EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (APPLICATION TO REVENUE AND CUSTOMS) ORDER 2007 (AMENDMENT) ORDER 2010

SI 2010 No. 360

THE POLICE AND CRIMINAL EVIDENCE (APPLICATION TO REVENUE AND CUSTOMS) ORDER (NORTHERN IRELAND) 2007 (AMENDMENT) ORDER 2010

SR 2010 No. 42

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 The purpose of the instruments is to amend the following instruments (the 2007 Orders):

The Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007 No. 3175

The Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007 No. 464

2.2 The effect of the amendments is to apply certain additional provisions of the Police and Criminal Evidence Act 1984 (PACE) and the Police and Criminal Evidence (Northern Ireland) Order 1989 (No. 1341 (N.I. 12)) (PACE(NI)) to relevant criminal investigations conducted by officers of Revenue and Customs and to extend the application of PACE/PACE (NI) to National Minimum Wage investigations.

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

None.

4. Legislative Context

4.1 Following the creation of HMRC in 2005, sections 82(2), 83(2) and 84(1) of the Finance Act 2007 allowed the Treasury to apply PACE and PACE (NI) to investigations carried out by HMRC officers across a range of functions of both the former HM C&E and Inland Revenue. The HMRC 2007 PACE and PACE (NI) application orders were brought in to force to bring effect to the Finance Act 2007 changes,

however some limitations on the application of PACE/PACE(NI) to former Inland Revenue functions remained.

4.2 The National Minimum Wage was one of the remaining functions, where the powers contained in the 2007 Orders could not be used. However, sections 11 and 12 of the Employment Act 2008 amended the Finance Act 2007 to bring the National Minimum Wage within the HMRC functions that are able to utilise the powers within the 2007 PACE application orders. These Statutory Instruments implements this change.

4.3 These Statutory Instruments also apply provisions of PACE and PACE (NI), not previously applied to criminal investigations conducted by HMRC,

5. Territorial Extent and Application

5.1 SI No. 360 applies to England and Wales.

5.2 SR No. 42 applies to Northern Ireland

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 HMRC is already able to use a range of powers contained within the 2007 orders when investigating crime in relation to the functions of HMRC.

7.2 The amendments to the 2007 Orders enable HMRC to carry out criminal investigations using PACE and PACE (NI) powers into National Minimum Wage (NMW) matters, where previously HMRC's has had to rely on police assistance.

7.3 The amendments also expand HMRC's powers to enter premises to arrest an individual when in possession of an arrest warrant or to arrest a person who is unlawfully at large. Previously HMRC would require police assistance in such circumstances, despite having powers to enter premises to arrest someone for an indictable offence. These amendments provide officers of HMRC with the same ability to enter premises to make arrests, whilst being subject to the existing safeguards that apply to criminal investigations generally. In addition, the amendments also allow material seized by someone accompanying

an HMRC officer, when executing a search warrant, to be retained for as long as necessary.

7.4 The HMRC Internet website has published material setting out which officers are authorised to use these powers in HMRC .This material is published on the criminal investigation policy page: http://www.hmrc.gov.uk/prosecutions/crim-inv-policy.htm

7.5 The amendments to the statutory instruments enable HMRC to exercise its investigative functions within an agreed legal framework.

- ***Consolidation***

7.6 This Statutory Instrument includes no consolidation.

8. Consultation outcome

8.1 The Statutory Instruments introduces minor amendments to the existing PACE Orders. As there is no impact on business interaction with HMRC, no consultation was undertaken.

9. Guidance

9.1 The Statutory Instruments apply to officers of HM Revenue and Customs, who are authorised to use criminal investigation powers. Internal guidance will be updated and relevant training will be given, where necessary, to the officers that will use the powers in this Statutory Instrument.

10. Impact

10.1 There 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 The legislation does not apply to small business.

12. Monitoring & review

12.1 The introduction of the amended powers ensures that HMRC can fulfil its functions, including criminal investigations within NMW and tracing of offenders when they are unlawfully at large.

12.2 Internal management information and assurance activity will monitor the use of the new powers. HMRC do not plan to publish this information.

13. Contact

David Margree at HM Revenue and Customs Tel: 020 7147 0495 or email: david.margree@hmrc.gsi.gov.uk can answer any queries regarding the instrument.