

EXPLANATORY MEMORANDUM TO
THE RESEARCH AND DEVELOPMENT (QUALIFYING BODIES) (TAX) ORDER
2018

2018 No. 217

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of The Research and Development (Qualifying Bodies)(Tax) Order 2018 is to provide that the bodies listed in the schedule are qualifying bodies for the purposes of Chapter 6A, Part 3 of the Corporation Tax Act 2009 and Part 13 of the Corporation Tax Act 2009 (additional relief for expenditure on research and development). As a result, where companies make payments to the bodies listed in relation to research and development the company making the payment can benefit from either tax credit or, in some cases, a tax relief. This replaces the list contained in SI 2012 No. 286.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The committee will note that the sections 1142(3) and (4) provide that any order made under section 1142 may have effect in relation to accounting periods beginning, or expenditure incurred, before the time the order is made. Article 1 (2) of this instrument provides that the order has effect for the bodies specified in column (1) of the schedule and for expenditure incurred on or after the date set out in column (4) of the schedule.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Chapter 6A of Part 3 of the Corporation Tax Act 2009 and Part 13 of the Corporation Tax Act 2009 provide, respectively, tax credit and tax relief in respect of qualifying expenditure incurred on Research and Development where the expenditure meets certain conditions. Sections 104E, 1067 (expenditure on sub-contracted R&D not undertaken in-house), 104H, 1072 (subsidised qualifying expenditure on contracted out R&D), 104K, 1078 (qualifying expenditure on contracted out R&D), 104L and 1079 (qualifying expenditure on contributions to independent R&D) provide that in order to be qualifying expenditure the expenditure must be incurred in making

payments to a qualifying body, an individual or a firm. Qualifying bodies are defined by section 1142. Under section 1142(1) (e) the Treasury may, by order, prescribe qualifying bodies for the purposes of Part 13 of the Act. Section 1142 is applied to Chapter 6A of Part 3 of Corporation Tax Act 2009 by section 104Y (1) of the Corporation Tax Act 2009.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is 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

What is being done and why

- 7.1 Under the Research and Development Expenditure Credit Scheme and the Large Company Scheme, payments for sub-contracted R&D do not generally qualify for enhanced relief. However, sub-contract payments by large companies to a “qualifying body” do.
- 7.2 The main types of qualifying body are educational establishments, NHS bodies, charities and scientific research associations. There is also a power to designate qualifying bodies. This was largely intended to cover those based abroad, which the UK definition does not include. The bodies listed in the schedule are overseas bodies which are sufficiently similar to the UK equivalent for prescription to be appropriate.

8. Consultation outcome

- 8.1 No consultation on this instrument has been undertaken.

9. Guidance

- 9.1 HMRC will revise guidance to show the updated list of designated bodies.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to make information on bodies which have been prescribed readily available in page 82250 of the Corporate Research and Development Manual, which can be found on the HMRC website.

11.3 The basis for the final decision on what action to take to assist small businesses is that small businesses need to know which bodies are prescribed in order to include them in their claims for Research and Development Credits.

12. Monitoring & review

12.1 The numbers and types of organisations designated will be monitored by HMRC.

13. Contact

13.1 Philip Hamblin at Her Majesty's Revenue and Customs, telephone: 03000588855 or email: randd.policy@hmrc.gsi.gov.uk can answer any queries regarding the instrument.