EXPLANATORY MEMORANDUM TO THE:

HER MAJESTY'S CHIEF INSPECTOR OF PRISONS (SPECIFIED ORGANISATIONS) ORDER 2007

2007 No. 1173

HER MAJESTY'S INSPECTORS OF CONSTABULARY (SPECIFIED ORGANISATIONS) ORDER 2007

2007 No. 1170

HER MAJESTY'S INSPECTORATE OF THE NATIONAL PROBATION SERVICE FOR ENGLAND AND WALES (SPECIFIED ORGANISATIONS) ORDER 2007

2007 No. 1172

HER MAJESTY'S INSPECTORATE OF COURT ADMINISTRATION (SPECIFIED ORGANISATIONS) ORDER 2007

2007 No. 1176

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

2. Description

2.1 Sections 28 to 32 of the Police and Justice Act 2006 amended the enabling legislation of each of the five justice sector inspectorates (Her Majesty's Chief Inspector of Prisons, Her Majesty's Inspectors of Constabulary, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of the National Probation Service for England and Wales, and Her Majesty's Inspectorate of Court Administration) to impose on each Chief Inspector a duty to prevent or limit certain proposed inspections of specified organisations in order to prevent an unreasonable burden being imposed on those organisations. These four Orders specify those organisations for four of the five inspectorates. No Order has been made in respect of Her Majesty's Chief Inspector of the Crown Prosecution Service because there are as yet no identified other inspectorates for that area of business.

2.2 The effect of the specification is that if a person or body (which is named in relation to an inspectorate for this purpose in the Police and Justice Act 2006) proposes to inspect one of the organisations specified in the order relating to that inspectorate, and the relevant Chief Inspector considers that the proposed inspection would impose an unreasonable burden on that organisation, the Chief Inspector must give notice to that person or body not to carry out the proposed inspection or not to carry it out in a particular manner. Ministers will be able to consent to the inspection going ahead if satisfied that it would not impose an unreasonable burden.

2.3 The specification in the four Orders has an effect if:

(a) Her Majesty's Chief Inspector of Prisons (HMI Prisons), Her Majesty's Chief Inspector of the Crown Prosecution Service (HMICPS), Her Majesty's Inspectorate of the National Probation Service for England and Wales (HMI Probation), the Commission for Healthcare Audit and Inspection (the Healthcare Commission) or the Audit Commission for Local Government and the National Health Service in England and Wales (the Audit Commission) proposes to inspect a police force, a police authority, the Serious Organised Crime Agency; the National Policing Improvement Agency, the Ministry of Defence Police, the British Transport Police Force, or the Civil Nuclear Constabulary - Her Majesty's Inspectors of Constabulary may issue a notice;

(b) HMI Probation, Her Majesty's Chief Inspector of Education, Children's Services and Skills, the Healthcare Commission, the Commission for Social Care Inspection, or the Audit Commission propose to inspect a Governor of a prison or a director, controller or other person working at a contracted out prison; a Governor or other person working at a young offender institution, a remand centre, a removal centre or a short-term holding facility; or any person exercising prison escort or custody functions - Her Majesty's Chief Inspector of Prisons may issue a notice;

(c) HMI Prisons, Her Majesty's Chief Inspector of Education, Children's Services and Skills, the Healthcare Commission, the Commission for Social Care Inspection or the Audit Commission proposes to inspect a local probation board, an organisation or individual with whom a local probation board has made arrangements or a manager or other person working at approved premises - Her Majesty's Inspectorate of the National Probation Service for England and Wales may issue a notice;

(d) The Audit Commission proposes to inspect those who exercise the functions of Her Majesty's Courts Service including those with responsibility for enforcing court orders (including civilian enforcement officers, those who work for an approved enforcement agency and bailiffs of a county court) - Her Majesty's Inspectorate of Court Administration may issue a notice.

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

3.1 None.

4. Legislative Background

4.1 Sections 28 to 33 of the Police and Justice Act 2006 made provision about each of the five justice sector inspectorates, as described in paragraph 2.1 above, in respect of the delegation of functions, inspection programmes and frameworks, inspections by other inspectors of organisations within each inspectorate's remit, cooperation, joint action and assistance for other public authorities.

4.2 Section 28 inserted a new Schedule A1 into the Prison Act 1952, conferring certain additional powers and duties on Her Majesty's Chief Inspector of

Prisons. Sections 29 to 32 made equivalent provision in respect of Her Majesty's Inspectors of Constabulary (by inserting new Schedule 4A into the Police Act 1996), Her Majesty's Chief Inspector of the Crown Prosecution Service (by inserting a new Schedule into the Crown Prosecution Service Inspectorate Act 2000) , Her Majesty's Inspectorate of the National Probation Service for England and Wales (by inserting new Schedule 1A into the Criminal Justice and Court Services Act 2000) and Her Majesty's Inspectorate of Court Administration (by inserting new Schedule 3A into the Courts Act 2003).

4.3 Paragraph 3(1) of each new Schedule provides that if another person or body, often an inspectorate, listed in paragraph 3(2) proposes to carry out an inspection of a "specified organisation", and the Chief Inspector considers that the proposed inspection would impose an unreasonable burden on that organisation, then the Chief Inspector shall give notice to that other inspectorate not to carry out that inspection or not to carry it out in a particular manner. The relevant Minister is empowered in paragraph 3(4) of each new Schedule to specify by order a person or body who is to be a "specified organisation" for the purposes of paragraph 3(1), and so whom the Chief Inspector is to be obliged to protect from an unreasonable inspection. Only persons or bodies that the Chief Inspector has a duty to inspect himself can be specified and the relevant Minister may specify persons or bodies in relation to particular functions of theirs. The relevant Minister may specify circumstances where the notice procedure under paragraph 3(1) need not or shall not apply. Where notice is given, the proposed inspection is not to take place or is not to take place in the manner proposed, subject to the power of the relevant Minister to give consent to the inspection if satisfied that it would not impose an unreasonable burden.

5. Territorial Extent and Application

5.1 These instruments apply to England and Wales.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 From March to June 2005 the Government consulted a wide range of stakeholders in the justice sector and beyond on proposals for modernising the justice sector inspection regime. The recommended proposal at that time was to merge the five justice inspectorates (as described in paragraph 2.1 above) into one. A detailed analysis of the response was published in the policy statement "Inspection Reform: Establishing an Inspectorate for Justice, Community Safety and Custody" (Office for Criminal Justice Reform, November 2005). That statement described a "gatekeeper" function for the new single inspectorate, in order to reduce the burden of inspections by other inspectorates. The recommended proposal was taken forward in the Police and Justice Bill 2006. During the passage of the Bill the "gatekeeper" function was subsequently developed, in consultation with the inspectorates and departments concerned, into the provision described in paragraph 2.1 above and provisions for

strengthening co-ordination between the existing five inspectorates were thus enacted in the context of the existing enabling legislation.

7.2 The policy underlying the "gatekeeper" function can be described as follows. There are generally three elements of inspection: institutions (and their practices), client groups (and their experiences) and partnerships (and their success in achieving outcomes). The focus of modern inspection is shifting more towards the latter two, yet the burden still falls upon the institutions. Voluntary arrangements between the inspectorates have for some time sought to co-ordinate inspection programmes and manage their impact upon institutions. Such efforts have helped to constrain unwarranted inspection but have not proved effective enough to remove the problem of uncoordinated inspection programmes and the increasing demands that arise from them. A "gatekeeper" function is intended to protect institutions from such pressures.

7.3 These Orders, which specify the organisations for which each justice inspectorate (with the exception of Her Majesty's Chief Inspector of the Crown Prosecution Service), will act as "gatekeeper", have been drawn up in close consultation with each sponsoring department and each inspectorate. There has been no public or media interest. The provision is a relatively small but important part of the Government's strategy for modernising public sector inspection in the context of its strategy for reducing regulatory burdens generally.

7.4 Each inspectorate will be responsible for implementing the "gatekeeper" function and will be able to give any necessary further guidance to staff on its operation. Each justice sector inspectorate is committed to creation of a joint secretariat, which will coordinate handling of "gatekeeper" issues across the inspectorates so as to ensure consistency.

8. Impact

8.1 A Regulatory Impact Assessment was prepared for the original proposal (paragraph 7.1) and published with the policy statement. Regarding the "gatekeeper" function it said: "By reducing the scope for duplication of inspection activity, it would minimise any additional work arising from inspections on the bodies concerned (including those in the private and voluntary sectors, such as privately operated prisons)." The function was strongly endorsed by the Cabinet Office Better Regulation Executive, who have been co-ordinating work to put in place identical provisions in respect of the other main public sector inspection regimes (those covering education, health and local services), in consultation with those directly affected.

8.2 The statement quoted at paragraph 8.1 applies equally to the public sector. The purpose of this provision is reduction of unnecessary administrative burdens on inspected bodies.

9. Contact

Simon MacCulloch at the Office for Criminal Justice Reform (telephone 0207 035 0601 or e-mail Simon.MacCulloch@cjs.gsi.gov.uk) can answer any queries regarding the instruments.