EXPLANATORY MEMORANDUM TO

THE DATA-GATHERING POWERS (RELEVANT DATA) (AMENDMENT) REGULATIONS 2013

2013 No. 1811

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

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

2. Purpose of the instrument

2.1 These Regulations amend the Data-gathering Powers (Relevant Data) Regulations 2012 to prescribe what data merchant acquirers (and similar bodies) must provide to HMRC on receipt of a data-holder notice. People who process payment card transactions for businesses are introduced by Finance Act 2013 as a new class of data-holder under Part 2 of Schedule 23 to Finance Act 2011 ("FA 2011").

2.2 These Regulations also correct two unrelated technical errors in the 2012 Regulations regarding the types of data HMRC can obtain about interest payments.

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

3.1 These Regulations are subject to the negative procedure of the House of Commons because they are not the first regulations made under paragraph 1(3) of Schedule 23 to the FA 2011. Therefore, paragraph 44(2) of Schedule 23 does not apply. Consequently, paragraph 44(3) of Schedule 23 applies instead.

3.2 In accordance with paragraph 3.4.13 of Statutory Instrument Practice, HMRC has agreed with the SI Registrar that the free issue procedure does not need to apply to this instrument on the basis that the primary purpose of the Regulations is to introduce new provisions.

4. Legislative Context

4.1 HMRC's data-gathering powers were modernised by Schedule 23 to FA 2011 following consultation. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

4.2 Merchant acquirers were not explicitly specified as data-holders in Schedule 23 to FA 2011 as originally enacted, and do not fall within any other existing categories of data-holder specified in the Schedule.

4.3 The relevant clause in Finance Act 2013 introduces a new class of data-holder under Schedule 23: institutions that contract with businesses to reimburse them for supplies made where a credit, debit or charge card (or equivalent method) was accepted as payment. This includes both merchant acquirers and businesses known as “aggregators”, which act as intermediaries by aggregating a number of retailers under a single merchant account. The number of businesses that could receive notices issued under this measure is small.

4.4 These Regulations are needed to specify the data that HMRC may require merchant acquirers and aggregators to provide, and also to correct the 2012 Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of 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

7.1 The policy objective is to provide HMRC with a power to require merchant acquirers and aggregators to provide bulk data about business taxpayers, in order to identify those who do not declare their full sales.

7.2 These Regulations specify the types of data that can be obtained from merchant acquirers. These include the total card payments made to each UK business that accepts credit and debit cards, their contact details, bank account details, details of their merchant account and trade classification, and their VAT number. HMRC will not be able to gather data about individual card holders.

7.3 This data will be matched with data HMRC already holds to check returns. It will improve HMRC’s ability to identify and target those who are underpaying tax, allowing HMRC to compare actual sales made using cards with turnover declared in returns. It will also highlight businesses that have not registered with HMRC for tax, in particular for VAT. HMRC's current estimate of uncollected tax (the tax gap) is around £32 billion, of which £9.6 billion is represented by VAT.

7.4 HMRC will use the data to help in the risk assessment of businesses. More accurately targeted compliance checks will help level the playing field for those who do pay the correct amount of tax.

7.5 HMRC will work with merchant acquirers and aggregators regarding how best to provide the information requested. The department will not be able to demand data that is not currently held. Data-holders will be able to appeal against a data notice on the grounds that complying would be unduly onerous.

7.6 Legislation is required to provide HMRC with the power to issue notices to merchant acquirers and aggregators. This provides these parties with clear legal cover to provide information.

7.7 The technical corrections concern the types of data that HMRC can obtain from people who make payments of interest. These changes are not related to the provisions for data from merchant acquirers.

7.8 The changes correct two restrictions that were inadvertently placed on HMRC's powers in the original Regulations. An error was made in transposing provisions from the predecessor legislation. These corrections restore the position that existed for data about interest payments before Schedule 23 was introduced, in line with the policy intention stated for this type of data during consultation.

- *Consolidation*

7.9 This is the first time that the Data-gathering Powers (Relevant Data) Regulations 2012 have been amended. There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 Draft primary and secondary legislation was published for comment on 11 December 2012 as part of the consultation on the Finance Bill 2013, and changes have been made in response.

8.2 The technical corrections bring the 2012 Regulations into line with the intention stated during consultation in 2009, 2010 and 2011.

9. Guidance

9.1 Relevant guidance will be updated, working with the merchant acquirers and aggregators.

10. Impact

10.1 The impact on business, charities, voluntary bodies and the public sector is negligible. Merchant acquirers and aggregators will incur an administrative burden in providing the data to HMRC. Businesses that are not paying the full amount of tax will face greater scrutiny from HMRC as a result of this measure, but there will be no impact on businesses undertaking normal business transactions.

10.2 A Tax Information and Impact Note was published on 20 March 2013 alongside the Finance Bill 2013.

11. Regulating small business

11.1 The legislation applies to small business, though HMRC is not aware of any merchant acquirer or aggregator with less than 20 employees who would be affected.

11.2 HMRC does not expect this measure to have a significant effect on small businesses.

12. Monitoring & review

12.1 The measure will be monitored by HMRC, making use of the data obtained under the proposed legislation.

13. Contact

If you have any questions about this instrument please contact George Margesson at HMRC (tel: 020 7147 3069, or email: george.margesson@hmrc.gsi.gov.uk).