EXPLANATORY MEMORANDUM TO

THE RESEARCH AND DEVELOPMENT (PRESCRIBED ACTIVITIES) REGULATIONS 2023

2023 No. 293

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations revoke and replace the Research and Development (Prescribed Activities) Regulations 2004 (S.I. 2004/712) in order to update statutory references and refer to the latest iteration of the applicable guidelines – "Guidelines on the Meaning of Research and Development for Tax Purposes" issued by the Secretary of State for Business, Energy and Industrial Strategy on 07 March 2023.

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Previous versions of the regulations have defined Research and Development ("R&D") for tax purposes by reference to the "Guidelines on the Meaning of Research and Development for Tax Purposes" issued by the Secretary of State for Business and Trade on 5 March 2004 (the "BEIS Guidelines 2004"), which provided details of the activities constituting R&D. The BEIS Guidelines 2004 were updated on 07 March 2023 as the BEIS Guidelines 2023. These regulations now refer to the latest updated guidelines.

7. Policy background

What is being done and why?

7.1 These regulations ensure that the tax legislation refers to the latest iteration of applicable guidelines (replacing the BEIS Guidelines 2004). The most recent iteration of the guidelines is called the BEIS Guidelines 2023 and contains updated language to

deliver the government's decision to allow pure mathematics to qualify as R&D for tax purposes from 1 April 2023. It has also been updated to remove outdated technical and accounting references.

7.2 At the same time, these regulations update references to tax legislation where that legislation has been updated or consolidated since the original Research and Development (Prescribed Activities) Regulations 2004 came into force.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the amended instrument in the immediate future.

10. Consultation outcome

10.1 No consultation on this instrument has been undertaken.

10.2 Consultation on the decision to extend the definition of R&D for tax purposes to include pure mathematics was undertaken from 3 March 2021 to 2 June 2021.

10.3 Responses were in favour of the extension of the definition.

11. Guidance

11.1 Guidance in relation to this change will be incorporated into His Majesty's Revenue and Customs Corporate Intangibles Research and Development Manual (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual).

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 because the impact on the above customer groups is expected to be negligible.

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 amendment to this instrument does not create any additional regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that no specific monitoring or review is proposed.

14.2 The instrument does not include a statutory review clause in accordance with the requirements of the Small Business, Enterprise and Employment Act 2015 because

the legislation makes minor technical update and has anticipated negligible impact on customers. A review clause would be inappropriate.

15. Contact

15.1 Yasmin Achha at HM Revenue and Customs. Telephone: 03000592504 or email: Yasmin.Achha@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tessa Robins, Deputy Director for Innovation & Growth, at His Majesty's Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.