EXPLANATORY MEMORANDUM TO

THE GOVERNMENT ALTERNATIVE FINANCE ARRANGEMENTS REGULATIONS 2014

2014 No. 1327

1. This explanatory memorandum has been prepared by the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

These Regulations will enable the Treasury to raise money through arrangements which do not involve the payment of interest, but which equate in substance to transactions which do involve the payment of interest.

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 The Treasury has power to raise money under section 12 of the National Loans Act 1968-

- for the purpose of promoting sound monetary conditions in the UK,
- for providing the sums required to meet any excess of payments out of the National Loans Fund over receipts into that Fund, and
- for providing any necessary working balance in that Fund.

4.2 The Treasury uses this power to borrow money by (for example) issuing gilts.

4.3 In addition, section 157 of, and Schedule 46 to, the Finance Act 2008 ("the 2008 Act") enables the Treasury to make provision by regulations for raising money through alternative finance arrangements. For these purposes, section 157(8) of the 2008 Act defines "alternative finance arrangements" as arrangements which in the Treasury's opinion-

- equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest (including the issuance of government securities), but

- achieve a similar effect to such a transaction without including provision for the payment of interest.

4.4 These Regulations are made under the powers in section 157 of, and Schedule 46 to, the 2008 Act. They enable the Treasury to raise money through alternative finance arrangements which comply with the conditions specified in regulation 3 of the Regulations.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 To date two main forms of legislative provision have been made in relation to alternative finance arrangements. Firstly, the provision in the 2008 Act which (as mentioned above) has been used to make the Regulations. Secondly, provision has also been made in tax legislation (most notably in Schedule 61 to the Finance Act 2009 ("the 2009 Act")) so that alternative finance arrangements are treated in a similar way to other financial instruments which involve the payment of interest.

7.2 The Prime Minister announced in October 2013 that the Government plans to raise money through alternative finance arrangements in the financial year 2014-15, specifically to issue a sovereign Sukuk (an Islamic government bond). The Regulations will provide the necessary powers to achieve this and the Treasury continues to work on the practicalities of any issuance.

7.3 The Regulations provide as follows:

- Regulation 3 specifies the types of alternative finance arrangements which are available to the Treasury for raising money, referred to in the Regulations as 'available arrangements'. To ensure close alignment with relevant tax provisions the drafting is similar to that used in paragraph 5 of Schedule 61 to the 2009 Act.

- Regulation 4 specifies the purposes for which money may be raised through available arrangements. These purposes are consistent with those in the National Loans Act 1968 ("the 1968 Act") for gilts.

- Regulation 5 sets out matters which the Treasury must and may have regard to in deciding whether to raise money through available arrangements. In particular, this enables the Treasury to have regard to the likely effect on the general availability of alternative finance arrangements in the UK (the development of the Islamic finance industry).

- Regulation 6 enables the Treasury and the Secretary of State to enter into available arrangements, and arrangements which facilitate those arrangements. This provides the Government with the necessary powers to raise money by means of alternative finance arrangements.

- Regulation 7 enables the Treasury to give financial assistance to any company involved in the alternative finance arrangements. This power has been taken primarily as a precaution to avoid any risk of default on operational grounds. Given the importance to the United Kingdom of avoiding any such default, a standing service to the Consolidated Fund is established for these purposes.

- Regulation 8 provides for certain sums to be paid into and out of the National Loans Fund. This provision is similar to that which is made in section 12(1) and (4) of the 1968 Act in relation to gilts. Items to be paid from the National Loans Fund include sums paid by the Treasury or the Secretary of State, and expenses incurred, in connection with available arrangements. Examples of such items would include payments to certificate holders and any indemnities which the Treasury may need to give in connection with available arrangements.

- Regulation 9 modifies Schedule 5A to the 1968 Act so that alternative finance arrangements are treated in the same way as gilts for the purposes of the Debt Management Account.

- Consolidation

7.4 As these are the first regulations to be made under section 157 of, and Schedule 46 to, the 2008 Act, consolidation is not a relevant issue.

8. Consultation outcome

The Government has not consulted on these Regulations.

9. Guidance

No additional guidance is being provided.

10. Impact

10.1 The impact on business, charities or voluntary bodies should be minimal. Any impact should be positive to the extent that the Government entering into alternative finance arrangements facilitates the provision of those arrangements more widely.

10.2 The impact on the public sector should also to be minimal. The alternative finance arrangements will raise funds for the Exchequer at a cost broadly equivalent to the yield on gilts.

10.3 An Impact Assessment has not been prepared for these Regulations.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Treasury continues to work on practicalities of raising money through alternative finance arrangements. The Government will review these Regulations in the light of any issuance based on the powers in the Regulations.

13. Contact

Richard Curtis at HM Treasury Tel: 020 7270 5471 or email: richard.curtis@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.