

EXPLANATORY MEMORANDUM TO
THE REVENUE AND CUSTOMS (AMENDMENT OF APPEAL PROVISIONS
FOR OUT OF TIME REVIEWS) ORDER 2014

2014 No. 1264

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

This memorandum contains information for Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The instrument ensures that where requests for a review of a HMRC decision are made out of time, in the regimes to which this instrument applies, where HMRC decides not to undertake a review, a taxpayer seeking to challenge the original decision will first have to convince a tribunal to give permission to appeal.

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

- 3.1 The draft Order is subject to the draft affirmative procedure and must be approved by the House of Commons before being made. The Order is made by the Treasury in exercise of the powers granted by section 124 of the Finance Act 2008. The Order amends primary and secondary legislation.

4. **Legislative Context**

- 4.1 The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56) made a number of changes to tax appeal provisions, including the introduction of a new cross-tax review process. The instrument seeks to make one change to various indirect tax and financial services appeal provisions relating to out of time reviews.

- 4.2 The Government considers it necessary for all taxpayers who want to pursue an appeal outside the statutory time limit, and where HMRC has not agreed to undertake a review out of time, to persuade the First-tier tribunal that they ought to accept the appeal out of time before it can proceed.

- 4.3 At present, in a variety of indirect tax and financial services appeal provisions, seeking a review out of time of a decision by HMRC provides a new window of 30 days to make an in-time appeal, regardless of how

long ago the decision was made. This is the case both where HMRC agrees to undertake a review (because it considers there is a reasonable excuse for the delay), or where it refuses to undertake a review (because it considers there is no justification for the delay). In the latter situation, the tribunal is not able to refuse to hear an in-time appeal, as it can where an appeal is lodged outside the statutory time limits.

4.4 The Government considers that the rules which allow a new in-time window to appeal undermines the certainty of the tax system because tax liabilities for past periods, which are closed, could be reopened at any time in the future and contested. The Government also considers that in cases where a taxpayer is seeking a review out of time, where HMRC decides not to undertake a review, the taxpayer should have to persuade a tribunal to allow an appeal against the original decision to proceed.

4.5 The following legislation will be amended by this change:

Value Added Tax	VAT Act 1994 s83G
Customs and Excise Duties	Finance Act 1994 s16
Insurance Premium Tax	Finance Act 1994 s59G
Landfill Tax	Finance Act 1996 s54G
Climate Change Levy	Finance Act 2000 Sch 6 para 121G
Aggregates Levy	Finance Act 2001 s40G
Import and Export Penalties	Finance Act 2003 s33F
Export Penalties	Export (Penalty) Regulations 2003 reg 9F
Financial Services	Control of Cash (Penalties) Regulations 2007 reg 4F
	Money Laundering Regulations 2007 reg 43F
	Transfer of Funds (Information on the Payer) Regulations 2007 reg 12F

4.6 The instrument also corrects a minor error (to a cross-reference) in section 33F(3) of Finance Act 2003.

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 Revenue and Customs (Amendment of Appeal Provisions for Out of Time Reviews) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 Under the current rules, where the time limit to appeal against a decision by HMRC in a number of indirect tax and financial services appeal provisions has passed, a taxpayer is able to obtain a new 30 day window in which to make an in-time appeal by requesting an out of time review of the decision by HMRC. This is the case even if HMRC decides not to review the decision out of time (because it considers there is no reasonable excuse for the taxpayer's delay). The new 30 day window to make an in-time appeal applies regardless of how long ago the original decision was made by HMRC. This presents a risk to revenue that has already been collected, as taxpayers could use it to reopen cases that have been closed for years. The Government considers this should be changed.

8. Consultation outcome

8.1 The Government is not consulting on this instrument in order to avoid forestalling.

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, where a taxpayer receives a decision from HMRC in relation to one of the regimes to which this instrument applies, who then does not seek a review or make an appeal in time, and who later requests a review of that decision out of time. Entities making appeals to the tribunal after HMRC has refused a request for an out of time review will face an additional hurdle of making a case to the tribunal that their appeal should be heard.

10.2 The impact on the public sector in particular operational impacts on HMRC is considered to be negligible, and will be managed within the existing resources.

10.3 A Tax Information and Impact Note has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The legislation applies to all taxpayers who receive a decision, and any person other than a taxpayer who has a right of appeal, regardless of the size of their business. A taxpayer, that is a business, and who appeals to the tribunal after HMRC has refused a request for an out of time review will face an additional hurdle of persuading a tribunal that their appeal should be heard.

12. Monitoring & review

12.1 The legislation contained within this Order will be monitored and reviewed as appropriate within the context of the wider legislative schemes relating to reviews and appeals.

13. Contact

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