EXPLANATORY MEMORANDUM TO

THE MARD (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 996

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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 has been made to introduce legislative fixes relating to the EU Mutual Assistance in Recovery of Debt (MARD) provisions (Council Directive 2010/24/EU) to reflect that the United Kingdom (UK) is no longer a European Union (EU) Member State. It also provides a clear end date for obligations under MARD in respect of cases within the scope of Article 100 of the Withdrawal Agreement.

2.2 MARD enables reciprocal debt recovery between EU Member States for all national taxes and duties, regional and local taxes, and agricultural levies. It was extended to encompass a third country (the UK) under the terms of the Withdrawal Agreement. It will apply to the UK for the transition period plus a further 5 years in respect of requests under Article 100 of the agreement, or if the debt falls under the Northern Ireland Protocol, for as long as that Protocol remains in force.

2.3 This instrument will be laid under the vires in section 87 of the Finance Act 2011 and will make minor changes to references in the Finance Act 2011 and the MARD Regulations 2011 (SI 2011/2931). It will ensure that the UK's implementing legislation operates in accordance with the terms of the Withdrawal Agreement (including the Northern Ireland Protocol) and continues to function properly post the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the MARD (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The EU MARD provisions are contained within Council Directive 2010/24/EU. This Directive is supported by Commission Implementing Regulation (EU) No 1189/2011 (as amended by Commission Implementing Regulation (EU) 2017/1966 and Commission Implementing Decision C(2011)8193).

6.2 The Council Directive was implemented into UK law by section 87 of, and Schedule 25 to, the Finance Act 2011 and MARD Regulations 2011.

6.3 Section 87 allows regulations to be made for the purpose of giving effect to any amendments or extensions of Council Directive 2010/24/EU.

6.4 Article 100 of the Withdrawal Agreement and the Northern Ireland Protocol extends the applicability of the Directive to encompass a third country (the UK).

6.5 This instrument amends Schedule 25 to the Finance Act 2011 and also amends the MARD Regulations 2011.

6.6 The impact of this is that this legislation will work as intended for the time limits specified within the Withdrawal Agreement.

7. Policy background

What is being done and why?

7.1 Legislative fixes are being introduced to reflect that the UK is no longer a Member State. This will ensure the MARD provisions continue to work as intended.

7.2 A new regulation is being introduced to provide a clear end date for when obligations under MARD will cease to apply for requests under Article 100 of the Withdrawal Agreement. This will provide legal certainty to taxpayers.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it introduces legislative fixes relating to EU MARD provisions.

9. Consolidation

9.1 There is no current plan to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 No public consultation was undertaken as this instrument introduces legislative fixes and contains no substantive changes to tax policy.

10.2 The devolved administrations have been consulted regarding the legislative fixes, and agreement has been obtained.

11. Guidance

11.1 Guidance on the current MARD provisions is already published at www.gov.uk/hmrc-internal-manuals/debt-management-and-banking/dmbm560010.

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 has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the legislation does not alter the operation of existing procedures.

14. Monitoring & review

14.1 This instrument will be subject to review only in relation to any future developments of the mutual assistance rules between the UK and the EU.

14.2 The regulation does not include a statutory review clause because the legislation relates to taxes, duties, levies or other charges and falls within the exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Deborah Sunter at HMRC Telephone: 03000 518070 or email: deborah.sunter@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nick Jones, Deputy Director for Debt Management Logistics at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

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