EXPLANATORY MEMORANDUM TO

THE SECURITISATION COMPANIES (APPLICATION OF SECTION 83(1) OF THE FINANCE ACT 2005: ACCOUNTING STANDARDS) (AMENDMENT) REGULATIONS 2016

2016 No. 1182

1. Introduction

1.1 This explanatory memorandum has been prepared by HM 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 This instrument relates to the taxation of securitisation companies.

2.2 It further extends the application of section 83 of the Finance Act 2005 to such companies which made use of the previous extension of the application of that section (in 2007). The extension applies for periods of account ending before 1 January 2037.

2.3 The Regulations enable such companies to continue basing their corporation tax computations on UK generally accepted accounting practice as it stood at 31 December 2004 instead of International Accounting Standards (which could have a potentially more volatile effect) and so remove an area of uncertainty. The Regulations allow companies who do not wish to continue this tax treatment to elect out of the extension.

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 These Regulations extend the operation of section 83 of Finance Act 2005 by amending the Securitisation Companies (Application of Section 83(1) of the Finance Act 2005: Accounting Standards) Regulations 2007.

4.2 The Regulations enable the existing corporation tax treatment applied to those securitisation companies taxed under section 83 of Finance Act 2005 to continue for a further 20 years. This will ensure that they continue to be taxed on their actual cash profit, and not their accounting profit.

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 Securitisation is a widespread method of raising debt finance on the capital markets through the issue of asset-backed securities. Securitisation companies are special purpose vehicles which issue securities to third party investors which are backed by assets transferred by another company.

7.2 A securitisation company typically acts as a conduit in which income flows from the securitised assets are channelled to the investor in the form of interest on the securities. It will normally only retain a small cash profit over the life of the securitisation. The application of International Accounting Standards in 2005 led to increased volatility in the accounting profits of such companies. As a result the statutory accounts no longer formed a suitable basis for calculating a securitisation company's tax liability.

7.3 To enable the securitisation market to function, special corporation tax rules were required. In 2005 the "interim regime" was introduced. This requires a securitisation company that existed at 31 December 2004 and which meets certain conditions to ignore International Accounting Standards in computing its corporation tax liabilities. This was an interim measure, applicable for periods of account ending before 1 January 2008, to enable permanent tax rules to be developed for securitisation companies in 2006.

7.4 Not all securitisation companies fit within the permanent regime that is now in place. The interim regime was therefore extended to periods ending before 1 January 2017 for companies already within it, subject to an election out.

7.5 The interim regime is being extended by a further 20 years to assist those remaining companies whose securitisations are expected to continue beyond 2017, so as to apply to periods ending before 1 January 2037. This will enable more securitisations to run their natural course and for affected companies within the interim regime to prepare their tax computations on a consistent basis. The Regulations will allow a company to elect out of this extension, enabling companies to be taxed instead on their statutory accounts under new accounting standards.

7.6 Securitisation companies that fall within the permanent regime are not affected by this change.

Consolidation

7.7 There are no plans to consolidate this instrument.

8. Consultation outcome

8.1 HMRC has been working with the securitisation industry consultative group since October 2015. This group was formed to consider ways of modernising the corporation tax treatment of securitisation companies to take account of changes to

accounting standards and commercial developments since the regime was introduced. Discussions with the consultative group and other professional firms confirmed that it would be better to extend the interim regime for a further 20 years, instead of allowing it to expire. This regime has already been extended twice before, so there is no policy change.

8.2 A consultation ran for four weeks, ending 16 November 2016, with draft regulations and a draft Explanatory Note published on www.gov.uk. Responses were supportive and have not required any adjustments.

9. Guidance

9.1 Guidance on this change will be incorporated into HMRC's Corporate Finance Manual in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 19 October 2016 alongside the consultation draft of the Securitisation Companies (Application of Section 83(1) of the Finance Act 2005: Accounting Standards) (Amendment) Regulations 2016 and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 Corporation tax work on securitisation companies is handled by HMRC's securitisation companies unit. HMRC will monitor the extension of the existing regime through communication with affected securitisation companies and their professional representatives.

13. Contact

13.1 Elizabeth Ward-Penny at HM Revenue and Customs Telephone: 03000 585876 or email: elizabeth.ward-penny@hmrc.gsi.gov.uk can answer any queries regarding the instrument.