EXPLANATORY MEMORANDUM TO

THE DATA-GATHERING POWERS (RELEVANT DATA) REGULATIONS 2012

2012 No. [XXXX]

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.

2. Purpose of the instrument

These regulations specify the data that data-holders may be required to provide to an officer of HMRC under the provisions of Schedule 23 to the Finance Act 2011.

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

None.

4. Legislative Context

4.1 Schedule 23 to the Finance Act 2011 ("Schedule 23") contains a modernised power to require persons to provide information about taxpayers. Part 2 of Schedule 23 identifies the groups of data-holders who hold information that may be needed by HMRC to discharge tax functions.

4.2 These regulations set out the data that may be required from each group of data-holders.

4.3 These regulations are the first set of regulations made under the power in paragraph 1(3) of Schedule 23 and are therefore laid under the draft affirmative procedure, pursuant to paragraph 44(1)(2).

4.4 Section 13 of the Interpretation Act 1978 is relied on to make these regulations since Schedule 23 does not come into force until 1 April 2012.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

In my view the provisions of the Data-gathering Powers (Relevant Data) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The single information power in Schedule 23 replaces over 25 separate powers that are spread throughout the Taxes Acts. There are no significant changes from the groups of data-holders covered by the old powers. The information obtained is mainly used in risk analysis in order to identify persons whose tax affairs need to be checked. A typical use of the power will be to require banks to supply details of interest paid on customers' accounts.

7.2 Each of the old powers had its own set of rules and many were archaic, unnecessarily complex or did not provide for the data to be sent in a form that could easily be processed. Schedule 23 contains a single set of rules including the provision of an appeal right for the first time.

7.3 Under the old powers the data that could be required was set out partly in primary law and partly in regulations. These new regulations bring together in one place the rules about what data may be required from each group of data-holders. In some cases the descriptions of the data is wider than previously specified to ensure that there is no impediment in HMRC getting the data that it needs for tax functions.

7.4 Those old rules that were in primary legislation are repealed by Schedule 23 from 1 April 2012.

- ***Consolidation***

7.5 Not applicable.

8. Consultation outcome

8.1 Options for modernising its data-gathering powers were the subject of consultations by HMRC in July 2009 and July 2010, the latter containing draft primary legislation (which became Schedule 23) and draft regulations. A summary of the responses was published to each consultation.

8.2 Following the second consultation the draft regulations were revised and an updated version was published on 22 June 2011 together with a commentary. No comments were received on the updated version of the regulations but some drafting changes have been made to improve clarity.

9. Guidance

HMRC will publish guidance on the operation of the information power.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not expected to be significant.

10.2 The impact on the public sector is negligible.

10.3 A Tax information and Impact Note covering this instrument was published on 9 December 2010 alongside draft legislation and is available on the website http://www.hmrc.gov.uk/budget-updates/autumn-tax/tiin910.pdf It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 It is unlikely that firms employing up to 20 people will have to provide information unless they already do so under the old powers. A small number may have to begin filing returns in a specified electronic format rather than on paper.

11.3 The potential impact on firms being required to provide information in a specified format (typically an excel spreadsheet) was fully explored in the consultations on this measure and was not considered to be significant.

12. Monitoring & review

This measure essentially modernises rather than extends the information powers used by HMRC. All changes to information powers are reviewed by an implementation oversight forum which has a majority of external members.

13. Contact

Madeleine O'Brien at HMRC (Tel: 0207 147 2466) or email: powers.review-of-hmrc@hmrc.gsi.gov.uk can answer any queries regarding the instrument on behalf of HM Treasury.