EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF (CYPRUS) ORDER 2019

2019 NO. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order brings into effect arrangements set out in a Protocol ("the 2018 Protocol") made by the Governments of the United Kingdom and the Republic of Cyprus. The 2018 Protocol amends the existing arrangements between the two Governments for the Elimination of Double Taxation with respect to Taxes on Income and on Capital Gains and the Prevention of Tax Evasion and Avoidance ("the 2018 Double Taxation Agreement (DTA)"). The 2018 DTA is set out in the Schedule to the Double Taxation Relief and International Tax Enforcement (Cyprus) Order 2018.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 In accordance with section 505 of the Taxation (International and Other Provisions) Act 2010 this instrument covers the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

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, Mel Stride, has made the following statement regarding Human Rights:

"In my view the provisions of the Double Taxation Relief (Cyprus) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Order is being made to give effect in United Kingdom (UK) legislation to the 2018 Protocol, which has been signed by the two Governments. The arrangements in the 2018 Protocol are specified in the Schedule to the Order, and are given domestic legislative effect. The Order does not implement European Union legislation.

7. Policy background

What is being done and why?

7.1 The 2018 DTA replaced the arrangements set out in the 1974 DTA between the two Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains. DTAs aim to prevent income or gains being taxed both in the territory in which they arise and the territory in which the recipient is resident. They do this by allocating the taxing rights that each treaty partner has under its domestic law over the same income and gains and/or by providing relief from double taxation.

7.2 Under the 1974 DTA, all pensions, including government service pensions, were taxable only in the state of which the recipient of the pension was a resident. As a result, under the 1974 DTA a Cypriot resident in receipt of a government pension from the UK was taxable on that pension only in Cyprus. Under Cypriot law, a resident of Cyprus in receipt of a pension for services rendered outside of Cyprus can opt for their pension income to be taxed at a rate of 5 per cent.

7.3 The 2018 DTA changed the basis of taxation of government service pensions so that they would generally be taxable only in the state paying the pension. This approach follows the Organisation for Economic Cooperation and Development Model Tax Convention and is considered an internationally accepted practice. As a result of the change, a Cypriot resident in receipt of a government pension from the UK will generally be taxable on that pension only in the UK and at their marginal rate of UK income tax.

7.4 The 2018 Protocol amends the Entry into Force provisions of the 2018 DTA so that a person in receipt of a government service pension can elect to continue to be taxed in accordance with the provisions of the 1974 DTA for a period of up to 5 years.

7.5 This amendment is intended to give persons affected by the change in the taxation of government service pensions under the 2018 DTA sufficient time to plan for the revised tax treatment of their income.

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 An informal consolidated version of the 2018 DTA will be published on the HMRC pages of the gov.uk website on entry into force of the 2018 Protocol.

10. Consultation outcome

10.1 The arrangements in the 2018 Protocol were made in response to representations received in respect of the 2018 DTA from Members of Parliament, individuals resident in Cyprus and groups representing the interests of pensioners in Cyprus. These representations expressed concern about the increase in the rate of tax payable by persons resident in Cyprus in receipt of a UK government pension, the effect that this increase would have on their disposable income, and the short period of time between the announcement of the change in their tax treatment and those changes taking effect.

11. Guidance

11.1 Guidance on the effect and operation of the 2018 Protocol can be found on the HMRC pages of the gov.uk website at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764782/Government_service_pensions_under_the_UK_and_Cyprus_Double_Taxation_Convention.pdf

12. Impact

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

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

12.3 An Impact Assessment has not been prepared for this instrument because it gives effect to a DTA. DTAs do not introduce new tax burdens; rather, they provide relief from tax. Taxpayers may have to make a claim to HMRC or the other territory's fiscal authority in order to benefit from the Arrangements.

13. Regulating small business

13.1 This Order does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to the monitoring of this legislation is that both governments will keep the Arrangements scheduled to the Order under consideration to ensure that they continue to meet the policy objectives set out above in Section 7.

14.2 The Order does not include a statutory review clause. In accordance with section 28(3)(a) Small Business, Enterprise and Employment Act 2015 there is no requirement to make provision for review of any secondary legislation that makes or amends provision imposing, abolishing or varying any tax, duty, levy or other charge.

15. Contact

15.1 Tom Matthews at HM Revenue and Customs, Telephone: 03000 585 476 or tom.o.matthews@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Hay, Deputy Director for Business, Assets and International, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Mel Stride MP, Financial Secretary to the Treasury and Paymaster General can confirm that this Explanatory Memorandum meets the required standard.