EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2009, SCHEDULES 55 AND 56 AND SECTIONS 101 AND 102 (STAMP DUTY RESERVE TAX) (APPOINTED DAYS, CONSEQUENTIAL AND TRANSITIONAL PROVISION) ORDER 2014

2014 No. 3269 (C. 151)

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument brings the harmonised interest regime and penalty regimes for late filing of returns and late payment of tax, introduced by sections 101 to 103 and by Schedules 55 & 56 to the Finance Act 2009 into force in relation to payments due to be made to or by HMRC and returns due to be made to HMRC in connection with Stamp Duty Reserve Tax ("SDRT").

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

3.1 Amendments that are consequential to the penalties order come into force on 1st January 2015 for filing obligations arising from that date.

4. Legislative Context

4.1 The penalty regime for late filing of returns was introduced by Schedule 55 to the Finance Act 2009, and the penalty regime for late payment of tax was introduced by Schedule 56 to the Finance Act 2009. Sections 106 and 107 of the Finance Act 2009 provide that Schedules 55 and 56 respectively will come into force on a day appointed by Treasury Order either generally or for specified purposes. It is the intention of HMRC to implement these new penalties on a staged basis, and the legislation allows for this approach on an individual tax basis.

4.2 The harmonised interest regime was introduced by sections 101 to 105 of the Finance Act 2009. This regime aligns the rules for the charging and paying of late payment interest and repayment interest for all taxes and duties administered by HMRC.

4.3 Section 104 of the Finance Act 2009 provides that sections 101 to 103 of that Act come into force on a day appointed by Treasury Order either generally or for specified purposes. It is the intention of HMRC that the new interest regime will be phased in for each existing tax and duty, and where possible with all new taxes and duties, over a number of years. The legislation allows for this approach.

4.4 Section 103 of the Finance Act 2009 already has general application by virtue of S.I. 2011/2401.

4.5 These orders continue the process of implementation of new penalties, started with S.I. 2010/466, which made the new regime effective for late payments under the PAYE Regulations (S.I.2003/2682) and pension schemes from 6 April 2010.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Finance Act 2009, Schedules 55 and 56 and Sections 101 and 102 (Stamp Duty Reserve Tax) (Appointed Days, Consequential and Transitional Provision) Order 2014 are compatible with the Convention rights."

7. Policy background

7.1 The HMRC Review of Powers, Deterrents and Safeguards began in 2005, following the merger of the Inland Revenue and HM Customs & Excise. The objective of the Review was to provide a framework of law and practice for HMRC that supports the Government's objectives of a tax system that is fair and better adapted to the needs of our customers. The Review has already aligned the penalty regimes for incorrect returns and failures to notify, and this regime continues the work in relation to late filing and late payment penalties.

7.2 The underlying principle of the Review was to support those who seek to comply, whilst dealing firmly with those seeking an unfair advantage by not complying with their tax obligations. The escalating nature of the penalty levels and provisions for suspension of a late payment penalty where deferred payment of the tax has been agreed are part of this approach. Aligning penalties across taxes enables clearer deterrent messages and facilitates cross-tax compliance checks.

7.3 The instrument brings into force Schedule 55 on 1st January 2015 for late returns under SDRT. When a return is late, the penalty is initially a fixed £100 penalty. If the failure continues for over three months, the penalty level escalates by a fixed £10 per day up to a maximum of 90 days, charged at HMRC's discretion. For more serious non-compliance where the failure is prolonged beyond six or twelve months, there are further penalties of either £300 or 5% of the tax liability on the return (whichever is the greater).

7.4 From 1st January 2015, this instrument also applies Schedule 56 to late payments under SDRT for payments due from this date. If a payment is over 30 days late, then a penalty of 5% of the amount unpaid is due, with similar penalties if any amounts remain unpaid after a further five or eleven months. There are special rules that apply where HMRC make further assessments of tax.

7.5 The two penalty structures operate independently of each other, so the late filing penalty is not capped to the amount unpaid or due.

7.6 These penalties have a reasonable excuse defence, as well as other safeguards, which will operate in a similar way across all taxes when implementation is complete.

7.7 Alongside the Review of Powers, HMRC also reviewed the existing legal frameworks for charging and paying interest that the department inherited from the former Inland Revenue and HM Customs and Excise. There are a number of differences in the way interest is charged and paid across the heads of taxes. For some taxes, interest is charged as soon as payment is late whereas for others it is only charged where under-declarations are assessed. For some liabilities, there is no late payment interest charge at all.

7.8 Following extensive consultation, the Government introduced legislation in the Finance Act 2009 to harmonise the way that interest is charged and paid across all taxes and duties. This legislation will, however, take some time to come into force in its entirety as many of the changes will require substantial changes to HMRC IT systems.

7.9 These policies were the subject of wide consultation with the public and interested bodies, and the intended start date has been publicised.

8. Consultation outcome

8.1 A consultation document "Meeting the obligations to file returns and pay tax on time" was published by HMRC on 24 November 2008. Drafts of what became Schedules 55 & 56 were attached to that consultation.

8.2 The consultation ran until 13 February 2009 and the "Summary of Responses" was published on 22 April 2009. Both documents are available through the National Archive website (with links from the HMRC website). Throughout the consultation and in the subsequent Budget announcement, HMRC clearly indicated its intention to bring these provisions into effect for ITSA filing and payment obligations on 6 April 2011.

8.3 Following the consultation, Ministers decided to include the draft legislation in the 2009 Finance Bill, and it was subsequently legislated as Schedules 55 & 56 to the Finance Act 2009.

8.4 Draft versions of the orders were published in advance on the HMRC website for public comment.

9. Guidance

9.1 The changes have been publicised within the relevant business community and businesses and other intermediaries have been preparing on the assumption that the new rules will commence on the basis set out in the order.

9.2 HMRC is conducting a programme of guidance, communication and training to raise awareness of the new penalty regime, as well as a review of its own business processes.

10. Impact

10.1 The impact on charities or voluntary bodies, and for businesses who report SDRT via the CREST system is nil, as it is for the majority of those who submit paper returns who do so on time. There is no expectation that the penalties will apply to a wider population than the regime that it replaces.

10.2 The benefits of alignment include simplicity (facilitating publicity and understanding, as well as reducing compliance costs) and integration (allowing for single HMRC action to cover several taxes). Therefore, when fully implemented, a single penalty regime will eventually reduce costs for taxpayers and HMRC.

10.3 The impact on the public sector is nil.

10.4 An Impact Assessment for interest harmonisation and for the late filing and late payment penalties reform was published by HMRC on 14 April 2009 and is available from the HMRC website at http://www.hmrc.gov.uk/better-regulation/ia.htm.

11. Regulating small business

11.1 The legislation applies to small business. Small business will benefit from having a single aligned set of rules in relation to the filing and payment obligations it must meet with HMRC, rather than the broad range of possible penalty regimes that may currently apply.

11.2 HMRC sought views about the impact of these changes on small business during its consultation. The structure of the new penalty regime took into account consultation responses and meetings with a range of bodies, including the Federation of Small Business, Forum of Private Business and the Low Income Tax Reform Group.

11.3 To exempt small businesses with fewer than twenty employees would deny them the benefits of simplification that results from aligning the penalty regimes across all the taxes and duties administered by HMRC. Small businesses that may need further advice on their obligations can access this advice through our website or contact centres.

12. Monitoring & review

12.1 HMRC is introducing systems which will allow it to track the number and value of penalties charged across taxes under the new penalty regimes. There will be guidance and governance procedures in place to ensure that the new penalty regimes are applied in a consistent manner.

12.2 A Post Implementation Review of the interest and penalty regimes will take place within three years of full implementation.

13. Contact

Adrian Morton at HMRC can answer any questions regarding the instrument. Telephone: 03000 586434 or email: adrian.morton@hmrc.gsi.gov.uk.