EXPLANATORY MEMORANDUM TO

THE INCOME AND CORPORATION TAXES (ELECTRONIC COMMUNICATIONS) (AMENDMENT) REGULATIONS 2025

2025 No. 172

1. Introduction

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

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Sally Mundy, Deputy Director for Tax Administration Policy at HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Laura Maddison at HMRC, Telephone: 03000581023 or email: Laura.Maddison@hmrc.gov.uk and Holly Mennell at HMRC, Telephone 03000 541396 or email: Holly.Mennell@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Income and Corporation Taxes (Electronic Communications) Regulations 2003, SI 2003/282 ("the 2003 Regulations") in two respects.

4.2 Firstly, it amends the 2003 Regulations so that an insignificant technical error, in an electronic delivery to HMRC of information to which the 2003 Regulations apply, does not completely invalidate the delivery. The instrument ensures that the significance of any failure to adhere to the technical conditions is taken into account in assessing the validity of an electronic delivery.

4.3 Secondly, it amends the 2003 Regulations so that they apply to certain communications for the purposes of Penalty Reform legislation (contained within the Finance Act 2021). This is to ensure that consent-based electronic communications can continue to be issued to Income Tax Self Assessment (ITSA) taxpayers in connection with penalties once Penalty Reform is commenced.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The 2003 Regulations prior to this amendment presented a risk: when a taxpayer attempted to use electronic communications to deliver to HMRC information to which those Regulations applied, a single technical error or missed step in a multistep submission process could technically invalidate the delivery. This was due to the prescriptive wording within the 2003 Regulations whereby information was validly delivered *if but* ***only*** *if* all relevant conditions were satisfied. These conditions include a number of technical conditions imposed by directions made under the 2003 Regulations.

5.2 The position under the 2003 Regulations is different for company tax returns where the 2003 Regulations have regard to the cumulative significance of any technical failures rather than potentially invalidating a delivery due to a single technical failure.

5.3 This instrument amends the 2003 Regulations, aligning the provision for the satisfaction of the conditions applying to the delivery of income tax returns and other information mentioned in regulation 2(1) of the 2003 Regulations with the existing provision applying to the delivery of company tax returns. This reduces the risk that deliveries of information could be technically invalid on the basis of minor errors. The process that taxpayers and their agents currently follow to deliver returns to HMRC is unchanged.

5.4 This instrument also, separately, amends the 2003 Regulations to bring within their scope communications under specific paragraphs of the Finance Act 2021 (notices relating to certain Penalty Reform penalties), so that these notices can be issued electronically to taxpayers who consent to this method of communication. This is to ensure that consent-based electronic communications can continue to be issued for ITSA taxpayers once Penalty Reform is commenced (as is currently possible under the existing penalty legislation).

What was the previous policy, how is this different?

5.5 The provision which this instrument makes for the conditions applying to electronic deliveries of information is a technical change rather than a policy change, designed to ensure that the 2003 Regulations do not have unintended consequences. The amended legislation applies a more flexible approach, having regard to the cumulative significance of failures to comply. It aligns the provision for the satisfaction of the conditions applying to the delivery of income tax returns and other information mentioned in regulation 2(1) of the 2003 Regulations with the existing provision applying to the delivery of company tax returns. The effect is that a minor error during the process of delivering information electronically to HMRC does not automatically invalidate the delivery. Instead, the instrument ensures that the significance of any failure to adhere to the technical conditions is taken into account in assessing the validity of an electronic delivery.

5.6 The provision which this instrument makes to bring relevant provisions of the Finance Act 2021 within the scope of the 2003 Regulations does not introduce a policy change but instead maintains the status quo. That is, it continues the current policy position of enabling HMRC to use electronic communications to deliver penalty-related information to ITSA taxpayers who consent to this method of communication.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the 2003 Regulations, replacing old regulations 3(8) and (9) with new regulations 3(7A) to (7C).

6.2 These new provisions apply where a person uses electronic communications to deliver information to HMRC. They prescribe when the relevant conditions (i.e. the conditions which the person must satisfy in order to use electronic communications to make the delivery) are taken to be satisfied. They apply to, and make the same provision in respect of, deliveries of information falling within regulation 2(1) of the 2003 Regulations and deliveries of company tax returns and related information. Prior to this amendment, these two categories of information were treated differently.

6.3 New regulation 3(7B) provides that the relevant conditions will be treated as satisfied where HMRC is satisfied that the person's failure to satisfy them is either insignificant or the result of a reasonable attempt to make a timely delivery.

6.4 New regulation 3(7C) defines "extra time", a concept used in regulation 3(7B)(b), covering various ways in which a person making a delivery might be given, or treated as having, extra time in which to do so. This instrument does not itself give HMRC any additional power to extend time in relation to any matter.

6.5 This instrument makes consequential amendments to regulations 1 and 5 of the 2003 Regulations to reflect the replacement of old regulations 3(8) and (9) by new regulations 3(7A) to (7C).

6.6 This instrument also makes a separate amendment to the 2003 Regulations in connection with the Penalty Reform legislation in the Finance Act 2021. It amends regulation 2(1) (which defines the scope of the 2003 Regulations) so that this now includes any information delivered pursuant to paragraphs 6, 8 and 16 of Schedule 24, paragraphs 12 and 13 of Schedule 25, and paragraphs 7, 9, 16 and 17 of Schedule 26, to the Finance Act 2021 (except in relation to value added tax). This is to ensure that consent-based electronic communications can continue to be issued to ITSA taxpayers in connection with penalties under the Penalty Reform legislation.

Why was this approach taken to change the law?

6.7 This approach aligns the provision regarding satisfaction of the conditions for electronic delivery of income tax returns and other information mentioned in regulation 2(1) of the 2003 Regulations which apply to both company tax returns and other information within the scope of the 2003 Regulations. This produces a sensible and unified legal position going forward and also enables some simplification of the 2003 Regulations. It was convenient to bring the Penalty Reform provisions within the scope of the 2003 Regulations at the same time so as to avoid a further separate amending instrument.

7. Consultation

Summary of consultation outcome and methodology

7.1 Informal consultation on the technical drafting was undertaken. The need to bring Penalty Reform provisions within scope of the 2003 Regulations was understood and accepted. Stakeholders sought assurance that the changes would not amount to information provided by a third party being considered "valid" when it was not approved by the taxpayer. HMRC provided this assurance, confirming that lack of

approval would be a significant failure to satisfy the 2003 Regulations, and that it would remain open to a taxpayer to show the return was submitted without their knowledge or connivance. A formal public consultation was not carried out as this is a technical amendment to align the provision governing electronic delivery of information generally to which the 2003 Regulations apply with that currently applying to company tax returns.

7.2 No consultation was carried out regarding bringing the specified provisions of the Finance Act 2021 within the scope of the 2003 Regulations as this is simply an amendment to continue the current policy regarding electronic communications relating to penalties for ITSA once Penalty Reform is introduced.

8. Applicable Guidance

8.1 Not applicable.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note[1] covering this instrument will be published on the gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies because the processes taxpayers and agents follow are unchanged. Impacts to businesses will be negligible but will involve familiarisation with the position following the amendment to the 2003 Regulations.

9.3 The legislation does not impose new requirements on any person, including small or micro businesses, but it will have the impact on such businesses of requiring them, or their agents, to familiarise themselves with the position following the amendment.

9.4 These businesses cannot be excluded from the change as it targets the online ITSA tax return delivery process. These changes are required in order to ensure that the 2003 Regulations operate properly, and this is to the benefit of all affected persons including small or micro businesses.

9.5 The impact on the public sector is negligible. This measure is required to support the Exchequer's commitment to protect revenue.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 No specific monitoring arrangements are required. The policy objectives will be kept under regular review by HMRC.

10.2 The instrument does not include a statutory review clause because it is exempt under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 (provisions relating to tax).

[1] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").