

EXPLANATORY MEMORANDUM TO
THE FINANCE ACT 2009, SCHEDULE 47 (CONSEQUENTIAL AMENDMENTS)
ORDER 2009

2009 No. 2035

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**

This purpose of this instrument is to repeal 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 Finance Act 2008 as amended by Schedule 47 to Finance Act 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 Finance Act 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. Schedule 36 itself repealed the main powers in primary legislation that are no longer required but did not address the range of specialist powers that apply to particular types of tax check. This instrument repeals over 40 of those specialist provisions.

4.2 Most of the information powers being repealed by this instrument have associated penalties for failure to comply which apply by virtue of the provision containing the power having an entry in the Table in section 98 of TMA 1970. Paragraph 8 of the Schedule to Article 2 repeals the relevant entries in that Table.

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, Schedule 47 (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 Finance Act 2008 which came into effect on 1 April 2009. Schedule 47 to Finance Act 2009 modifies Schedule 36 including some provisions which enable a larger number of specialist powers to be repealed.

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 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 were listed in an Annex to the consultation document. A draft of this instrument was made available to the Public Bill Committee and referred to in the course of the debate on clause 94 which became section 95 FA 2009.

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

As the effect of the instrument is to repeal redundant legislation, no review is proposed.

13. Contact

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