EXPLANATORY MEMORANDUM TO THE

ORDERS FOR THE DELIVERY OF DOCUMENTS (PROCEDURE) (AMENDMENT) REGULATIONS 2005

2005 No. 1131

1. This explanatory memorandum has been prepared by the Commissioners of Inland Revenue 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 These Regulations amend existing regulations which deal with Inland Revenue powers to require the production of documents. The Commissioners for Revenue and Customs Act transfers all of the powers of the Inland Revenue to Her Majesty's Revenue and Customs (HMRC). These regulations amend references to organisational units of the Inland Revenue so that they refer to the equivalent parts of HMRC instead.

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

3.1 This instrument will come into force on 18 April, in breach of the 21-day rule.

3.2 The regulations ensure that HMRC has clear and continuous legislative cover for the exercise of its powers to require the production of documents. If they were not to come into force until some time after the transfer of functions to HMRC, there would be a doubt in the interim as to the new department's ability to exercise one of its main powers for investigating suspected serious tax fraud.

3.3 Because of the short time between Royal Assent of the Commissioners for Revenue and Customs Act, and the transfer of functions, it is not possible to lay these regulations in time for them to come into force at the time of transfer without breaching the 21-day rule.

4. Legislative Background

4.1 The Commissioners for Revenue and Customs Act 2005 ("the Act") establishes HMRC by bringing together HM Customs and Excise (Customs and Excise) and the Inland Revenue into a single non-ministerial government department.

4.2 All of the powers of the old departments are transferred to the new department, without change. Powers exercised by either body of

Commissioners vest in the new body by virtue of section 5. Powers exercised by the officers of each of the old departments vest in officers of the new department under sections 6 and 7. But powers inherited from Inland Revenue officers may only be used in relation to former Inland Revenue matters (section 7(2)), and powers inherited from Customs and Excise officers may not be used in relation to former Inland Revenue matters (section 7(4)).

4.3 References in enactments to the old bodies of Commissioners and to the old styles of officers are to be read as if they were references to the Commissioners for Her Majesty's Revenue and Customs, and officers of Revenue and Customs respectively (section 50(1) and (2)).

4.4 The Act does not contain any consequential amendment provisions for references to the Inland Revenue as an organisation, or its sub-divisions.

4.5 Section 20BA and Schedule 1AA Taxes Management Act 1970 provide a power to require the production of documents that may be required as evidence in an investigation into suspected serious tax fraud. Schedule 1AA has regulation-making powers relating to ancillary matters, and the current regulations are the Orders for the Delivery of Documents (Procedure) Regulations 2000, No. 2875.

4.6 The regulations provide that an application for an order must be approved by a member of the Senior Civil Service in either the Special Compliance Office or the Cross-Cutting Policy branch of the Inland Revenue (regulation 3). It is these organisational references which are updated by the present regulations.

4.7 Similar regulations are being laid in respect of the equivalent power relating to stamp duty land tax. (SI 2005 No.1132)

5. Extent

This instrument 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 Paymaster General has announced that there will be a review and consultation on the powers needed by HMRC. It is expected that the review will be followed by legislation in due course. In the meantime, the approach taken by the Commissioners for Revenue and Customs Act is to transfer existing powers to the new department without alteration. Powers will continue to be used as before, and the Act is particularly careful to

ensure that no powers are widened in their scope merely through being transferred to a department with wider responsibilities.

7.2 These regulations do no more than ensure the transposition of a power, with no substantive change. The power in question will continue to be used only in relation to income tax, corporation tax and capital gains tax. The Senior Civil Servants able to authorise an application to a judge will be, as before, those employed in the operational and head office units responsible for the power.

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.

9. Contact

John Shuker at the Inland Revenue (Tel: 020 7147 2403 or e-mail: john.shuker@ir.gsi.gov.uk) can answer any queries regarding the instrument.