

**EXPLANATORY MEMORANDUM TO THE  
BAIL (AMENDMENT) ACT 1993 (PRESCRIPTION OF PROSECUTING  
AUTHORITIES) (AMENDMENT) ORDER 2005**

**2005 No.1129**

1. This explanatory memorandum has been prepared by the Office for Criminal Justice Reform and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

2.1 This Statutory Instrument amends the Schedule to The Bail (Amendment) Act 1993 (Prescription of Prosecuting Authorities) Order 1994 (S.I. 1994/1438) (“the 1994 Order”), which prescribes the prosecuting authorities which can appeal against a grant of bail by a magistrates’ court. It replaces the references to the Commissioners of Customs and Excise and Inland Revenue in the previous Order with a reference to the new office of Director of the Revenue & Customs Prosecution Office (RCPO) created under the Commissioners for Revenue and Customs Act 2005 (“the CRC Act 2005”).

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

3.1 This Order breaches the 21 day rule for the following reasons. It could not be made until the CRC Act 2005 had completed its Parliamentary stages, which occurred on 6 April 2005.

On commencement of the CRC Act 2005 on 18 April 2005, the Director of the RCPO will immediately take over responsibility for the prosecution of all existing Revenue and Customs offences from the former Commissioners of HM Customs and Excise and the Inland Revenue. Many of these cases will be before the Courts. The Director must therefore be in a position to appeal against decisions by magistrates’ courts to grant bail to those being prosecuted for Revenue and Customs offences, where he considers that these decisions are inappropriate. RCPO will be responsible immediately on commencement of the Bill for prosecuting some of the most serious cases before the magistrates’ courts and a gap of even a few days in which the Director did not have the power to appeal against bail decisions in these cases could have very serious consequences.

4. **Legislative Background**

4.1 The Bail (Amendment) Act 1993 allows the prosecution to appeal to a Crown Court judge where bail has been granted by a magistrates’ court to a

person charged or convicted of certain offences (section 1(1)). By virtue of section 1(2) this applies where the prosecution is conducted by a person prescribed by order of the Secretary of State. The 1994 Order prescribes the relevant prosecuting authorities, including the Commissioners of Customs and Excise and the Commissioners of Inland Revenue. The Director of the RCPO is a new office being created in the CRC Act 2005. From 18 April he and his staff will prosecute all offences previously investigated by the Commissioners for Revenue and Customs or their predecessor departments, the Commissioners of Customs and Excise and the Commissioners of Inland Revenue. The Director will also be able to designate any member of his office to exercise any of his functions. It is necessary to update the 1994 Order to take account of this change.

## **5. Extent**

5.1 This instrument applies to England and Wales only.

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

Not applicable.

## **7. Policy background**

7.1 The RCPO's creation will coincide with the commencement of the legislation. It is therefore necessary that the power to appeal bail decisions are available to the Director RCPO from this date.

## **8. Impact**

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

8.2 There is no impact on the public sector as this instrument does not create a new power.

## **9. Contact**

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