taxpayers across the full range of their needs. Increasingly taxpayers are signing up to receive communications from HMRC in digital format and this instrument supports that by widening the range of communications which HMRC may deliver digitally to such customers/taxpayers.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 The Taxes Management Act 1970 already provided for the delivering and (where appropriate) the withdrawing of a Notice of Simple Assessment. Schedule 55 of the

Finance Act 2009 already provided for the delivering of a Notices of Daily Penalties (for the continued failure to make (or deliver) a return.

Why is it being changed?

- 7.3 The Income and Corporation Taxes (Electronic Communications) Regulations 2003 did not clearly stipulate that Notices of Simple Assessment and Notices of Daily Penalties can be digitally made, delivered and (where appropriate) formally withdrawn. In order to support those who wish to receive such communications digitally from HMRC, this Statutory Instrument will amend the 2003 Regulations so that they apply to Notices of Simple, and other Assessments, withdrawals of Simple Assessments and Notices of Daily Penalties.

What will it now do?

- 7.4 This instrument supports taxpayers' preference for HMRC to communicate with them digitally, whilst achieving departmental cost and resource savings.

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 further amends paragraph 2 "Scope of the Regulations" of The Income and Corporation Taxes (Electronic Communications) Regulations 2003, to insert notices of Simple Assessment, Notices of the withdrawal of a Simple Assessment and Notices of Daily Penalties into the existing list of digital communications. No consolidation of these regulations is being undertaken at present. However, as HMRC further increases its use of digital communications, (as explained at item 7.1 of this Explanatory Memorandum), a consolidation of these regulations could take place in the future, at which time HMRC would announce what the projected timescale for consolidation may be.

10. Consultation outcome

- 10.1 No consultation took place because the instrument does not create any additional tax liabilities, nor increase the number of Simple Assessments and Daily Penalties that are already being issued. The instrument simply provides that where appropriate, these communications may be delivered digitally (where the customer/taxpayer has consented to HMRC issuing them digital communications).

11. Guidance

- 11.1 HMRC customer guidance on GOV.UK <https://www.gov.uk/personal-tax-account> and internal departmental guidance will be updated when this instrument has been laid and comes into effect.

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 has not been prepared for this instrument because the instrument will not affect the number of notices of assessment and notices of daily

penalties which will be delivered, but merely the manner in which they may be delivered.

13. Regulating small business

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

14. Monitoring & review

14.1 No formal monitoring or review of the effect of this instrument is required. The Notices that are subject of this instrument are already being sent to taxpayers on paper and this instrument neither increases nor decreases the number of Notices issued each year. However, HMRC continually monitors its use of digital communications to identify where improvements to customer service and efficiency savings can be achieved.

15. Contact

- 15.1 Peter Nicholls at HMRC Telephone: 03000556776 or email: Peter.nicholls@hmrc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Helen Page, Deputy Director for the Tax Administration Policy area 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.