EXPLANATORY MEMORANDUM TO

THE PUBLICATION OF INFORMATION ABOUT TAX AVOIDANCE SCHEMES (LEGALLY PRIVILEGED COMMUNICATIONS DECLARATIONS) REGULATIONS 2026

2026 No. 570

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.

2. Declaration

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

2.2 Kathryn Robertson, Deputy Director for Counter Avoidance Policy, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kristian Jarvis at HMRC can be contacted by email at the following address with any queries regarding the instrument: kristian.jarvis1@hmrc.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 In circumstances where HMRC proposes to publish the name of a lawyer involved in the promotion of tax avoidance arrangements, the lawyer may make representations explaining why they should not be named and, where professional obligations prevent disclosure of supporting evidence, those representations may be supported by a declaration confirming that the substance of the representations cannot be substantiated without disclosing privileged communications. This instrument specifies the form and manner in which a declaration is to be made; the information to be contained in it; and when and how a declaration is to be provided. It requires the declaration to include the name, home address and practising address of the lawyer making the representations, of the lawyer making the declaration where different, and of any other lawyer whose privileged communications would otherwise be relied upon, together with their regulatory bodies and any identifying numbers they issue.

4.2 The declaration must identify the suspected tax avoidance arrangements to which the representations relate; identify each fact stated in the representations to which the declaration relates; confirm that those representations are true and that privileged material would substantiate them on the balance of probabilities either alone or with other material. If also relying on other material, it must identify what this is. It must confirm that the declaration is true to the best knowledge and belief of the lawyer making it and be signed and dated by the lawyer making the declaration.

4.3 The instrument further provides that the declaration must be supplied to HMRC no later than the time at which the relevant representations are made.

Where does the legislation extend to, and apply?

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

4.5 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 This instrument is part of a wider package of measures to tackle promoters of tax avoidance. Section 214 of the Finance Act 2026 extends HMRC's publishing powers by allowing it to publish the names of lawyers involved in the promotion of tax avoidance arrangements, irrespective of whether their role is limited to activities subject to legal professional privilege (LPP) (or, in Scotland, confidentiality of communications).

5.2 Where HMRC informs a person that they propose to name them under the relevant powers, the person must be given the opportunity to make representations explaining why they should not be named. The lawyer's professional obligations may mean that they are unable to provide evidence in support of these representations. In those circumstances, the lawyer will be able to make representations supported by a declaration confirming that substantiation of some or all of their representations would require disclosure of privileged communications.

5.3 A declaration must be treated as conclusive evidence unless HMRC is satisfied that it includes any information that is incorrect. The changes in Finance Act 2026 also introduce a statutory penalty of up to £10,000 for making a declaration that contains incorrect information plus a further sanction allowing HMRC to publish information about a lawyer who incurs a penalty following an incorrect declaration. These Regulations set out the requirements of such a declaration. The declaration mechanism provides a way for lawyers to respond to HMRC where LPP prevents them from substantiating their representations, preserving proper protection for privileged material while enabling HMRC to consider publication where appropriate.

What was the previous policy, how is this different?

5.4 Previously, HMRC had powers to publish information about promoters of tax avoidance, but those powers did not permit HMRC to publish the identity of legal professionals where their only relevant involvement in an arrangement consisted of activities subject to LPP. Under the new policy, HMRC is permitted to publish the names of lawyers involved in the promotion of tax avoidance arrangements even where those activities are subject to LPP, subject to specified safeguards.

6. Legislative and Legal Context

How has the law changed?

6.1 HMRC has the power to publish information about the promoters of tax avoidance, in particular under section 86 of the Finance Act 2022, section 316C of the Finance Act 2004 and paragraph 36 of Schedule 17 to the Finance (No. 2) Act 2017. However, these provisions did not allow HMRC to publish the details of legal professionals where their only relevant activities were subject to LPP. Section 214 of the Finance Act 2026 amended these provisions so that lawyers may be identified where they fall within their scope. Section 209 of the Finance Act 2026 introduced a process that

applies where LPP prevents a lawyer from substantiating their representations. In those circumstances, the lawyer may submit a declaration stating that their representations, that they are not involved in promoting or implementing tax avoidance schemes, are true. This declaration can be made by themselves or another lawyer. Section 209 of the Finance Act 2026 provides the Commissioners of HMRC with the power to make regulations specifying the contents, manner and form of declarations in relation to legally privileged material. This instrument exercises those powers in order to set out the requirements for a valid declaration.

Why was this approach taken to change the law?

6.2 Parliament has conferred regulation-making powers in section 209 of the Finance Act 2026, so these changes are appropriately made by secondary legislation.

7. Consultation

Summary of consultation outcome and methodology

7.1 The policy was consulted on as part of the "Closing in on promoters of marketed tax avoidance" consultation from 26 March 2025 to 18 June 2025[1] and a technical consultation on the primary legislation on the 21 July 2025 to 15 September 2025. The public consultation sought views from tax professionals, representative bodies, legal professionals and other stakeholders through written responses and stakeholder meetings, on proposals to strengthen HMRC's powers to disrupt promoters of marketed tax avoidance schemes. Respondents were generally supportive of taking stronger action against promoters. A summary of responses was published on 21 July 2025[2]. Respondents generally accepted the case for action against the small number of legal professionals involved in promoting schemes but expressed concerns that the naming measure could have wider impacts on the legal profession and on individuals seeking legitimate advice. Many emphasised the need for strong safeguards for legal professional privilege, which informed the government's approach.

7.2 An informal consultation on the regulations was undertaken between 24 April and 5 May with stakeholders, including representative bodies for the legal sector. Concerns were discussed regarding a legal professionals' ability to make representations and declaration while upholding LPP. Stakeholders were given the opportunity to contribute to the guidance to address these concerns.

8. Applicable Guidance

8.1 Guidance is being prepared on this new legislation and will be published on GOV.UK later in 2026.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Tax Information and Impact Note was published for this measure at Budget 2025, within the context of the wider package of measures.[3]

[1] Consultation: https://www.gov.uk/government/consultations/closing-in-on-promoters-of-tax-avoidance/closing-in-on-promoters-of-marketed-tax-avoidance

[2] Summary of responses: https://www.gov.uk/government/consultations/closing-in-on-promoters-of-tax-avoidance/outcome/closing-in-on-promoters-of-marketed-tax-avoidance-summary-of-responses

[3] Tax Information and Impact Note: https://www.gov.uk/government/publications/tackling-promoters-of-marketed-tax-avoidance/closing-in-on-promoters-of-marketed-tax-avoidance-schemes

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this SI is focussed on a small number of legal professionals involved, or suspected to be involved, with promoting tax avoidance schemes.

9.3 The legislation does not impact small or micro businesses that are not involved, or suspected of being involved, in the promotion of tax avoidance. It will impact the very small number of legal professionals that HMRC suspects are involved with promoting tax avoidance schemes.

9.4 There is no, or no significant, impact on the public sector because this SI is focussed on the small number of legal professionals involved, or suspected to be involved, with promoting tax avoidance schemes.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through HMRC's ongoing oversight of The Publication of Information About Tax Avoidance Schemes (Legally Privileged Communications Declarations) regime.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative 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").