EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL TAX COMPLIANCE (CROWN DEPENDENCIES AND GIBRALTAR) REGULATIONS 2014

2014 No. 520

1. This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument implements the Agreements between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Isle of Man, the States of Guernsey, the Government of Jersey and the Government of Gibraltar, to Improve International Tax Compliance signed on 10th October 2013, 22nd October 2013, 22nd October 2013 and 21st November 2013 respectively ("the Agreements"), as those Agreements have effect from time to time.

2.2 The Agreements will come into force when the necessary internal procedures for entry into force have been completed and written notification is provided to the other party.

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

3.1 None.

4. Legislative Context

4.1 Each Agreement provides for mutual exchange of tax information between the tax authorities of the UK and the other Party to the Agreement. The UK has agreed to provide the Isle of Man, Guernsey, Jersey and Gibraltar with certain information about the accounts of Isle of Man, Guernsey, Jersey and Gibraltar taxpayers respectively, who hold accounts with UK financial institutions.

4.2 These Regulations implement each of the Agreements by enabling HM Revenue & Customs (HMRC) to obtain from UK financial institutions the information the UK has agreed to provide to the Isle of Man, Guernsey, Jersey and Gibraltar. This ensures that the UK will receive reciprocal exchange of tax information from the Isle of Man, Guernsey, Jersey and Gibraltar relating to accounts held by UK tax residents.

4.3 Information reported by UK financial institutions to HMRC under these Regulations will, as required by the Agreements, be automatically exchanged annually with the Competent Authority of the other Party to the relevant Agreement through the legal gateways for automatic exchange of information in the following Arrangements.

4.3.1 For the Isle of Man, information will be exchanged under Paragraph 10 of The 1955 Arrangement between the United Kingdom of Great Britain and Northern Ireland and the Government of the Isle of Man for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income as amended by the 1991, the 1994, and the 2008 arrangements between the two governments, amended and signed on 10 October 2013.

4.3.2 For Guernsey, information will be exchanged under Article 5a of The Agreement between the United Kingdom and the States of Guernsey Amending the 2009 Agreement between the United Kingdom and the States of Guernsey for the exchange of information relating to tax matters, amended and signed on 22 October 2013.

4.3.3 For Jersey, information will be exchanged under Article 5a of The Agreement between the United Kingdom and the Government of Jersey Amending the 2009 Agreement between the United Kingdom and the Government of Jersey for the exchange of information relating to tax matters, amended and, signed on 22 October 2013.

4.3.4 For Gibraltar, information will be exchanged under Article 5a of The Agreement between the United Kingdom and Gibraltar Amending the 2009 Agreement between the United Kingdom and Gibraltar for the exchange of information relating to tax matters, amended and signed on 21 November 2013.

4.4 These Regulations, in line with the UK's obligations in the Agreements, obliges UK financial institutions to report relevant information about Isle of Man, Guernsey, Jersey and Gibraltar taxpayers to HMRC and so includes a requirement to put in place arrangements to obtain details of the country of tax residence of account holders. This allows financial institutions to introduce systems for collecting and maintaining information whilst also enabling compliance with data protection rules.

4.5 The Agreements include provisions that certain procedures and definitions set out in US Treasury Regulations (the US Treasury Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities) may be adopted in implementing the Agreements. Provisions equivalent to the US Treasury

Regulations have therefore been adopted in relation to the rule relating to currency translation and the rule relating to modification of due diligence requirements.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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

7.1 These fully reciprocal Agreements are part of a wider push for greater international cooperation to tackle tax evasion. The Agreements (supported by local law in the UK, Isle of Man, Guernsey, Jersey and Gibraltar) form part of the UK Government's efforts to combat tax evasion by UK tax residents. Through the Agreements, the UK will receive information in respect of financial accounts held by UK tax residents with financial institutions in the Isle of Man, Guernsey, Jersey or Gibraltar. As part of the reciprocal nature of the Agreements these Regulations will produce information to be exchanged by the UK with the Isle of Man, Guernsey, Jersey or Gibraltar to help them combat tax evasion by their tax residents using financial accounts in the United Kingdom.

7.2 These Regulations impose an additional burden in relation to UK financial institutions. They will now have to identify and report information on accounts held by Isle of Man, Guernsey, Jersey or Gibraltar tax residents. For UK insurance businesses, in particular, these Regulations also impose an additional burden as they bring certain pre-existing insurance products into scope for reporting for the first time. Additional burdens have, however, been minimised as far as possible while ensuring the agreements provide an effective tool to tackle tax evasion.

7.3 These Agreements were a natural next step in greater international cooperation to deliver increased tax transparency to tackle international tax evasion. They build on the groundbreaking agreement signed between the UK and the US in September 2012, closely mirroring the requirements and procedures in that agreement in order to minimise additional costs for financial institutions and tax administrations.

7.4 The UK and Isle of Man, Guernsey, Jersey and Gibraltar subsequently signed agreements as follows:

- The UK-Isle of Man Agreement to Improve International Tax Compliance, signed on 10 October 2013.
- The UK-Guernsey Agreement to Improve International Tax Compliance, signed on 22 October 2013.
- The UK-Jersey Agreement to Improve International Tax Compliance, signed on 22 October 2013.
- The UK-Gibraltar Agreement to Improve International Tax Compliance, signed on 21 November 2013.

7.5 The G8 and the G20 also recognised the potential to build on the agreements being signed with the US, culminating in the G20 asking the OECD to develop a new international standard in automatic exchange based on these agreements. This standard was published by the OECD on 13 February 2014 and was endorsed by the G20 at the meeting of Finance Ministers on 22/23 February 2014.

8. Consultation outcome

8.1 Following the publication of the draft Regulations on 12 December 2013, HMRC, in line with the Government's Tax Consultation Framework, has undertaken extensive stakeholder engagement with representative bodies and businesses to better understand the scale of impact of the regulations and how the key issues and sector specific concerns of the various impacted stakeholder groups could be implemented through an intergovernmental approach.

8.2 A formal consultation was run for 6 weeks from 12 December 2013 to 24 January 2014. This was shorter than the normal 12 as it recognised the significant amount of informal and targeted consultation completed as well as the significant overlap with the International Tax Compliance (United States Of America) Regulations 2013 (S.I. 2013/1962) to implement the agreement with the US, which were subject to extensive consultation. This was also to allow the swift making of the regulations in order to provide early certainty as to the requirements imposed on financial institutions.

8.3 No summary of responses to the consultation has been prepared as the only formal responses HMRC received concentrated on the scope of the (already signed) underlying Agreements rather than the draft regulations themselves. Suggestions and comments received from our business and legal working groups have been taken into account in finalising these Regulations.

9. Guidance

9.1 Working with business and advisers HMRC has produced draft guidance which is accessible at http://www.hmrc.gov.uk/fatca/index.htm. Given the consistency of approach and the terms of the Agreements with the US Agreement, much of

HMRC's guidance issued in respect of implementing the UK-US agreement applies to these regulations, draft guidance covering areas specific to the Crown Dependencies and Gibraltar Agreements is also available under the same link, given above.

10. Impact

10.1 A Tax Information and Impact Note covering the instrument was published on 12 December 2013 alongside a draft of the Regulations and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm . It remains an accurate summary of the impacts that apply to this instrument and has been reissued as a final document.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, HMRC are taking steps to deliver eased reporting requirements and, through negotiation with the Crown Dependencies and Gibraltar, have effectively removed the smallest financial institutions (for example Credit Unions) from reporting completely. The Agreements also apply thresholds for certain low value accounts (up to $50 000) to be exempt from reporting. Sole traders are not affected.

11.3 Affected businesses have confirmed that these exemptions will reduce the impact on small business, carving out certain products that are typical to these financial institutions (for example ISAs) and reducing the level of reporting for those at lower risk of having access to evasion.

11.4 However the size of the business is not in itself a key determinant of the risk of tax evasion. As such any financial institution can be a reporting entity if it has account holders of its products who are residents of the Crown Dependencies or Gibraltar. For example a large "business" can have many financial institutions within its structure as reporting is on an entity by entity basis and large UK banking groups will potentially have significant numbers of financial institutions which will need to report.

12. Monitoring & review

12.1 Both the Government of the United Kingdom and the Governments of Isle of Man, Guernsey, Jersey and Gibraltar respectively will consult in good faith to amend the Agreement as necessary in order to ensure that it meets the policy objectives set out above in section 7.

13. Contact

Andy Beazley at HM Revenue and Customs, Tel: 03000 586080 or email: andy.beazley@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.