EXPLANATORY MEMORANDUM TO

THE DATA-GATHERING POWERS (RELEVANT DATA) (AMENDMENT) REGULATIONS 2017

2017 No. 1175

1. Introduction

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

1.2 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 specify the relevant data which Money Service Businesses may be required to provide to HMRC on receipt of a data-holder notice under Schedule 23 to Finance Act 2011 ("Schedule 23"). Money Service Businesses provide, by way of business, the services of currency exchange, money transmission or cheque cashing. They are introduced by Finance (no 2) Act 2017 as a new class of relevant data-holder in Part 2 of Schedule 23. For these purposes banks, building societies, credit unions and friendly societies are not relevant data-holders.

3. Matters of special interest to Parliament

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. Therefore, paragraph 44(2) of Schedule 23 does not apply. Consequently, paragraph 44(3) of Schedule 23 applies.

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 Schedule 23 contains HMRC's data-gathering powers. Persons from whom HMRC may require relevant data are called relevant data-holders and are specified in Part 2 of Schedule 23. The kinds of data that HMRC may require from particular data-holders are specified in the Data-gathering Powers (Relevant Data) Regulations 2012.

4.2 Section 69 of the Finance (no 2) Act 2017 introduces a new category of relevant data-holder to Part 2 of Schedule 23 to the Finance Act 2011 – Money Service Businesses.

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 The policy objective is to provide HMRC with a power to require Money Service Businesses to provide data that will assist HMRC to identify third parties who operate in the hidden economy and do not declare their income.

7.2 HMRC is concerned that some Money Service Businesses are vulnerable to exploitation by those who misuse their services to hide sources of income from HMRC and operate in the hidden economy.

7.3 The hidden economy places an unfair burden on the vast majority of people and businesses, who pay their fair share of tax. Hidden economic activity also disadvantages compliant businesses. Competition between businesses is distorted when a small minority seek to avoid complying with their tax obligations. This measure will enable more effective tax risking and identification of potential non-compliance, while ensuring that the government receives the revenue it is owed to fund vital public services.

7.4 These Regulations specify the relevant data that HMRC can require Money Service Businesses to provide. HMRC believes that the information requested is information that Money Service Businesses should already hold in the course of their business.

7.5 The kind of information HMRC may require includes: information about the quantity and value of transactions with a given customer over a given period; information to facilitate identification of the data holder's customer and beneficial owners other than the customer; and records that the data holder is required to keep under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Consolidation

7.6 There is no current intention to consolidate the amendments to the 2012 Regulations.

8. Consultation outcome

8.1 A consultation document was published by HMRC on 26 August 2016 about the proposals to extend Schedule 23 to Money Service Businesses. A summary of the responses was published on 5 December 2016. The majority of respondents agreed that data-gathering powers should be updated.

8.2 Following the consultation, draft primary and secondary legislation was published for comment on 5 December 2016 as part of the consultation on the Finance Bill 2017. The consultation closed on 1 February 2017.

9. Guidance

9.1 Relevant guidance will be updated and published.

10. Impact

10.1 There is no impact on business outside of the Money Service Business sector. Within that sector, there is negligible impact, primarily the costs associated with providing relevant data to HMRC. There is no impact on charities or voluntary bodies.

10.2 There will be some impact on HMRC in receiving and posting the data but there will not be an impact on the wider public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 5 December 2016 alongside draft legislation about extending HMRC's data-gathering powers 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 applies to activities that are undertaken by small businesses but only if they meet the definitions in the primary legislation.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The basis for the final decision on what action to take to assist small businesses was based on the negligible impact the measure will have on businesses generally.

12. Monitoring & review

12.1 This measure will be monitored through compliance activity and communication with data-holders required to provide HMRC with relevant data, to ensure the policy operates as intended.

13. Contact

13.1 John Tully at HMRC Telephone: 03000 586687 or email: john.tully@hmrc.gsi.gov.uk can answer any queries regarding the instrument.