EXPLANATORY MEMORANDUM TO

THE INHERITANCE TAX (DELIVERY OF ACCOUNTS) (EXCEPTED ESTATES) (AMENDMENT) REGULATIONS 2014

2014 No. 488

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, 2011/214 and 2011/2226.

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 None.

4. Legislative Context

4.1 This instrument amends the Excepted Estates Regulations as a result of amendments to Inheritance Tax Act 1984 ("IHTA") made by new provisions introduced in Finance Act 2013 relating to the treatment of liabilities for inheritance tax ("IHT") purposes.

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 Personal representatives administering the estate of a deceased person 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 and 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 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 an account of the property comprised in the estate to HMRC and obtaining a tax certificate. This allows HMRC to examine the details of the estate, and collect any IHT due, before the assets are distributed to beneficiaries. About 35,000 accounts were submitted in 2012-13.

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 200,000 excepted estate returns were submitted in 2012-13.

7.4 IHT is normally charged on transfers of value occurring on death, although it can also be charged on certain lifetime transfers. It is charged at 40% on the value transferred above the nil-rate band or IHT threshold (currently £325,000). The value transferred is the net value of a deceased person's estate after deducting liabilities outstanding at the date of death, reliefs and exemptions, plus certain transfers made within 7 years of death.

7.5 New provisions (sections 162A and 175A IHTA) introduced by section 176 and Schedule 36 of Finance Act 2013 restrict the extent to which liabilities may be deducted in arriving at the value transferred. A deduction for a liability will be disallowed if the borrowed money has been used to acquire 'excluded property' (broadly, property which is situated outside the UK and which belongs to, or was settled by, a non-UK domiciled individual so is not chargeable to IHT), or if the liability has not been repaid out of the assets in the estate, unless certain conditions apply. The changes remove the tax advantage arising from not repaying the liability or using a loan to acquire property not chargeable to IHT, and will ensure that the treatment of liabilities is consistent for IHT purposes.

7.6 The Excepted Estates Regulations broadly exempt estates where there is no IHT to pay because the gross value of the estate including certain specified transfers and exempt transfers does not exceed £1 million, and the net chargeable value of the estate after deducting liabilities and the exemption for transfers to a spouse, civil partner or charity does not exceed the IHT

threshold. Regulation 4(3)(f) contains a formula, which includes a reference to the total liabilities of the estate ('C'), for calculating the amount which has to be below the threshold for the estate to qualify as an exempt estate.

7.7 To ensure that the treatment of liabilities for the purposes of the Excepted Estates Regulations takes into account the new provisions introduced by Finance Act 2013, liabilities should not be included in the total liabilities of the estate (amount 'C') in the formula in Regulation 4(3)(f) to the extent that they are disallowed as a deduction by those new provisions. The relevant liabilities to be excluded from C are:

- all liabilities attributable to financing the acquisition, maintenance or enhancement of the value of excluded property, whether or not any liability may be allowable as a deduction under any of the provisions in section 162A(2) to (4) and (6) IHTA,
- liabilities which are not discharged on or after death out an estate or from excluded property,
- liabilities which are prevented from being taken into account by any other provisions in IHTA.

7.8 This instrument makes a consequential amendment to the Excepted Estates Regulations to ensure that the similar treatment is achieved.

8. Consultation outcome

8.1 As the change being made by this instrument is a relatively minor consequential technical amendment and does not involve any significant change in the excepted estates policy or impose any new obligations, HMRC considers that a formal consultation in line with the Tax Consultation Framework is not appropriate. Nevertheless, HMRC has published the draft to for information and comments

8.2 In accordance with section 256(3A) of the Inheritance Tax Act 1984, HMRC has 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 (IHT206), 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

Danka Wigley at HMRC can answer any queries regarding the instrument (tel: 03000 585 277 or email: danka.wigley@hmrc.gsi.gov.uk).