EXPLANATORY MEMORANDUM TO

THE RESEARCH AND DEVELOPMENT (QUALIFYING BODIES) (TAX) ORDER 2009

2009 No. 1343

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

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to provide that the bodies listed in the schedule are qualifying bodies for the purposes of Part 13 of the Corporation Tax Act 2009 (additional relief for expenditure on research and development) and as a result where companies make payments to them in relation to research and development the expenditure incurred benefits from tax relief.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Committee will note that sections 1142(3) and (4) provide that any order made under section 1142 may have effect in relation to accounting periods beginning, or expenditure incurred, before the time the order is made. Article 1(2) of this instrument provides that expenditure incurred on or after 1 April 2002 in making payments to the listed bodies qualifies for relief.

4. Legislative Context

4.1 Part 13 of the Corporation Tax Act 2009 provides tax relief to companies in respect of qualifying expenditure incurred on Research and Development where that expenditure meets certain conditions. Sections 1067 (expenditure on sub-contracted R&D not undertaken in-house), 1078 (qualifying expenditure on contracted out R&D) and 1079 (qualifying expenditure on contributions to independent R&D) provide that in order to be qualifying expenditure the expenditure must be incurred in making payments to a qualifying body, an individual or a firm. Qualifying bodies are defined by section 1142. Under section 1142(1)(e) the Treasury may, by order, prescribe qualifying bodies for the purposes of Part 13 of that Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Under the large company R&D scheme, payments for sub-contracted R&D do not generally qualify for enhanced relief. However, sub-contract payments by large companies to a "qualifying body" do.

7.2 The main types of qualifying body are educational establishments, NHS bodies, charities and scientific research associations. There is also a power to designate qualifying bodies, either individually or as a class. This was largely intended to cover those based abroad, which the UK definitions do not include.

8. Consultation outcome

8.1 No consultation on this instrument has been undertaken.

9. Guidance

9.1 HMRC will issue guidance setting out the criteria for designation of qualifying bodies and the procedure to be followed as well as a list of those bodies designated.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 Chapters 2 to 4 of the Corporation Tax Act 2009 provides that Small or Medium sized enterprises are also entitled to tax relief in relation to Research and Development expenditure when certain conditions are met. Where the Research and Development is not carried out by the small or medium sized enterprise section 1067 provides relief in respect of expenditure incurred in making payments to a qualifying body.

12. Monitoring & review

12.1 The numbers and types of organisation designated will be monitored by HMRC.

13. Contacts

David Harris, HM Revenue & Customs
020 7147 2562

Neil Smillie, HM Revenue & Customs
020 7147 0864