

EXPLANATORY MEMORANDUM TO
THE REVENUE SCOTLAND AND TAX POWERS ACT 2014
(CONSEQUENTIAL PROVISIONS AND MODIFICATIONS) ORDER 2014

2014 No. [XXXX]

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to update existing UK legislation in consequence of the Revenue Scotland and Tax Powers Act 2014, which establishes Revenue Scotland as the tax authority responsible for the collection and management of devolved taxes. This Order is necessary to establish Revenue Scotland as a Non-Ministerial Department and as an office-holder in the Scottish Administration; to ensure that whistleblowers who assist Revenue Scotland, Registers of Scotland (“RoS”) or the Scottish Environment Protection Agency (“SEPA”) in relation to the devolved taxes are protected; to make consequential changes to reflect that Revenue Scotland will be a separate legal body from Scottish Ministers; to allow for information sharing between Her Majesty’s Revenue and Customs (“HMRC”) and Revenue Scotland in pursuit of their functions; and to add Revenue Scotland to the list of bodies from which MPs are disqualified as members.

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

3.1 None.

4. Legislative Context

4.1 The Revenue Scotland and Tax Powers Act 2014 received Royal Assent on 24th September 2014. The Revenue Scotland and Tax Powers Act 2014 (Consequential Provisions and Modifications) Order 2014 will be made in exercise of the powers conferred by section 104, 112(1), 113(2), (4) and (5) and 114(1) of the Scotland Act 1998 (“the 1998 Act”). The instrument is subject to the affirmative procedure in UK Parliament.

4.2 Section 104(1) of the 1998 Act enables the making of provision consequential on legislation of, or scrutinised by, the Scottish Parliament. This Order makes provision consequential on the Revenue Scotland and Tax Powers Act 2014.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom, except article 6 which has the same extent as the Public Interest Disclosure (Prescribed Persons) Order 1999 (S.I. 1999/1549).

6. European Convention on Human Rights

The Parliamentary Undersecretary of State for Scotland has made the following statement regarding Human Rights:

“In my view the provisions of the Revenue Scotland and Tax Powers Act 2014 (Consequential Provisions and Modifications) Order 2014 are compatible with the Convention rights.”

7. Policy background

7.1 The Scotland Act 2012 provides for the full devolution of the taxation of land transactions and disposals to landfill to the Scottish Parliament. It is intended that the new devolved taxes will come into force from April 2015.

7.2 The Revenue Scotland and Tax Powers Act 2014 makes provision for a Scottish tax system to enable the collection and management of the devolved taxes. It establishes Revenue Scotland as the tax authority responsible for the collection of the devolved taxes, and provides for Revenue Scotland to delegate any of its functions relating to Land and Buildings Transaction Tax to RoS and any of its functions relating to Scottish Landfill Tax to SEPA. The Revenue Scotland and Tax Powers Act 2014 puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship between Revenue Scotland and taxpayers in Scotland, including the relevant powers, rights and duties.

7.3 As above, the purpose of this Order is to establish Revenue Scotland as a Non-Ministerial Department and as an office-holder in the Scottish Administration; to ensure that whistleblowers who assist Revenue Scotland, RoS or SEPA in relation to the devolved taxes are protected in the same way as individuals who assist HMRC are currently protected; to make consequential changes to reflect that Revenue Scotland will be a separate legal body from Scottish Ministers; to allow for information sharing between HMRC and Revenue Scotland; and to add Revenue Scotland to the list of bodies from which MPs are disqualified as members.

7.4 In relation to information sharing between HMRC and Revenue Scotland, the Scottish Government and Her Majesty's Government are agreed that this should be permitted in both directions in connection with the collection and management of revenue by each body, and that such provision should be made in this Order. Section 18(2)(i) of the Commissioners for Revenue and Customs Act 2005 permits HMRC to share information with the Scottish Ministers in connection with the collection and management

of devolved taxes. Article 4(1) substitutes Revenue Scotland for Scottish Ministers in section 18(2)(i), and repeals section 18(2A) of the Commissioners for Revenue and Customs Act 2005 which was inserted by section 24(4) of the Scotland Act 2012. Section 18(2A) would prohibit the onwards disclosure of information received from HMRC, but given that a protected taxpayer information regime is provided at section 15 of the Revenue Scotland and Tax Powers Act 2014 which only permits such information to be shared in clearly defined circumstances it is unnecessary for both sets of provisions to remain in place. Article 4(3) permits information to be shared by Revenue Scotland with HMRC by extending the circumstances in which disclosure is permitted for the purposes of section 15 to include disclosure of information to HMRC made in connection with HMRC's purposes.

8. Consultation outcome

8.1 No formal consultation has taken place on the Order; Orders taken forward under section 104 of the 1998 Act are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises. The terms of the Order have been agreed between the Scottish Government, HMRC, HM Treasury, the Department for Business, Innovation and Skills, Cabinet Office and the Scotland Office.

8.2 The Scottish Government has consulted on establishing Revenue Scotland to administer taxes devolved under the Scotland Act 2012, seeking views on the structure and powers for Revenue Scotland, ensuring tax compliance, tackling tax avoidance, resolving tax disputes, treatment of taxpayer information and accelerated tax changes. This consultation closed on 12th April 2013. Responses to the consultation can be found online at: <http://www.scotland.gov.uk/Publications/2013/05/2816/downloads>

9. Guidance

9.1 No formal guidance will be available on the use of these powers.

10. Impact

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

10.2 There will be no direct impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.