EXPLANATORY MEMORANDUM TO

THE LONDON CAPITAL AND FINANCE COMPENSATION SCHEME (CHARGEABLE GAINS EXEMPTION) REGULATIONS 2021

2021 No. 1385

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument exempts from capital gains tax compensation payments made to former customers of London Capital and Finance plc (LCF) under the terms of the LCF Compensation Scheme. This scheme has been established by the Treasury with spending authority provided by the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Act 2021. The terms of the compensation scheme were published on 3 November 2021 https://www.gov.uk/government/publications/london-capital-finance-lcf-compensation-scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument is being made to give effect to the government's announcement on 20 July 2021 https://questions-statements.parliament.uk/written-statements/detail/2021-07-20/hcws204 that compensation received by LCF policyholders is exempt from capital gains tax.

6.2 It is being made using powers in found in Schedule 15 to the Finance Act 2020. That Schedule, amongst other things, permits the Treasury to exempt from capital gains tax qualifying payments made under compensation schemes administered by or on behalf of the government by statutory instrument. In this particular case the powers being exercised are found within paragraphs 2 and 4 of the Schedule and this statutory instrument identifies payments made under the LCF compensation scheme as being qualifying payments for the purposes of Schedule 15.

6.3 The Schedule also allows for an element of retrospectivity. This is because payments from the scheme will begin before these regulations take effect and, without the retrospective element, they would be subject to capital gains tax.

7. Policy background

What is being done and why?

7.1 LCF was a Financial Conduct Authority (FCA) authorised firm which issued non-transferable debt securities (known as "minibonds"). The firm went into administration in January 2019, at which point it had over 11,000 investors who had invested £237 million in total. The majority of LCF's investors were ineligible for compensation from the Financial Services Compensation Scheme (FSCS) as the issuance of LCF's minibonds was not a regulated activity.

7.2 As a consequence of the failure and the losses suffered by bondholders, in May 2019 the Economic Secretary to the Treasury issued a direction, pursuant to sections 77(1) and (2) and 78(5) and (6) of the Financial Services Act 2012 to the FCA, that it was in the public interest that an investigation be undertaken into the relevant events relating to the regulation of LCF.

7.3 The FCA appointed a former Court of Appeal judge, Dame Elizabeth Gloster, to undertake that investigation. In December 2020, Dame Elizabeth's report was published. It concluded that the FCA did not discharge its functions in respect of LCF in a manner which enabled it to effectively fulfil its statutory objectives during the relevant period.

7.4 In view of the range of factors contributing to the scale of losses for bondholders and the regulatory failure identified by Dame Elizabeth Gloster's report, the government decided to establish a compensation scheme for LCF bondholders.

7.5 Due to the nature of the scheme this statutory instrument ensures that the compensation received by LCF policy holders is exempt from capital gains tax.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This is a free-standing statutory instrument; no legislation is being consolidated.

10. Consultation outcome

10.1 There was no formal consultation undertaken. This instrument simply complements the government's announcement that compensation paid under the LCF compensation scheme will be exempt from tax.

11. Guidance

11.1 General guidance on the operation on capital gains tax can be found on the HMRC pages of the gov.uk website at: https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual. The manual will be updated by Spring 2022.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The purpose of this legislation is to exempt from capital gains tax a one-off compensatory payment to LCF policy holders. No formal monitoring or review is considered necessary.

14.2 The instrument does not include a statutory review clause. In accordance with section 28(3)(a) Small Business, Enterprise and Employment Act 2015 there is no requirement to make provision for review of any secondary legislation that makes or amends provision imposing, abolishing or varying any tax, duty, levy or other charge.

15. Contact

15.1 Nick Williams at HM Revenue and Customs, Telephone: 03000 585660 or email: nicholas.williams@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Kelsey, Deputy Director for Assets, Residence and Valuation at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.