EXPLANATORY MEMORANDUM TO

THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (EXERCISE OF FUNCTIONS) ORDER 2013

2013 No. 2733

1. This Explanatory Memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To allow HMRC to act as the Central Authority for incoming direct tax mutual legal assistance requests instead of the UK Central Authority based in Home Office.

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

3.1 None.

4. Legislative Context

4.1 The Crime (International Co-operation) Act 2003 (referred to in this EM as the 2003 Act), and the Commissioners for Revenue and Customs Act 2005, were amended by Section 97 of the Criminal Justice and Immigration Act 2008 (referred to in this EM as the 2008 Act) which dealt with mutual legal assistance in revenue matters.

4.2 Section 97 of the 2008 Act amended the Order making power at section 27(1) of the 2003 Act. It also repealed paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 which had placed restrictions on the exercise of the Order making power in section 27(1) of the 2003 Act. Paragraph had restricted HMRC to sending and receiving requests in relation to Customs matters only. Paragraph 27(1) now permits functions under sections 10, 11 and 13 to 26 of the 2003 to be exercised, by Order, by HMRC in relation to all its functions.

4.3 The Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2005 (S.I. 2005/425) made provision for the exercise of powers by HMRC under sections 13, 14, 15, and 19 and paragraph 6 of Schedule 1 to the 2003 Act. As this Order had been made prior to the repeal of the restriction at paragraph 14 of the Commissioners for Revenue and Customs Act 2005, it did not have effect in relation to direct tax matters.

4.4 This meant that whilst HMRC was the relevant Central Authority in relation to Customs matters, and could send and receive requests for mutual legal assistance itself for Customs matters, all requests in relation to former

Inland Revenue matters were required to be sent via the Home Office which was the relevant Central Authority.

4.5 By making a new Order, the provisions of the 2003 Act set out at paragraph 4.4 of this EM will have effect in relation to all HMRC functions. HMRC will be the relevant Central Authority in relation to all its functions. This will enable it to deal directly with requests for mutual legal assistance in relation to all its functions.

5. Territorial Extent and Application

5.1 SI No. 2733 applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

As this 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 HMRC is already a Central Authority and can, in relation to former Customs matters, exercise the functions of the Secretary of State under sections 13, 14, 15, 19 and Paragraph 6 of Schedule 1 of the 2003 Act.

7.2 These functions are exercised by the Commissioners for Revenue and Customs as a consequence of the Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2005, made under section 27(1) of the 2003 Act, which enables the Commissioners to receive and execute requests for mutual legal assistance.

7.3 However, due to the historic restriction at paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005, HMRC is presently unable to send and receive requests for mutual legal assistance in relation to former Inland Revenue matters. These must instead be routed via the UK Central Authority, in the Home Office, before they are passed to HMRC to execute.

7.4 As the restriction was repealed by the 2008 Act, by making a new Order, the power will be exercisable by HMRC in relation to all its functions.

7.5 This instrument will make HMRC the Central Authority for all its functions enabling it to receive, respond, and have ownership of the administrative process in cases where it is responsible for executing a foreign request for mutual legal assistance.

7.6 HMRC has also taken this opportunity to make some minor drafting changes that update some of the language.

- ***Consolidation***

7.7 This instrument includes no consolidation.

8. Consultation outcome

8.1 As there is no impact on business interaction with HMRC, no consultation was undertaken.

9. Guidance

9.1 This instrument applies to officers of HMRC who are authorised to use these powers. Internal guidance will be updated and relevant training will be given, where necessary, to the officers that will use the powers in this instrument.

10. Impact

10.1 here is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring & review

12.1 The powers and procedures provided by this instrument will be monitored by HMRC to ensure they remain aligned to wider criminal justice procedure.

13. Contact

Rakesh Modi at HM Revenue and Customs Tel: 03000 585 373 or email: rakesh.modi@hmrc.gsi.gov.uk can answer any queries regarding the instrument.