EXPLANATORY MEMORANDUM TO

THE SCOTTISH INFECTED BLOOD SUPPORT SCHEME (APPLICATION OF SECTIONS 731, 733 AND 734 OF THE INCOME TAX (TRADING AND OTHER INCOME) ACT 2005) ORDER 2017

2017 No. 446

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The tax rules for annual payments charge income tax on regular payments of compensation unless the payments fall into a category which the rules specifically exempt from liability.

2.2 Payments to individuals who became infected with Hepatitis C, HIV or both through NHS treatment with contaminated blood products, paid under existing compensation schemes, are currently exempted from income tax by secondary legislation.

2.3 This Order extends that exemption to ensure that payments made by a new Scottish scheme will be exempt from income tax.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Since 1988, successive governments have set up various schemes to provide financial support to individuals infected with Hepatitis C, HIV or both through NHS treatment with contaminated blood products. The longstanding position has been that such compensation payments should be exempt from tax and statutory instruments have been made in the past to provide exemptions for the schemes making these payments.

4.2 The Department for Health has been consulting on improvements to the schemes for those infected in England. When the changes to introduce these improvements were originally announced in a press release issued in July 2016, it was confirmed that payments would continue to be tax exempt. The Welsh Government and the Northern Ireland Executive will also be introducing similar improvements to the schemes covering infected people in Wales and Northern Ireland.

4.3 The Scottish Government carried out their own review and announced in March 2016 that they will be introducing a different set of proposed payments. The schemes currently making payments across the UK will, for Scotland, be consolidated into one new scheme. The existing schemes will continue making payments for the rest of the UK until a new scheme administrator is put in place for England, Wales and Northern Ireland later in 2017.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Scottish Infected Blood Support Scheme is administered by the Common Services Agency, an NHS board accountable to Scottish Ministers. It makes payments to the infected individuals in accordance with an agreement between the Common Services Agency and Scottish Ministers. In the absence of a specific exemption the regular payments made by the Common Services Agency would fall within the tax rules for 'annual payments'. The payments would be taxable income of the recipients and the Common Services Agency would have to deduct income tax from the amounts paid.

7.2 There are several exemptions from liability. All periodical payments in respect of personal injuries made under Court orders or agreements that settle claims for damages are exempt. Similarly, payments from annuities purchased to meet an award made by the Criminal Injuries Compensation Board are exempt.

7.3 The rules include a power for the Treasury to make an Order to apply the exemption to periodical payments of compensation for personal injury under other schemes or arrangements. It is under this power that the Order is made.

7.4 The Order is expected to apply to approximately 190 Scottish beneficiaries (140 infected people and 50 widows, widowers and surviving civil partners and dependants of infected people).

7.5 The current Orders relate specifically to the existing schemes, Skipton Fund Ltd (SI 2011/1157, amended by SI 2012/1188) and MFET Ltd (SI 2010/673). This Order ensures that regular payments from the new Scottish Infected Blood Support Scheme to Scottish beneficiaries are exempt from income tax, in the same way as regular payments from the existing schemes to beneficiaries in the rest of the UK are exempt from income tax.

Consolidation

7.6 Not applicable.

8. Consultation outcome

8.1 The recommendations of the Scottish Financial Review Group were made following consultation by the group with those affected and their families regarding reform of the existing schemes. No formal consultation has been carried out by HMRC because this instrument makes only minor and uncontroversial changes to the legislation, which will affect a very small number of people and simply continues the existing policy of exempting the compensation payments from tax.

9. Guidance

9.1 Guidance on the change to the legislation will be included in HMRC's Savings and Investment Manual.

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 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The policy will be kept under review through communication with stakeholders affected by the measure.

13. Contact

13.1 Jenny McDougall at HMRC Telephone: 03000 593627 or email: jenny.mcdougall@hmrc.gsi.gov.uk can answer any queries regarding the instrument.