EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2009, SECTIONS 101 AND 102 (DISCLOSURE OF TAX AVOIDANCE SCHEMES: PENALTIES) (APPOINTED DAY AND CONSEQUENTIAL PROVISIONS) ORDER 2019

2019 No. 918

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue & Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument commences sections 101 and 102 of the Finance Act 2009, so that interest is charged by HM Revenue & Customs on late payment of certain penalties, or paid by that department for late refunds of such charges. The penalties are those for failing to comply with certain obligations under the Disclosure of Tax Avoidance Schemes (DOTAS) regime.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Financial Secretary to the Treasury the Right Honourable Mel Stride MP has made the following statement regarding Human Rights:

"In my view the provisions of the Finance Act 2009, Sections 101 and 102 (Disclosure of Tax Avoidance Schemes: Penalties) (Appointed Day and Consequential Provisions) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Order commences the interest provisions contained in Finance Act 2009 in respect of certain penalties chargeable on those who market or promote tax avoidance. The DOTAS regime imposes obligations on promoters of tax avoidance schemes to disclose certain information to HM Revenue & Customs, and penalties can be charged

on those who fail to discharge their obligations. The DOTAS rules are found in Finance Act 2004 and are replicated for National Insurance Contributions (NIC) in the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012.

6.2 The instrument is made through the negative procedure because it makes minor amendments to primary legislation to remove interest on DOTAS penalties from the previous interest regime, which never came into force for these penalties.

7. Policy background

What is being done and why?

7.1 The Finance Act 2009 introduced a new, harmonised regime of interest on amounts due to and payable by HM Revenue & Customs. This was to ensure interest is charged and paid on the same basis across the taxes administered by HM Revenue & Customs. These provisions were intended to be commenced individually for particular taxes, and tax collection and penalty regimes, when opportunities arose to make suitable changes to HM Revenue & Customs processes. HM Revenue & Customs is preparing to update parts of its penalty processes and systems, giving the opportunity to begin charging interest when penalties are not paid on time. This instrument commences these interest provisions in respect of penalties under DOTAS, chargeable on those who promote avoidance of tax or NIC. It ensures an appropriate level of interest is applied to DOTAS penalties not paid on time.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 None, this instrument does not amend another one.

10. Consultation outcome

10.1 The regime of harmonised interest is already commenced for some other taxes and tax collection regimes and this instrument extends that to a specific group of penalties. A public consultation was held in 2008, prior to legislation introducing the harmonised regime. No consultation was necessary for this instrument.

11. Guidance

11.1 There is no guidance specific to this instrument, and there is existing guidance of longstanding on charging interest.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it gives effect to a previously-announced policy and is an Appointed Day Order.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is the number of businesses affected will be very low and that the instrument will only affect those who do not comply with their obligations.

14. Monitoring & review

14.1 This measure will be monitored by monitoring of interest charged on unpaid or late-paid penalties and through communication with practitioners affected by the measure.

14.2 The regulation does not include a statutory review clause, because it does not make regulatory provision in relation to a qualifying activity.

15. Contact

15.1 Peter Woodham at HM Revenue & Customs, Telephone: 03000 586533 or email: peter.woodham@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nick Jones, Deputy Director for Counter-Avoidance Policy, at HM Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Right Honourable Mel Stride MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.