

**EXPLANATORY MEMORANDUM TO**  
**THE CHILD TRUST FUNDS, REGISTERED PENSION SCHEMES AND**  
**STAMP DUTY RESERVE TAX (CONSEQUENTIAL AMENDMENTS)**  
**REGULATIONS 2012**

**2012 No. 886**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

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

2. **Purpose of the instrument**

2.1 These Regulations amend three regulations that have relied upon the definition of an incapacitated person found at section 118 of the Taxes Management Act 1970 ("TMA"). The definition is to be revoked and the amendments made in these Regulations will ensure that both the primary legislation and the secondary legislation that rely on the definition are consistent.

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

3.1 The amendments being laid will breach the 21 day rule because the amendments are being made as a result of a Budget announcement that will have effect from the 6<sup>th</sup> April. To lay the instrument earlier would be a possible breach of Budget protocol (making an amendment reliant on a Budget measure prior to its announcement). If laid after the Budget, observing the 21 day rule would mean the changes would not be made at the start of the 2012/13 tax year and making the changes at the start of a tax year is a policy intention of the Budget measure

4. **Legislative Context**

4.1 These Regulations make amendments to secondary legislation in anticipation of the repeal of section 72 (trustees, guardians, etc of incapacitated persons) and section 73 (further provision as to infants) of the TMA and section 106(1) and (2) (persons acting in a representative capacity on behalf of incapacitated persons and minors) in Part 4 of Finance Act 2003 (stamp duty land tax) to be made by the Finance Act 2012. The amendments to the TMA will have effect for the tax year 2012-13 and subsequent tax years and the amendments to section 106(1) and (2) of the Finance Act 2003 will

have effect in relation to land transactions with an effective date on or after the day on which the Finance Act 2012 is passed.

4.2 The Child Trust Fund Regulations 2004 (S.I. 2004/1450) refers to sections 72 and 73 of the TMA at regulation 29(4). The Registered Pension Schemes (Discharge of Liabilities under Section 267 and 268 of the Finance Act 2004) Regulations 2005 (S.I. 2005/3452), at regulation 4 and the Schedule to the Stamp Duty Reserve Tax Regulations 1986 (S.I. 1986/1711) also make reference to the TMA definition being removed.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

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 wording of the incapacitated person definition in the TMA is both offensive and archaic and the intention is to revoke the provision. The change will mean that all customers, including those individuals lacking capacity, will be treated the same as regards their tax liability. However if a customer requires help or assistance to carry out their tax obligations and need a representative to act for them HMRC will look to the general law to provide the basis for that representation.

7.2 The regulations subject to amendment refer to this definition but in practice are seldom relied upon. Therefore the regulations are being amended to bring them into line with the changes to the primary legislation to ensure consistency and clarity.

- *Consolidation*

7.3 HMRC has no plans to consolidate the named regulations at this time.

## **8. Consultation outcome**

8.1 The change to the incapacitated person definition was subject to a full policy consultation ending in August 2011. Nineteen responses were received as a result of which the favoured option was to revoke the definition, rather than re-define the meaning of an incapacitated person, and seek to rely upon the general law. This has the advantage of making the tax system in this area clearer and more flexible and allows HMRC to treat all customers the same, while customers who require assistance will be able to rely on third party help should they wish to.

8.2 The consultation on the draft legislation for Finance Bill 2012 closed on 10 February and two responses were received both supporting the legislative change. A Tax Information and Impact Note was issued with the draft legislation and indicated the intention to amend the subordinate regulations in line with the changes to the primary legislation.

## **9. Guidance**

9.1 HMRC is currently developing internal and external guidance and will engage stakeholder in the development of the guidance in this area.

## **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 not expected to be significant.

10.3 A Tax information and Impact Note was published on 6<sup>th</sup> December 2011 alongside the draft Finance Bill 2012 clauses and includes the consequential amendments being made to secondary legislation and is available at: [http://www.hm-treasury.gov.uk/d/incapacitated\\_persons.pdf](http://www.hm-treasury.gov.uk/d/incapacitated_persons.pdf)

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The change of policy will be monitored in conjunction with stakeholders.

## **13. Contact**

John Tully at HMRC (Tel: 02071472450) or email: [tap@hmrc.gsi.gov.uk](mailto:tap@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.