EXPLANATORY MEMORANDUM TO

THE LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS (CHANGE OF ACCOUNTING PRACTICE) (AMENDMENT) REGULATIONS 2004

2004 No. 3347

1. This explanatory memorandum has been prepared by the Commissioners of Inland Revenue 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. Description

2.1 The regulations make three amendments to regulation 4(7) of the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (SI 2004/3271) to correct errors.

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

3.1 The instrument breaches the 21 day rule. This is because the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (SI 2004/3271) laid on 10 December and coming into force on 1 January 2005 contain errors. This instrument amends that one to correct the errors, and needs to come into force at the same time.

4. Legislative Background

4.1 The power to make the Regulations is contained in 85B(3) and (5) and paragraph 19B of Schedule 9 to, the Finance Act 1996. These provisions allow certain profits and losses from loan relationships to be left out of account, to be brought into account in a different way or to be brought into account at a later date.

5. Extent

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 This instrument is subject to annulment and does not amend primary legislation, so no certificate under the Human Rights Act 1998 is required.

7. Policy background

7.1 Profits and losses on debts and derivative contracts are generally brought into account as they are recognised in accounts drawn up using UK Generally Accepted Accounting Practice (GAAP). From 2005 all companies will be permitted to use International Accounting Standards (IAS) to draw up their

accounts, and such accounts will be an acceptable basis for tax purposes – section 50 Finance Act 2004.

7.2 Where a company changes its accounting basis, any difference between the carrying value of the asset or liability between the period of change and the previous period are brought into account for tax purposes in the period of change. In this particular case, the change to IAS in 2005, the amounts involved are both potentially very large and also presently unquantifiable. The Government has decided to defer the tax effect of the adjustments until reliable figures are known. It will then consider what, if anything, to do about the transitional adjustments.

7.4 There has been consultation with relevant bodies on parts of these regulations and drafts of those parts have been published on the Inland Revenue's website for comments.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is nil, because the Regulations maintain the status quo.

9. Contact

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