

EXPLANATORY MEMORANDUM TO
THE STAMP DUTY LAND TAX (VARIATION OF THE FINANCE ACT 2003)
REGULATIONS 2006

2006 No. 3237

- 1.** This explanatory memorandum has been prepared by HM Revenue and Customs 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. Description

The Regulations amend the legislation governing stamp duty land tax ('SDLT') in order to counter schemes designed to avoid SDLT.

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

None

4. Legislative Background

4.1 Section 109 Finance Act 2003 gives HM Treasury the power to vary Part 4 of that Act (the legislation governing SDLT) by Regulations. The power cannot be used to vary SDLT rates and thresholds. The Explanatory Notes to Clause 109 of Finance Bill 2003 stated that the power would be used 'to allow avoidance devices to be countered as they arise and to allow reliefs to be implemented with immediate effect'. These Regulations counter known avoidance devices of which HM Revenue & Customs have recently become aware.

4.2 The power in section 109 has been used once before in making The Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No 2) Regulations 2003 (2003 SI No 2816) (in strictness twice, since those Regulations replaced an earlier defective instrument). Those Regulations were concerned with giving relief.

4.3 Section 110 Finance Act 2003 provides that the regulations cease to have effect unless approved by the House of Commons within a period of 28 days beginning with the day on which they are made, disregarding any time during which the House is adjourned for more than four days.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 One of the drivers for the introduction of SDLT in 2003 was fairness between taxpayers. In order to achieve this objective the Government adopts a robust approach to countering SDLT avoidance. Finance Bills since 2003 have included a number of SDLT anti-avoidance measures.

7.2 HM Revenue & Customs have recently become aware of a number of avoidance schemes which have the potential to put significant tax yield at risk. In view of the amounts at stake the Government has decided it is appropriate to counter the schemes with immediate effect.

7.3 In view of the risk of forestalling it was not appropriate to consult in advance on the Regulations. However section 109(5) Finance Act 2003 provides that the Regulations cease to have effect after 18 months, so permanent provisions replacing the Regulations will be included in Finance Bill 2007. The Government invites representations on the Regulations, and any representations will be taken into account in drafting the provisions in Finance Bill 2007.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Crispin Taylor at HM Revenue and Customs Tel: 020 7147 2793 or e-mail: crispin.taylor@hmrc.gsi.gov.uk can answer any queries regarding the instrument.