EXPLANATORY MEMORANDUM TO

THE CUSTOMS (INSPECTIONS BY HER MAJESTY'S INSPECTORS OF CONSTABULARY AND THE SCOTTISH INSPECTORS) (AMENDMENT) REGULATIONS 2014

2014 No. 907

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

2. Purpose of the instrument

2.1 To make provision for Her Majesty's Inspectorate of Constabulary (HMIC) to delegate its powers to inspect customs holding facilities to Her Majesty's Inspectorate of Prisons (HMIP) only, rather than generally to 'another public body' and to update the list of customs holding facilities.

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

3.1 None

4. Legislative Context

4.1 The Customs (Inspections by Her Majesty's Inspectors of Constabulary and the Scottish Inspectors) Regulations 2012 ("the 2012 Regulations") were scrutinised after enactment. On 26 November 2012 the 16th Report by the Secondary Legislation Scrutiny Committee (HL Paper 77) questioned whether the Regulations allow HMIC to delegate their functions to any public authority. The Home Office responded to this question in the affirmative, explaining that the policy intention was to ensure that under these Regulations an inspector from another appropriate inspectorate could conduct an inspection into a Border Force customs custody premises with equal powers to their counterparts in HMIC.

4.2 Following this, the Government was asked in a Parliamentary Question if it would amend the 2012 Regulations to narrow HMIC's powers to delegate the inspection of the treatment and conditions of persons detained in Border Force customs custody to HMIP only. The Government responded, promising to consider redrafting the Regulations, noting that until such time, HMIC had no intention to delegate inspection powers other than to HMIP.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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 Regulation 4 narrows HMIC's powers to delegate their inspection functions by limiting this to delegation to HMIP only. This change is necessary to prevent delegation to a body other than HMIP. The policy intention was that this delegation would be to HMIP only.

7.2 Regulation 5 amends the list of premises specified for the purposes of regulation under Part 1 and Part 2 of the Schedule, as the premises used have changed since the 2012 Regulations.

- ***Consolidation***

7.3 As the amendments made by this instrument are relatively limited, the Department does not consider consolidation is appropriate on this occasion.

8. Consultation outcome

8.1 The changes have not been subject to consultation as this would be disproportionate to the nature of the changes.

9. Guidance

9.1 HMIC and HMIP will be informed of the changes, however, no formal guidance will be required.

10. Impact

10.1 No regulatory impact assessment is considered necessary since it is not envisaged that there will be any implications for business, charities or voluntary bodies nor significant resource or cost implications for the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Officials from the Home Department and Her Majesty's Inspectorate of Constabulary and the Scottish Inspectors will continue to engage in dialogue and meet to discuss matters related to the inspections. Periodically the Department will review discussions held regarding these regulations and will consider whether it would be advantageous to make any modifications.

13. Contact

13.1 James Carroll at the Corporate Security Directorate Tel: 07786 747 509 or email: james.carroll@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.