

**EXPLANATORY MEMORANDUM TO
THE FINANCE ACT 2009, SECTION 96 AND SCHEDULE 48 (APPOINTED DAY,
SAVINGS AND CONSEQUENTIAL AMENDMENTS) ORDER 2009**

2009 No. 3054 (C.133)

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

The purpose of this instrument is twofold. First, it provides that 1 April 2010 is the date on which the amendments to Schedule 36 to Finance Act (FA) 2008 made by section 96 of and Schedule 48 to FA 2009 come into force. Secondly, it repeals a range of powers under which officers of HMRC can require information or documents and carry out inspections. Those powers are now provided in Schedule 36 to FA 2008 as applied by section 96 of and Schedule 48 to FA 2009. Making these repeals avoids leaving unnecessary powers in place.

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

None.

4. **Legislative Context**

4.1 Schedule 36 to FA 2008 was brought into force on 1 April 2009. That Schedule contains a modernised set of powers which are available to HMRC to carry out compliance checks into a person's tax position. It applies to checks of income tax (including PAYE), corporation tax, capital gains tax, VAT and NIC.

4.2 Section 96(3) of FA 2009 applies the powers in Schedule 36, as amended by Schedule 48 to FA 2009, to eight additional taxes and duties administered by HMRC from a day to be appointed by Treasury order. Article 2 of this instrument provides that the appointed day is 1 April 2010.

4.3 Section 96(5) of FA 2009 provides that a Treasury order may make savings and other provisions as a consequence of or otherwise in connection with section 96 and Schedule 48. Articles 3 and 4 of this instrument repeal a range of specialist information powers that are no longer required as a result of the extension of the Schedule 36 powers to other taxes and duties and save provisions regarding appeals and penalties in relation to information notices issued before 1 April 2010.

5. **Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury, Mr Stephen Timms, has made the following statement regarding Human Rights:

In my view the provisions of the Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The HMRC Review of Powers, Deterrents and Safeguards began in 2005, following the merger of the Inland Revenue and HM Customs and Excise, to provide a framework of law and practice for HMRC that supports the Government's objectives of a tax system that is fair and better adapted to the needs of customers. One of the main outputs of the Review is a harmonised set of powers with which HMRC may carry out checks into a person's tax position. That is contained in Schedule 36 to FA 2008 which came into effect on 1 April 2009 in relation to the main taxes administered by HMRC. Section 96 applies the powers to most of the other taxes administered by HMRC and Schedule 48 to FA 2009 modifies Schedule 36 to accommodate the extension to other taxes and includes some provisions which enable a larger number of specialist information powers to be repealed. This order switches on the FA 2009 provisions from 1 April 2010.

7.2 HMRC wish to avoid leaving overlapping powers in place as this will cause uncertainty as to which set of powers is being used. The powers in Schedule 36 contain greater safeguards for taxpayers than those in the specialist provisions. Accordingly, the powers in the specialist provisions are being revoked so that officers must use Schedule 36 instead.

- *Consolidation*

7.3 These regulations switch on the FA 2009 provisions and repeal powers in primary legislation that are no longer required. HMRC has no current plans to consolidate these Regulations.

8. Consultation outcome

The provisions that became Schedule 36 to FA 2008 were fully consulted on. The fact that having a single set of powers would enable existing information powers to be repealed or revoked was made clear in the consultation and welcomed by respondents. As part of a second consultation in relation to proposed legislation in the 2009 Finance Bill the specialist powers that were to be repealed and are now included in this order were set out in draft legislation.

9. Guidance

This instrument removes powers that are no longer necessary. Guidance on the new powers in Schedule 36 has been published and consulted on.

10. Impact

10.1 There will be negligible impact on business, charities and voluntary bodies.

10.2 There will be negligible 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 applies to small business.

11.2 Businesses will have to keep the same records as they do at present. The main effect of the instruments is to remove an unnecessary set of powers under which information could be required or those records could be inspected.

11.3 Small businesses, as with all employers, will gain from having only one set of powers to refer to.

12. Monitoring & review

An Implementation Forum, chaired by HMRC, but with a majority of its members drawn from representative bodies was set up to monitor the application of Schedule 36 FA 2008. The Forum will also consider how Schedule 36 is being applied to the taxes specified in section 96 FA 2009.

13. Contact

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