

EXPLANATORY MEMORANDUM TO
THE REVENUE AND CUSTOMS (INSPECTIONS) REGULATIONS 2005
2005 No.1133

1. This explanatory memorandum has been prepared by the Commissioners for Customs and Excise on behalf of HM Treasury and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 These Regulations confer functions on inspectors of constabulary for England and Wales, Scotland, and Northern Ireland in relation to the Commissioners for Her Majesty's Revenue and Customs and officers of Revenue and Customs. The Regulations define the scope of, and the arrangements for inspections of Her Majesty's Revenue and Customs. They enable those inspectors to carry out inspections to assess the effectiveness of the actions of officers or the Commissioners in relation to the prevention, detection or investigation of offences or any subsequent criminal proceedings. They provide for inspections of the methods by which Her Majesty's Revenue and Customs identify and manage risks in relation to its law enforcement activities.

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

None.

4. **Legislative Background**

4.1 These Regulations are made under sections 27(1) and (2) of the Commissioners for Revenue and Customs Act 2005. This is the first occasion on which the powers in section 27 have been used.

4.2 The 2005 Act provides for the creation of Her Majesty's Revenue and Customs – a new non- Ministerial Government Department . The revenue and non revenue functions of the Commissioners of Inland Revenue and the Commissioners of Customs and Excise vest in the Commissioners for Revenue and Customs on 18th April 2005 and the two old Departments then cease to exist. The functions of inland revenue officers and customs officers vest in officers of Revenue and Customs.

4.3 Section 27(3) precludes inspection of any matter which the Comptroller and Auditor General has power to examine under section 6 of the National Audit Act 1983, namely matters relating to the economy, efficiency and effectiveness with which a government department uses its resources to discharge its functions.

5. Extent

This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

These Regulations are subject to annulment and do not amend primary legislation. Accordingly no statement as to compliance with the Convention rights is required.

7. Policy Background

7.1 The policy stems from the widely publicised collapse of an excise diversion fraud trial in November 2002. The failure of the case prompted Ministers to commission an independent review into the practices and procedures relating to the disclosure, associated investigation techniques and case management in HM Customs and Excise criminal cases. Hon. Mr Justice Butterfield's report, published in July 2003, identified serious deficiencies in the handling of informants and a failure to comply with disclosure obligations. The findings had significant implications for the way in which the Department managed its cases. The report recommended several measures including a review to examine how additional external scrutiny might be introduced into Her Majesty's Customs and Excise's Investigation work. In response to this review, Ministers agreed that inspectors of constabulary should provide external scrutiny of investigation work in the new Department, Her Majesty's Revenue and Customs. A similar arrangement is intended for the Serious Organised Crime Agency.

7.2 The policy objective is to put in place external scrutiny similar to that operating over Police Forces. The arrangements will provide scrutiny of law enforcement activities not previously subject to regular, systematic, independent review. External scrutiny will encourage Departmental compliance and improve professional standards. This should increase ministerial and public confidence. The regulations fulfil the policy objective by defining the scope of inspections, rights of access and reporting arrangements. The regulations also provide for payment in respect of inspection activities and appointment of assistant inspectors.

7.3 The policy has been agreed with the Office of Public Services Reform and the Office for Criminal Justice Reform to ensure that the new arrangements are consistent with the developments in Government policy on inspection in the public services. The scope of the inspectors' scrutiny is restricted to assessing and reporting on HMRC's effectiveness in criminal investigations and proceedings. It does not include value for money matters, which are subject to National Audit Office scrutiny.

7.4 External scrutiny will apply across the whole of the United Kingdom. The policy in relation to inspections in Scotland has been agreed with the

Scottish Executive and the Scotland Office, and that in relation to Northern Ireland has been agreed with the Office of the First Minister and Deputy First Minister and the Northern Ireland Office.

8. Impact

No regulatory impact assessment is considered necessary since it is not envisaged that there will be any implications for the private/voluntary sectors nor significant resource cost or implications for the public sector.

9. Contact

Kieron King in HM Customs and Excise (Tel 0207 147 0748 or email Kieron.King@hmce.gsi.gov.uk) can answer any questions regarding the instrument.

HM Customs and Excise
on behalf of
Her Majesty's Treasury