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STATUTORY INSTRUMENTS

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**2015 No. 878**

**The International Tax Compliance Regulations 2015**

*Introductory*

**Citation, commencement, effect and interpretation**

1.—(1) These Regulations may be cited as the International Tax Compliance Regulations 2015 and come into force on 15th April 2015.

(2) These Regulations have effect for and in connection with the implementation of obligations arising under the agreements and arrangements listed in paragraph (3) and apply separately in relation to each of those agreements or arrangements except where the context otherwise requires.

(3) The agreements and arrangements are—

- (a) Council Directive 2011/16/EU<sup>(1)</sup> (“the DAC”),
- (b) the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of the United Kingdom of Great Britain and Northern Ireland on 29th October 2014 in relation to agreements with the participating jurisdictions listed in the table in Schedule 1 to improve international tax compliance based on the standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (“the CRS”)<sup>(2)</sup>,
- (c) the agreement reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to improve international tax compliance and to implement FATCA, signed on 12th September 2012<sup>(3)</sup> (“the FATCA agreement”).

(4) These Regulations have effect from—

- (a) 1st January 2016 in relation to the DAC and the CRS, and
- (b) 15th April 2015 in relation to the FATCA agreement.

(5) In these Regulations, a reference to “relevant agreement” means such agreement or arrangement referred to in paragraph (3) as the context requires, as that agreement or arrangement has effect from time to time.

(6) Any expression which is defined in a relevant agreement but not in section 222 or 235 of FA 2013 or in these Regulations has the same meaning in these Regulations as in the relevant agreement.

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(1) OJ No L 64, 11.3.2011, p1, relevantly amended by Council Directive 2014/107/EU, OJ No L 359, 16.12.2014, p1.  
(2) The standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (“the OECD”) is available on the OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>. The OECD Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information is available on OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/multilateral-competent-authority-agreement.pdf>.  
(3) That agreement, as signed on that date, is contained in a Command Paper published by the Stationery Office Ltd with the title “Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA” (Cm 8445, 2012); the Command Paper is available on the Official Documents website at <http://www.official-documents.gov.uk/document/cm84/8445/8445.pdf>.

**Meaning of “reportable account”**

2.—(1) In these Regulations, a “reportable account” means—

- (a) an account which is a reportable account within the meaning of the relevant agreement,
- (b) in relation to a reporting financial institution under the DAC or the CRS, an account that is a pre-existing entity account with an account balance or value that does not exceed US \$250,000 as of 31st December 2015, and
- (c) in relation to a reporting financial institution under the FATCA agreement, an account meeting the description at paragraph II.A, III.A or IV.A of Annex I of the agreement.

(2) But—

- (a) in relation to a reporting financial institution under the DAC or the CRS, an account listed as an excluded account in Schedule 2 is not a reportable account,
- (b) in relation to a reporting financial institution under the FATCA agreement, an account is not a reportable account if—
  - (i) the account holder is deceased or is a personal representative (within the meaning of section 989 of ITA 2007),
  - (ii) the account is held to comply with an order or judgment made or given in legal proceedings, or
  - (iii) the funds held in the account are held solely as security for the performance of a party’s obligation under a contract for the disposal of an estate or interest in land or of tangible moveable property, and
- (c) an account within paragraph (1)(b) or (c) is not a reportable account in relation to a reporting financial institution for a calendar year if there is an election by the institution which has effect for that year to treat all such accounts, or a clearly identified group of such accounts, as not being reportable accounts.

(3) An election under paragraph (2)(c) must be made for each calendar year for which the election is to have effect in the return required by regulation 6 for that year.

(4) The reporting financial institution must apply the account balance aggregation and currency rules in the relevant agreement for the purposes of determining whether an account maintained by the institution is within paragraph (1)(b) or (c).

(5) The account balance aggregation and currency rules are—

- (a) in Section VII.C of Annex I to the DAC,
- (b) in Section VII.C of the CRS, and
- (c) in paragraph VI.C of Annex I to the FATCA agreement.

(6) In applying the account balance aggregation and currency rules for the purposes of a relevant agreement and these Regulations, an account balance that has a negative value is treated as having a nil value.

(7) In determining the balance or value of an account denominated in a currency other than US dollars for the purposes of a relevant agreement and for the purposes of paragraph (1)(b) or (c), the institution must translate the relevant dollar threshold amounts into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

(8) For the purposes of a relevant agreement and these Regulations, an account held by an individual as a partner of a partnership is treated as an entity account and is not treated as an individual account.

### *Obligations in relation to financial accounts*

#### **Due diligence requirements**

**3.—(1)** A reporting financial institution must establish and maintain arrangements that are designed to identify reportable accounts.

(2) Such arrangements must—

- (a) identify the territory in which an account holder or a controlling person is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of that territory that is of a similar character to either of those taxes,
- (b) apply the due diligence procedures set out in the relevant agreement,
- (c) secure that the information obtained in accordance with this regulation, or a record of the steps taken to comply with this regulation, in relation to any financial account is kept for a period of six years beginning with the end of the year in which the arrangements applied to the financial accounts.

(3) The due diligence procedures are—

- (a) in relation to a reporting financial institution under the DAC, set out in Annexes I and II to the DAC,
- (b) in relation a reporting financial institution under to the CRS, set out in Sections 2 to 7 of the CRS,
- (c) in relation to a reporting financial institution under the FATCA agreement, set out in Annex I to that agreement.

(4) A reporting financial institution under the CRS must also apply the rules in Annex II of the DAC treating references to “Member State” in that Annex as references to “Participating Jurisdiction”.

(5) In applying the due diligence procedures, accounts within regulation 2(1)(b) and (c) in respect of which no election under regulation 2(2)(c) has been made are treated as new accounts or pre-existing accounts as the case may be.

#### **Modification of due diligence requirements: the DAC and the CRS**

**4.** A reporting financial institution under the DAC and the CRS may—

- (a) apply the due diligence procedures for new accounts to pre-existing accounts, and
- (b) apply the due diligence procedures for high value accounts to low value accounts.

#### **Modifications of due diligence requirements: FATCA agreement**

**5.—(1)** A reporting financial institution under the FATCA agreement may modify the due diligence requirements as follows.

(2) In the case of an account within paragraph II.B or II.C of Annex I to the FATCA agreement, the due diligence requirements do not include the requirement to carry out the electronic search described in paragraph II.B (1) of that Annex if—

- (a) the institution has established that the account holder is a specified U.S. person from documentary evidence mentioned in paragraph VI.D of Annex I of the agreement, and
- (b) it has done so in order to meet its obligations under a Qualifying Intermediary agreement as mentioned in that paragraph.

(3) In the case of an account with paragraph II.D or II.E of Annex I to the FATCA agreement, the due diligence requirements do not include the requirement to carry out the electronic searches

described in paragraph II.B (1) or II.D (1) of that Annex or the requirement to carry out the paper record search described in paragraph II.D (2) of that Annex if—

- (a) the institution has established the account holder is a specified U.S. person from documentary evidence mentioned in paragraph VI.D of that Annex, and
- (b) it has done so in order to meet its obligations under a Qualifying Intermediary agreement as mentioned in that paragraph.

(4) The reporting financial institution may rely on evidence that a person is a specified U.S. person obtained in relation to another financial account if the due diligence procedures in the relevant U.S. Treasury Regulations would allow such reliance.

(5) For the purposes of this regulation references to the documentary evidence set out in paragraph VI.D of Annex I of the FATCA agreement are to be treated as if the words “other than a Form W-8 or W-9” were omitted.

### **Reporting obligation**

6.—(1) A reporting financial institution must, in respect of the first reporting year and every following calendar year, make a return setting out the information required to be reported under the relevant agreement in relation to every reportable account that is maintained by the institution at any time during the calendar year in question.

- (2) The first reporting year is—
  - (a) the calendar year 2014 in relation to an account identified as a reportable account for the purposes of the FATCA agreement,
  - (b) the calendar year 2016 in relation to an account identified as a reportable account for the purposes of the DAC or the CRS.
- (3) The information required to be reported is—
  - (a) in relation to an account identified as a reportable account for the purposes of the DAC, set out in Section I of the Annex I to the DAC,
  - (b) in relation to an account identified as a reportable account for the purposes of the CRS, set out in Section I of the CRS,
  - (c) in relation to an account identified as a reportable account for the purposes of the FATCA agreement, set out in Article 2(2) of that agreement.
- (4) The return must be submitted electronically in accordance with regulation 7 on or before 31st May of the year following the calendar year to which the return relates.
- (5) For the purposes of the information required to be reported under the relevant agreement—
  - (a) interest includes any amount that is chargeable as interest under Part 4 of ITTOIA 2005(4),
  - (b) references to the balance or value of an account include a nil balance or value, and
  - (c) references to paying an amount include crediting an amount.

### **Electronic return system**

- 7.—(1) The return must be made electronically using an electronic return system.
- (2) The form and manner of an electronic return system is specified in specific or general directions given by the Commissioners for Her Majesty’s Revenue and Customs.
- (3) A return which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.

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(4) 2005 c. 5.

- (4) An electronic return system must incorporate an electronic validation process.
- (5) Unless the contrary is proved—
  - (a) the use of an electronic return system is presumed to have resulted in the making of the return only if this has been successfully recorded as such by the relevant electronic validation process,
  - (b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process, and
  - (c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.
- (6) A return made behalf of a reporting financial institution is taken to have been made by that institution, unless the institution proves that the return was made without the institution's authority.

**Modifications of reporting requirements: FATCA**

- 8.—(1) In relation to an account identified as a reportable account for the purposes of the FATCA agreement, the information required to be reported is modified as follows.
- (2) In the case of all reportable accounts for the calendar year 2014, the information required to be reported is provided in Article 3(3)(a)(1) of the FATCA agreement.
  - (3) In the case of custodial accounts for the calendar year 2015, the information required to be reported is provided in Article 3(3)(a)(2) of the FATCA agreement.
  - (4) In the case of pre-existing accounts—
    - (a) for calendar years before 2017—
      - (i) there is no requirement to include a U.S. federal taxpayer identifying number if the reporting financial institution does not hold that number, but
      - (ii) if the account holder is an individual whose date of birth the institution does hold, the institution must include the account holder's date of birth instead, and
    - (b) for the calendar year 2017 and subsequent years, if a reporting financial institution does not hold a U.S. federal taxpayer identifying number that it is required to report, the institution must obtain that number from the account holder.

**Additional due diligence and reporting obligations in relation to payments to a non-participating financial institution: FATCA**

- 9.—(1) In relation to a reporting financial institution under the FATCA agreement, the due diligence requirements and the information required to be reported are modified as follows in relation to payments to a non-participating financial institution.
- (2) A reporting financial institution must establish and maintain arrangements that are designed to identify payments made by the institution to a non-participating financial institution in the calendar year 2015 or 2016,
  - (3) "Payment" here does not include consideration given by the reporting financial institution for the provision of goods or services to it.
  - (4) A reporting financial institution must apply the due diligence procedures set out in paragraph IV.D (3) of Annex I of the FATCA agreement to identify whether a financial institution is a non-participating financial institution.
  - (5) In respect of any case in the calendar years 2015 and 2016 when a reporting financial institution is within the terms of sub-paragraph 1(e) of Article 4 of the FATCA agreement, the institution must make a disclosure of information in accordance with the requirements of that sub-paragraph.

(6) A reporting financial institution must in respect of each of the calendar years 2015 and 2016 prepare a return setting out the information set out in Article 4(1)(b) of the FATCA agreement.

(7) The return must be submitted electronically in accordance with regulation 7 on or before 31st May of the year following the calendar year to which the return relates.

(8) For the purposes of this regulation, “non-participating financial institution” includes anyone who is treated as a non-participating financial institution as a result of sub-paragraph 5(a) of Article 4 of the FATCA agreement.

### **Notification to individual reportable persons**

**10.**—(1) A reporting financial institution must notify each individual reportable person or individual specified U.S. person that information relating to that person which is required to be reported under regulation 6 will be reported to HMRC and may be transferred to the government of another territory in accordance with a relevant agreement.

(2) The notification must be made by 31st January in the calendar year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.

### **Non-resident reporting financial institution’s UK representative**

**11.**—(1) If a reporting financial institution is not resident in the United Kingdom, the obligations of the institution under these Regulations are to be treated as if they were also the obligations of any UK representative of the institution.

(2) “UK representative” has the same meaning as it has in—

- (a) Chapter 6 of Part 22 of CTA 2010, in relation to a reporting financial institution that is within the charge to corporation tax, and
- (b) Chapter 2C of Part 14 of ITA 2007, in relation to any other reporting financial institution.

(3) For the purposes of this regulation—

- (a) a reporting financial institution which is a partnership is resident in the United Kingdom if the control and management of the business of the partnership as a reporting financial institution takes place there, and
- (b) a reporting financial institution which is not a partnership is resident in the United Kingdom if it is resident in the United Kingdom for corporation tax or income tax purposes.

### **Use of service providers**

**12.** A reporting financial institution may use a service provider to undertake the due diligence requirements under regulations 3 to 5 and the reporting obligations under regulations 6 and 9, but in such cases those obligations continue to be the obligations of the institution.

### *Penalties for breach of obligations*

#### **Penalties for failure to comply with Regulations**

**13.** A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations.

#### **Daily default penalty**

**14.** If—

(a) a penalty under regulation 13 is assessed, and  
(b) the failure in question continues after the person has been notified of the assessment,  
the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

#### **Penalties for inaccurate information**

**15.**—(1) A person is liable to a penalty not exceeding £3,000 if—  
(a) in complying with an obligation under regulation 6 the person provides inaccurate information, and  
(b) condition A, B or C is met.  
(2) Condition A is that the inaccuracy is—  
(a) due to a failure to comply with the due diligence requirements in regulation 3 (as modified by regulations 4 or 5 where those regulations apply), or  
(b) deliberate on the part of the person.  
(3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform HMRC at that time.  
(4) Condition C is that the person—  
(a) discovers the inaccuracy some time later, and  
(b) fails to take reasonable steps to inform HMRC.

#### **FATCA agreement penalty: non-participating financial institutions**

**16.**—(1) In relation to payments that are required to be identified under regulation 9(2), a person is liable to—  
(a) a penalty of £300 for each failure to report a payment, and  
(b) a penalty of £300 for each failure to set out a payment accurately in a report made under regulation 9.  
(2) But in relation to a calendar year, a person's liability for penalties under this regulation is subject to a limit of £3000.

#### **Matters to be disregarded in relation to liability to penalties**

**17.**—(1) Liability to a penalty under regulation 13, 14 or 16 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.  
(2) For the purposes of this regulation neither of the following is a reasonable excuse—  
(a) that there is an insufficiency of funds to do something,  
(b) that a person relies upon another person to do something.  
(3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **Assessment of penalties**

**18.**—(1) If a person becomes liable to a penalty under any of regulations 13 to 16, an officer of Revenue and Customs may assess the penalty.

- (2) If an officer does so, the officer must notify the person.
- (3) An assessment of a penalty under regulation 13, 14 or 16(1)(a) must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.
- (4) An assessment of a penalty under regulation 15 or 16(1)(b) must be made—
  - (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
  - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

### **Right to appeal against penalty**

- 19.** A person may appeal against a penalty assessment—
- (a) on the grounds that liability to a penalty under any of regulations 13 to 16 does not arise, or
  - (b) as to the amount of such a penalty.

### **Procedure on appeal against penalty**

- 20.**—(1) Notice of an appeal under regulation 19 must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which notification under regulation 18 was given,
  - (c) to HMRC.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 19(a) that is notified to the tribunal, the tribunal may confirm or cancel the assessment.
- (4) On an appeal under regulation 19(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the assessment, or
  - (b) substitute another assessment that the officer of Revenue and Customs had power to make.
- (5) Subject to this regulation and regulation 22, the provisions of Part 5 of TMA 1970(5) relating to appeals have effect in relation to appeals under regulation 19 as they have effect in relation to an appeal against an assessment to income tax.

### **Increased daily default penalty**

- 21.**—(1) This paragraph applies if—
- (a) a penalty under regulation 14 is assessed under regulation 18,
  - (b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given, and
  - (c) the person has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.

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(5) 1970 c. 9. The Taxes Management Act 1970 was relevantly amended by sections 45(1) and 67(2) of the Finance (No. 2) Act 1975 (c. 45); section 68 of the Finance Act 1982 (c. 39); section 156(2) and (4) of the Finance Act 1989 (c. 26); section 199 of and paragraphs 18(1) and (2) of Schedule 19 to the Finance Act 1994 (c. 9); paragraph 28 of Schedule 19 to the Finance Act 1998 (c. 36); section 88 of and paragraph 31 of Schedule 29 to the Finance Act 2001 (c. 9); paragraph 21 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4); paragraph 257(a) and (b) of Schedule 1 to and Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3); section 119(12)(a) of the Finance Act 2008 (c. 9); paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); S.I. 1994/1813 and 2009/56.



(2) If this regulation applies, an officer of Revenue and Customs may make an application to the tribunal for an increased daily penalty to be imposed on the person.

(3) If the tribunal decides that an increased daily penalty should be imposed then for each applicable day on which the failure continues—

- (a) the person is not liable to a penalty under regulation 14 in respect of the failure, and
- (b) the person is liable instead to a penalty under this regulation of an amount determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1000 for each applicable day.

(5) If a person becomes liable to a penalty under this regulation, HMRC must notify the person.

(6) The notification must specify the day from which the increased penalty is to apply.

(7) That day and any subsequent day is an “applicable day” for the purposes of this regulation.

### **Enforcement of penalties**

**22.**—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) That date is—

- (a) the date on which the assessment under regulation 18 or notification under regulation 21(5) is given in respect of the penalty, or
- (b) if a notice of appeal under regulation 20 is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

### *Supplementary*

### **Anti-avoidance**

**23.** If—

- (a) a person enters into any arrangements, and
- (b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under these Regulations,

these Regulations are to have effect as if the arrangements had not been entered into.

### **Definitions**

**24.**—(1) In these Regulations—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,

“the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal,

“US Treasury Regulations” mean the US Regulations Relating to Information Reporting by Foreign Financial Institutions and Other Foreign Entities<sup>(6)</sup>.

(2) The following table lists the places where expressions that apply for the purposes of these Regulations are defined or otherwise explained—

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(6) The Regulations can be found on the US Department of the Treasury website at <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.

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*Status: This is the original version (as it was originally made).*

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Expression	Regulations	The DAC	The CRS	The FATCA agreement
account holder		Section VIII(E) (1) of Annex I	Section VIII(E) (1) of the CRS	Article 1(1)(ee)
annuity contract		Section VIII(C) (6) of Annex I	Section VIII(C) (6) of the CRS	
CRS	regulation 1(3)(b)			
cash value insurance contract		Section VIII(C) (7) of Annex I	Section VIII(C) (7) of the CRS	
the Commissioners	regulation 24(1)			
controlling person		Section VIII(D) (5) of Annex I	Section VIII(D) (6) of the CRS	Article 1(1)(mm)
custodial account		Section VIII(A) (3) of Annex I	Section VIII(A) (3) of the CRS	Article 1(1)(u)
the DAC	regulations 1(3) (a)			
entity		Section VIII(E) (3) of Annex I	Section VIII(E) (3) of the CRS	Article 1(1)(hh)
excluded accounts	Schedule 2	Section VIII(C) (17) of Annex I	Section VIII(C) (17) of the CRS	
the FATCA agreement	regulation 1(3)(c)			
financial account		Section VIII(C) of Annex I	Section VIII(C) of the CRS	Article 1(1)(s)
financial institution		Section VIII(A) (3) of Annex I	Section VIII(A) (3) of the CRS	Article 1(1)(g)
new account		Section VIII(C) (10) of Annex I	Section VIII(C) (10) of the CRS	
non-participating financial institution				Article 1(1)(r)
participating jurisdiction	Schedule 1	Section VIII(D) (4) of Annex I	Section VIII(D) (5) of the CRS	
pre-existing account		Section VIII(C) (9) of Annex I	Section VIII(C) (9) of the CRS	
pre-existing entity account	regulation 2(3)	Section VIII(C) (13) of Annex I	Section VIII(C) (13) of the CRS	Section IV of Annex I
reportable account	regulation 2	Section VIII(D) (1) of Annex I	Section VIII(D) (1) of the CRS	Article 1(1)(bb)

reporting financial institution		Section VIII(A) (1) of Annex I	Section VIII(A) (1) of the CRS	Article 1(1)(n)
reportable person	regulation 10(3)	Section VIII(D) (2) of the Annex	Section VIII(A) (1) of the CRS	
relevant agreement	Regulation 1(5)			
specified U.S. person				Article 1(1)(gg)
the tribunal	regulation 24(1)			
U.S. reportable account				Article 1(1)(dd) and paragraph I.B of Annex I
U.S. Treasury Regulations	regulation 24(1)			

**Revocation**

25. The International Tax Compliance (United States of America) Regulations 2014(7) are revoked.

*Alun Cairns*  
*David Evennett*  
 Two of the Lords Commissioners of Her Majesty's Treasury

24th March 2015