EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2021, SCHEDULE 33 (LICENSING AUTHORITIES: TAX INFORMATION) REGULATIONS 2022

2022 No. 224

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 Licensing authorities in England and Wales dealing with a licence application to drive a taxi, drive a private hire vehicle, operate a private hire business or be a scrap metal dealer, received on or after 4 April 2022, must fulfil new requirements relating to tax conditionality.

2.2 An applicant who wishes to renew a licence will need to carry out a check on tax registration (a tax check). A licensing authority will need to obtain confirmation from HMRC that the check has been completed before considering the application.

2.3 The purpose of this instrument is to confirm how applicants and licensing authorities must take certain actions in order to complete tax checks and comply with the new requirements. It also confirms when these actions have been taken.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 125 of the Finance Act 2021 introduces tax conditionality for applications for licences to drive taxis and private hire vehicles, to operate a private hire vehicle business or deal in scrap metal in England and Wales from 4 April 2022.

6.2 The legislation requires certain steps to be taken before licensing authorities can consider such applications. Licensing authorities will have to signpost first-time applicants to HMRC guidance about their potential tax obligations. An applicant who is not a first-time applicant will have to carry out a tax check. The licensing authority will have to obtain confirmation from HMRC that the applicant has completed the check before considering their application.

6.3 Schedule 33 to the Finance Act 2021 provides for the actions licensing authorities must take before considering an application.

6.4 This instrument is made under the powers conferred on the Commissioners for HMRC by Section 8 (1) to (3) of Schedule 33 to the Finance Act 2021.

6.5 The regulations set out administrative details of how and when information is to be given and obtained for the purposes of Schedule 33 to the Finance Act 2021. This includes details on how HMRC must tell an applicant it is satisfied with information given during the tax check process. It also determines the time at which certain actions will be taken to have occurred (for example, the time when HMRC tells a licensing authority that an applicant has completed a tax check).

7. Policy background

What is being done and why?

7.1 Tax conditionality was introduced by section 125 of, and Schedule 33 to, the Finance Act 2021. That legislation envisaged that provision for certain administrative matters would be made by regulations. The present instrument makes such provision and is the first instrument to do so.

7.2 The hidden economy is made up of individuals and businesses with taxable sources of income that are entirely hidden from HMRC. This deprives the government of funding for vital public services. The hidden economy tax gap (the difference between the amount of tax that should, in theory, be paid, and what is actually paid) is estimated to be £3 billion for 2019 to 2020. Reducing the hidden economy is a crucial part of HMRC's role in securing funds to pay for public services and creating a level playing field for compliant businesses.

7.3 Tax conditionality aims to address part of the hidden economy by helping applicants for certain public sector licences better understand their tax obligations and making access to the licences they need to trade conditional on completing a tax check.

7.4 This instrument contains administrative detail on how the tax check operates, ensures the process operates consistently for all users and provides certainty on when actions have been undertaken and completed during the tax check process.

7.5 The Finance Act 2021 defines the requirements of a tax check. An applicant will carry out a tax check by providing information to enable HMRC to satisfy itself that the applicant has complied with an obligation to notify their chargeability to income tax or Corporation Tax, where such an obligation applied. The check will include a question about whether income from the licensed activity has been declared to HMRC, where the applicant was chargeable to tax.

7.6 Since 2016, HMRC has conducted two public consultations on using tax conditionality to address the hidden economy and has undertaken technical consultation on draft legislation for tax conditionality; the legislation is now enacted in the Finance Act 2021. These proposals have been informed by feedback and discussion with a range of stakeholders, including licensing authorities and their representatives and representatives of the taxi, private hire vehicle and scrap metal sectors.

7.7 Following the publication of draft legislation for England and Wales, the House of Lords Economic Affairs Finance Bill Sub-Committee selected it as a part of its inquiry into the Draft Finance Bill 2021.

7.8 Four recommendations were made, including that HMRC should clarify the information that can be requested through the new tax checks. The government accepted this recommendation, and amended the draft legislation accordingly, and partially accepted another of the Committee's recommendations.

7.9 At Spring Budget 2021, the government announced that it would extend this policy approach to equivalent licensing regimes in Scotland and Northern Ireland by April 2023. This was followed by a further consultation which was published in March 2021; legislation to extend the policy in Scotland and Northern Ireland will be included in the next Finance Bill.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 This instrument is the first to make administrative provision for the purposes of tax conditionality and, accordingly, there is no current need for consolidation.

10. Consultation outcome

10.1 A technical consultation of the draft instrument was undertaken from 22 October 2021 to 18 November 2021. A total of four responses were received. Respondents welcomed the certainty provided over when and how certain information is given and obtained during the tax check process and highlighted the need for supporting guidance relating to the wider provisions in the Finance Act 2021. Some respondents made further recommendations relating to the wider implementation of the provisions within the Finance Act 2021. These have been considered by HMRC as part of work to implement the measure.

11. Guidance

11.1 HMRC has published guidance to help applicants and licensing authorities to understand what they need to do to comply with the requirements introduced in Schedule 33 to the Finance Act 2021.

The guidance is available on GOV.UK at the following link addresses.

Applicants:

First time applicants: https://www.gov.uk/guidance/confirm-your-tax-responsibilities-when-applying-for-a-taxi-private-hire-or-scrap-metal-licence

Completing a tax check: https://www.gov.uk/guidance/complete-a-tax-check-for-a-taxi-private-hire-or-scrap-metal-licence

Licensing authorities:

First time applicants: https://www.gov.uk/guidance/confirm-an-applicants-tax-responsibilities-for-taxi-private-hire-or-scrap-metal-licence-applications

Confirming a tax check: https://www.gov.uk/guidance/confirm-a-tax-check-for-taxi-private-hire-or-scrap-metal-licence-applications

For those unable to use or access the online digital system or need extra support, HMRC can be contacted on 0300 200 3300.

12. Impact

12.1 The impact on business, charities or voluntary bodies of the broader requirements in Schedule 33 to the Finance Act 2021 will be a significant impact cumulatively on about 400,000 businesses who are expected to hold licences in the relevant sectors by 2022 to 2023. Each time they apply to renew their licences, businesses will need to use the new digital service, or the alternative route provided for digitally excluded customers to demonstrate whether they have notified their chargeability to tax.

12.2 The impact on the public sector of the broader requirements in Schedule 33 to the Finance Act 2021 relate to the costs to licensing authorities in England and Wales associated with updating licensing forms and systems.

12.3 A Tax Information and Impact Note covering this instrument was published on 3 March 2021 alongside the Budget confirmation that the government would legislate for conditionality in Finance Bill 2021 and is available on the website at https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewal-applications-in-england-and-wales/new-checks-on-license-renewals-for-taxis-and-private-hire-vehicles. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), HMRC is providing a simple digital system to enable users to complete the tax check quickly. For those unable to use the digital system or who need extra support, a telephone service is available.

13.3 The basis for the final decision on what action to take to assist small businesses is an assessment that tax conditionality is a proportionate way of addressing the hidden economy tax gap and encouraging compliance.

14. Monitoring & review

14.1 HMRC will monitor the wider tax conditionality policy through communication with affected licensing and trade sector groups and through information collected from tax returns and tax checks undertaken.

14.2 The regulations do not include a statutory review clause because they are made in connection with tax and fall within the exemption in section 28(3)(a)(ii) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Jyoti Mistry at HMRC, compliancepolicyisbc@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Richard Williamson, Deputy Director for Policy and Strategy at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.