EXPLANATORY MEMORANDUM TO

THE INHERITANCE TAX (DELIVERY OF ACCOUNTS) (EXCEPTED ESTATES) (AMENDMENT) (No. 2) REGULATIONS 2011

2011 No. 2226

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.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this statutory instrument is to amend the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (S.I. 2004/2543) ("the Excepted Estates Regulations"), as amended by S.I. 2005/3230, 2006/2141 and 2011/214.

2.2 The Excepted Estates Regulations set out the circumstances in which a person or persons are not required to deliver an inheritance tax account to HMRC of the property comprised in the estate of a deceased person. They also set out the information required to be produced to the relevant court or office in those circumstances where an account is not required to be delivered.

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

3.1 This instrument corrects the error explained in HMRC's Second Memorandum of 24th March 2011 to the Inheritance Tax (Delivery of Accounts) (Excepted Estates) (Amendment) Regulations 2011 (S.I. 2011/214).

3.2 Although this instrument deals with matters other than correcting the error referred to in paragraphs 3.1 and 7.8, it is considered that the primary purpose of this instrument is to correct the error. Accordingly, a copy of the instrument will be issued free of charge to all known recipients of S.I. 2011/214.

4. Legislative Context

4.1 This instrument amends the Excepted Estates Regulations, in exercise of the powers afforded to the Commissioners for HMRC under the Inheritance Tax Act 1984.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Representatives administering the estate of a deceased person (the "personal representatives") need, in all but the smallest cases, a grant of representation (i.e. probate/letters of administration from the Probate Registry in England and Wales, the Probate and Matrimonial Office in Northern Ireland or confirmation from the Sheriff Clerk in Scotland), which is only issued by the relevant court or office once it is satisfied either that any inheritance tax ("IHT") due in respect of the particular estate has been paid or that none is due.

7.2 For some personal representatives this will involve delivering to HMRC an account of the property comprised in the estate and obtaining a tax certificate. This allows HMRC to examine, and collect any IHT due on, the estate before the assets are distributed to beneficiaries. About 60,000 accounts are submitted each year.

7.3 However, the vast majority of personal representatives are excused from the need to deliver an account to HMRC and obtain a certificate as they fall within circumstances prescribed in the Excepted Estates Regulations where no tax is expected to be due. Instead they submit to the relevant court or office, as evidence that no tax is due, a much shorter and simpler 'excepted estate' return of prescribed information. Once the grant of representation has been issued the returns are then passed to HMRC to allow HMRC to carry out its compliance work. About 220,000 excepted estate returns are submitted each year.

7.4 IHT is a tax on transfers of value. In general, IHT is payable on death; although it is also payable in respect of certain lifetime transfers. IHT is charged at 40 per cent of the value transferred by a deceased person above a nil-rate band, currently £325,000.

7.5 Since 2007, where a deceased person's nil-rate band is not fully used, the unused proportion can be transferred to a surviving spouse or civil partner and used against the survivor's estate when they die. This has reduced the number of estates that are due to pay IHT each year.

7.6 Amendments made by S.I. 2011/214 prescribed for the first time circumstances when the personal representatives of an estate benefiting from transferred unused nil-rate band may submit an excepted estate return to the relevant court or office, as opposed to having to complete a full IHT account. It is expected that the representatives of an additional 20,000 estates each year will as a result be excused from the need to deliver an account to HMRC.

7.7 However, excluded from the scope of those amendments, so that an IHT account is required to be delivered, are estates of those persons who die with funds in an alternatively secured pension ("ASP"). This is because the responsibility of accounting for and paying any IHT due on an ASP fund falls on the pension scheme administrator. The exclusion mirrors amendments to the Excepted Estates Regulations made in 2006 by S.I. 2006/2141.

7.8 In its memorandum of 24th March 2011 to the Select Committee on Statutory Instruments, HMRC accepted that the term "the alternatively secured pension fund provisions" (which is defined for the purpose of regulation 4 of the Excepted Estate Regulations) is undefined for the purpose of regulation 5A of the Excepted Estate Regulations, which was inserted by S.I. 2011/214. This instrument defines the term for this purpose.

7.9 Although the Memorandum dated 24th March 2011 stated that the definition of "the alternatively secured pension fund provisions" should be deleted from regulation 4 and inserted in regulation 2 (which contains definitions that apply throughout the Excepted Estate Regulations), on reflection it was considered preferable to insert a definition of this term in regulation 5A. This is because references to that term in regulation 4 cease to have effect in relation to deaths on or after 6th April 2011. For deaths from 6th April 2011, the term is relevant only to regulation 5A.

7.10 The definition of "the alternatively secured pension fund provisions" imports sections 151A to 151C of the Inheritance Act 1984. However, these provisions were repealed by paragraph 48 of Schedule 16 to the Finance Act 2011 (c. 11) in relation to deaths on or after 6th April 2011, following the removal of the need to take an annuity at age 75. This instrument makes a corresponding amendment to the Excepted Estates Regulations.

7.11 The implementation of S.I. 2011/214, with effect from 1st March 2011, necessitated revising the forms used for producing prescribed information to HMRC in relation to excepted estates where an IHT account is not required to be delivered. In the process, HMRC considered that the following details in relation to the deceased were unnecessary: Any surviving spouse, parent, brother or sister; and the number of surviving children, step-children, adopted children or grandchildren.

7.12 However, a corresponding amendment to the Excepted Estates Regulations was not made. This instrument regularises the position by making it clear that this information need no longer be provided.

8. Consultation outcome

8.1 In line with the *Tax Consultation Framework*, HMRC published the instrument in draft for a 4 week consultation period between 26th July 2011 and 28th August 2011. No comments were received.

8.2 In accordance with section 256(3A) of the Inheritance Act 1984, HMRC has also consulted the Lord Chancellor, the Scottish Ministers and the Lord Chief Justice of Northern Ireland regarding this instrument.

9. Guidance

9.1 The provisions of these amending regulations will be reflected in the Notes to completing the Excepted Estates forms, which is available on the HMRC website at http://www.hmrc.gov.uk/inheritancetax/iht-probate-forms/index.htm

10. Impact

10.1 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive change to tax policy.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This is a technical amendment and does not require further review.

13. Contact

Alan McGuinness at HMRC Tel: 020 7147 2766 or email: alan.mcguinness@hmrc.gsi.gov.uk can answer any queries regarding the instrument.