

EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2009, SECTIONS 101 AND 102 (DISGUISED REMUNERATION REPAYMENT SCHEME) (APPOINTED DAY AND CONSEQUENTIAL AMENDMENT) ORDER 2020

2020 No. 979

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) 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 This instrument enables HMRC to pay repayment interest on payments made under the Disguised Remuneration Repayment Scheme 2020 (the Scheme). The Scheme was published pursuant to section 20 of the Finance Act 2020. This gives effect to a recommendation from the Independent Loan Charge Review that certain voluntary amounts paid to HMRC to settle liabilities arising from the use of Disguised Remuneration schemes should be refunded. The instrument brings these repayments within the harmonised interest regime contained in sections 101 and 102 of the Finance Act 2009.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 Section 20 of the Finance Act requires HMRC to make repayments of certain voluntary payments paid to HMRC to settle liabilities where Disguised Remuneration schemes have been used. Applications submitted under the Scheme are determined by HMRC and then repayments are to be made to taxpayers. In some circumstances, statutory interest would not apply to elements within these repayments.
- 3.2 Section 102 of the Finance Act 2009 enables HMRC to apply repayment interest to the global amount to be repaid to a taxpayer upon determination of their application to the Scheme. Section 101 Finance Act 2009 enables HMRC to charge late payment interest on any payment refunded in error and subsequently recovered.

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)

- 3.3 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 Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Finance Act 2009, Sections 101 and 102 (Disguised Remuneration Repayment Scheme) (Appointed Day and Consequential Amendment) Order 2020, are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 101 and 102 of the Finance Act 2009 were brought into force to provide a harmonised interest regime for HMRC. Section 104(4) of the Finance Act 2009 provides that these sections can be commenced by Appointed Day Order for specified purposes and this instrument is within a series of other such commencement orders made since 2009.
- 6.2 Section 824 of the Income and Corporation Taxes Act 1988 applies repayment interest (termed supplement) to repayments of income tax collected through Pay As You Earn. The instrument includes a consequential amendment of this section so that it does not apply to repayments made under the Scheme. This is to ensure that repayments under the Scheme only attract repayment interest once.

7. Policy background

What is being done and why?

- 7.1 Sir Amyas Morse’s review of the Loan Charge – legislation which tackles the avoidance of tax on income by the use of loans or quasi-loans paid through a Disguised Remuneration avoidance scheme – was published on 20 December 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf. Recommendation 6 of the Review, which was accepted by the government, was that: “HMRC should refund the Voluntary Restitution elements of settlements made since 2016 that were paid to settle unprotected years”.
- 7.2 The government brought forward legislation in Finance Act 2020 to enable HMRC to give effect to the Review’s recommendations. Section 20 Finance Act 2020 requires HMRC to implement a scheme to make such refunds and section 21 provides the statutory basis for the operation of the Scheme. The Scheme was published on 22 July 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903049/The_Disguised_Remuneration_Repayment_Scheme_2020.pdf.
- 7.3 In common with all repayments made by HMRC, the government has decided that such refunds should also include repayment interest. This instrument is required to enable repayment interest to be applied equally to all repayments made under the Scheme.

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

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

9. Consolidation

9.1 There is no consolidation.

10. Consultation outcome

10.1 The government-appointed review of the Loan Charge, headed by Sir Amyas Morse, consulted various stakeholders before reaching its conclusions and recommendations set out in the report published on 20 December 2019:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf.

11. Guidance

11.1 The Scheme and accompanying guidance explaining eligibility and how to claim a refund, was published by HMRC on 22 July 2020:

<https://www.gov.uk/guidance/apply-for-a-refund-or-waiver-from-the-disguised-remuneration-repayment-scheme-2020>.

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 previously announced policy.

12.4 This instrument is in consequence of, and supports, the legislation in sections 20 and 21 of the Finance Act 2020 to refund certain payments of voluntary restitution paid to settle use of Disguised Remuneration avoidance schemes. It gives effect to the existing policy that sums paid by HMRC should include repayment interest and that late-paid sums owed to HMRC should be charged late payment interest.

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 regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that action is unnecessary as the principal purpose of the instrument is to ensure that small businesses due a payment under the Scheme receive repayment interest.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be monitored as part of monitoring of the application of the Disguised Remuneration Repayment Scheme 2020.

14.2 One of the Loan Charge Review's recommendations accepted by the government was that HMRC should report to Parliament before the end of 2020 on its implementation of the Loan Charge. HMRC's review of the application of the Disguised Remuneration Repayment Scheme 2020 will feed into the report to Parliament.

14.3 The instrument does not include a review provision because it amends a provision in connection with tax and is exempt under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Robin Wythes at HMRC email:robin.wythes@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Helen Page, Deputy Director for Tax Administration Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.