EXPLANATORY MEMORANDUM TO

THE TAXES (DEFINITION OF CHARITY) (RELEVANT TERRITORIES) (AMENDMENT) REGULATIONS 2014

2014 No. 1807

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

2. Purpose of the instrument

2.1 UK tax reliefs and exemptions for charities are available to organisations in member States of the European Union (EU) provided they meet certain conditions. These regulations extend the reliefs to eligible organisations in Liechtenstein.

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

3.1 None

4. Legislative Context

4.1 Following the judgment of the Court of Justice of the European Union in the case of Hein Persche v Finanzamt Lüdenscheid (case C-318/07) in January 2009, UK tax reliefs for charities were required to be extended to certain organisations outside the UK.

4.2 Part 1 of Schedule 6 to the Finance Act 2010 (c. 13) sets out four conditions, including the jurisdiction condition, that must be met in order for an organisation to be considered to be a "charity" for the purposes of the taxes specified in that Schedule.

4.3 Paragraph 2 of Schedule 6 provides that a body of persons or a trust will meet the jurisdiction condition if it falls to be subject to the control of a relevant UK court (being the High Court in England, the Court of Session in Scotland and the High Court in Northern Ireland) in the exercise of its jurisdiction with respect to charities or any other court in the exercise of a corresponding jurisdiction under the law of a relevant territory. Paragraph 2(3) provides that "a relevant territory" means a member State of the European Union other than the United Kingdom or a territory specified in regulations.

4.4 The Taxes (Definition of Charity) (Relevant Territories) Regulations 2010 (SI 2010/1904) specify Iceland and Norway as relevant territories. These Regulations amend the 2010 Regulations to specify Liechtenstein as a relevant territory.

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

7. Policy background

7.1 Charitable organisations (companies or trusts) established in the UK, and their donors, benefit from a range of tax reliefs and exemptions. For example, charities are exempt from tax on profits from certain trading activities, and can benefit from Gift Aid which enables a charity to reclaim from HMRC the basic rate of UK tax paid by donors in respect of their donation.

7.2 A new definition of a "charity" was introduced by Schedule 6 to the Finance Act 2010 for the purposes of the UK's tax reliefs and exemptions administered by HMRC following a decision in the European Court of Justice in January 2009 (Hein Persche v Finanzamt Lüdenscheid (C-318/07)) ("Persche"). The Court held that tax reliefs and exemptions for charities and their donors were required to be extended to certain organisations outside the UK.

7.3 In order for an organisation in the UK to meet the new definition of a "charity" it must (along with other requirements) be subject to the control of a relevant UK court that exercises jurisdiction with respect to charities (the "jurisdiction condition"). For these purposes the relevant UK courts are the High Court in England, the Court of Session in Scotland and the High Court in Northern Ireland. Organisations that are outside the UK meet the jurisdiction condition if they are subject to the control of a court exercising a corresponding jurisdiction with respect to charities under the law of a relevant territory. A "relevant territory" is a member State of the EU other than the UK, or, with regard to organisations outside the EU, a territory specified in regulations.

7.4 When the new Schedule 6 definition was introduced in 2010, two states outside the EU, Iceland and Norway, both members of the European Economic Area (EEA), were listed as relevant territories. The third non-EU EEA member state, Liechtenstein, was not listed as a relevant territory owing to the lack of agreements with the UK for the exchange of information and mutual assistance, such as debt collection.

7.5 HMRC has since established information exchange and tax collection arrangements with Liechtenstein. This instrument recognises Liechtenstein's conformance with OECD rules and the commitment by its government to introduce a five year taxpayer assistance and compliance programme under the Liechtenstein Disclosure Facility. Accordingly, by specifying Liechtenstein as a relevant territory, these regulations enable organisations in Liechtenstein and their donors (provided they meet other relevant conditions imposed by legislation) to benefit from the UK's tax reliefs for charities.

8. Consultation outcome

8.1 No consultation has been undertaken in respect of these regulations. As the regulations simply add Liechtenstein to the list of relevant territories, no consultation is necessary.

9. Guidance

9.1 HMRC publish guidance in relation to charitable tax reliefs. That guidance will be updated to reflect the changes made by these Regulations.

10. Impact

10.1 There is no impact on charities or voluntary bodies in the UK. The impact on businesses in the UK, who will have the option to make donations to eligible organisations to Liechtenstein as well as to organisations in the EU, will be negligible. The number of eligible organisations in Liechtenstein is likely to be negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These regulations extend the territorial scope for which organisations may be eligible to claim UK tax reliefs for charities. The processing of applications for relief from organisations established in Liechtenstein will demonstrate that the legislation is working.

13. Contact

Cathy Wilson at HM Revenue & Customs, telephone: 03000 536678 or email: cathy.wilson@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.