EXPLANATORY MEMORANDUM TO

THE PENALTIES FOR FAILURE TO PAY TAX (SCHEDULE 26 TO THE FINANCE ACT 2021) (ASSESSMENTS) REGULATIONS 2024

2024 No. 1153

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

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

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Nicholas Atkinson, Deputy Director for Making Tax Digital at HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Lilly at HMRC Telephone: 07773085954 or email: david.lilly@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This legislation will allow HMRC to assess a second late payment penalty where a customer has outstanding tax 31 days after the due date for payment, and that amount is still outstanding or not paid in full, just before the two-year assessment time period expires.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Schedule 26 to the Finance Act 2021 makes provision for penalties to be payable by a person when they fail to pay VAT or Income Tax due by the relevant due date. The Schedule has been commenced for VAT taxpayers from 1 January 2023 and Income Tax taxpayers who chose to volunteer to test services from 6 April 2024. Schedule 26 to the Finance Act 2021 allows HMRC to charge a first late payment penalty on tax

outstanding between 15-30 days after the payment due date, followed by a second late payment penalty on any tax that remains outstanding 31 days after the payment due date. HMRC are laying this secondary legislation to ensure reformed penalties work as intended for VAT and Income Tax Self-Assessment customers.

What was the previous policy, how is this different?

5.2 The policy intention has always been to assess and charge final second late payment penalties where payment is outstanding or not paid in full, just before the 2-year assessment time period expires. These Regulations will allow HMRC to deliver that policy intent.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations are made under paragraph 16(2) of Schedule 26 to the Finance Act 2021. This is the first set of Regulations made under these powers.

6.2 These Regulations are required to allow HMRC to assess a second late payment penalty before the end of the two-year assessment time limit, where tax remains outstanding. Previously the legislation only allowed HMRC to assess a second late payment penalty when the outstanding tax had been paid in full.

Why was this approach taken to change the law?

6.3 This approach was considered the most appropriate way of making this change, as Parliament envisaged changes of this nature to be made using secondary legislation when it legislated for the power to assess further penalties in Finance Act 2021.

7. Consultation

Summary of consultation outcome and methodology

7.1 On 10 June 2024, HMRC concluded a 4-week technical consultation on draft secondary legislation. The technical consultation was published on the GOV.UK website[1] on 14 May 2024 and ran until 10 June 2024. This consultation was open to any person with an interest, including individuals, businesses, accountants and representative bodies. The consultation gave external stakeholders the chance to review the draft secondary legislation and provide feedback, so that HMRC could consider any amendments. HMRC received 3 written responses, all coming from representative bodies. Responses were fully considered in finalising the legislation. Para 2(c) of the draft Regulations has been removed based on a response. This will allow for a second late payment penalty to be charged where time to pay arrangements are in place and last for longer than the 2-year assessment time limit period. The penalty would be calculated just before the 2-year assessment time limit expires; the calculation would be on tax outstanding 31 days after the payment due date up to the time to pay proposal date, which led to a time to pay agreement being set up.

[1] Technical Consultation: https://www.gov.uk/government/consultations/draft-legislation-the-penalties-for-failure-to-pay-tax-assessments-regulations-2024

8. Applicable Guidance

8.1 Existing guidance on the GOV.UK website[2] will be updated ahead of the secondary legislation coming into force on 4 December 2024 to reflect the changes legislated for in this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering late payment penalties was published on 3 March 2021 and is available on the GOV.UK website[3]. It remains an accurate summary of the impacts of the late payment penalties regime established by Schedule 26 to the Finance Act 2021.

Impact on businesses, charities, and voluntary bodies

9.2 There is no significant impact on business, charities, or voluntary bodies because the change only affects customers/businesses that have tax outstanding nearly 2 years after the payment due date. Current data modelling works on the assumption that approximately 10% of customers/businesses are non-compliant and could miss payment due dates. This measure is expected overall to have no impact on businesses and individuals' experience of dealing with HMRC as the change is simply to fully reflect the original policy intention.

9.3 The legislation does impact small or micro businesses by ensuring the policy works as originally intended. Any small business that is VAT registered and has tax outstanding or not paid in full 2-years after the payment due date will be charged a second late payment penalty. Income Tax taxpayers who chose to volunteer to test services from April 2024 and have tax outstanding or not paid in full 2-years after the payment due date will be charged a second late payment penalty.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 HMRC will monitor the impact of the changes introduced by this instrument periodically using information collected from its internal systems and processes, as well as regular engagement with affected stakeholder groups.

10.2 The instrument 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.

[2] Interest harmonisation and penalties for late payment and late submission guidance: https://www.gov.uk/government/publications/interest-harmonisation-and-penalties-for-late-submission-and-late-payment-of-tax/interest-harmonisation-and-penalties-for-late-payment-and-late-submission

[3] Tax information and impact note: https://www.gov.uk/government/publications/interest-harmonisation-and-penalties-for-late-submission-and-late-payment-of-tax

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is made under powers in Finance Act 2021 Schedule 26. Subject to the negative procedure, legislation will be laid in Parliament at least 21 days before it comes into force.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").