EXPLANATORY MEMORANDUM TO

THE REVENUE AND CUSTOMS (COMPLAINTS AND MISCONDUCT) (AMENDMENT) REGULATIONS 2006

2006 No.1748

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs on behalf of HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

These Regulations amend the Revenue and Customs (Complaints and Misconduct) Regulations 2005 (SI 2005/3311). The 2005 Regulations provide for Part 2 of the Police Reform Act 2002, and secondary legislation made under it, to apply with modifications for the purpose of conferring functions on the Independent Police Complaints Commission in relation to the Commissioners for Her Majesty's Revenue and Customs ("Commissioners") and officers of Revenue and Customs. Schedules 1, 2, 3 and 4 to the 2005 Regulations set out those modifications.

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

This statutory instrument corrects the drafting error described in paragraph 4.5 below and is being issued free of charge to all known recipients of the 2005 Regulations.

4. Legislative Background

4.1 The Regulations are made under section 28(1) and (2)(a) of the Commissioners for Revenue and Customs Act 2005.

4.2 The Revenue and Customs (Complaints and Misconduct) Regulations 2005 provide for Part 2 of the Police Reform Act 2002, and secondary legislation made under Part 2, to apply with modifications for the purpose of conferring functions on the Independent Police Complaints Commission ("IPCC") in relation to the Commissioners and officers of Revenue and Customs. Part 2 of the 2002 Act also establishes a system for handling and investigating complaints, conduct matters, and incidents of death or serious injury - and the IPCC is required to oversee that system. Schedules 1, 2, 3 and 4 to the 2005 Regulations modify Part 2 of the 2002 Act and the secondary legislation to tailor it to HM Revenue and Customs.

4.3 Regulations 3 and 4 of the 2005 Regulations provided for specified provisions of Part 2 of the 2002 Act and the secondary legislation to apply

from 28th December 2005 or 1st April 2006 as the case may be. To remove any doubt whether regulations 3 and 4 of 2005 Regulations govern the date the amendments to the 2005 Regulations are to have effect regulation 1(2) of these Regulations provides that the amendments are to have effect from the date these Regulations come into force.

4.4 Regulation 3 of these Regulations inserts new regulation 4A into the 2005 Regulations. Regulation 4A provides for specified amendments to the Police (Complaints and Misconduct) Regulations 2004 (S.I. 2004/643) to apply for the purpose of the application of the 2004 Regulations to HMRC. These amendments came into force after the 2005 Regulations came into force and, without regulation 4A, would have no application to HMRC. Having regard to the relationship between regulations 4 and new 4A and to remove any doubt whether regulation 4 governs the date the specified amendments are to apply for HMRC purposes, regulation 4A(3) provides for regulation 4A to apply from 27th July 2006.

4.5 Section 12(2A), read with sections 12(2B), 12(2C) and 12(2D), of the 2002 Act define “death or serious injury” for the purposes of Part 2 of that Act. Paragraph 4(3) of Schedule 1 to the 2005 Regulations modified these provisions in order to make the definition of “death or serious injury” relevant in the context of HM Revenue and Customs. The need to modify section 12(2B)(b) was overlooked. Regulation 4(2) corrects this oversight. It replaces a reference to a person serving with the police with a reference to an officer of Revenue and Customs.

4.6 The effect of regulation 5(2) is to modify paragraph 4 of Schedule 3 to the 2002 Act by inserting paragraphs 4(1A) and 4(1B). Paragraph 4(1A) sets out the conditions under which a duty arises on the Head of the Home Civil Service to refer to the IPCC a complaint about a death or serious injury, or about specified types of conduct. Paragraph 4(1B) sets out the conditions under which that duty arises on the Commissioners and their Chairman.

4.7 The effect of regulation 5(3) is to revoke the modifications made to paragraphs 10 and 11 of Schedule 3 to the 2002 Act. These modifications had specified the conditions under which a duty to record a conduct matter arose.

4.8 The effect of regulation 5(4) is to modify paragraph 13 of Schedule 3 to the 2002 Act by inserting paragraphs 13(1A), 13(1B) and 13(1C). These paragraphs set out the conditions under which a duty to refer a recordable conduct matter to the IPCC arises. The conditions under which the duty to refer arises and the persons to whom the duty applies are the same for recordable conduct matters as for complaints.

4.9 The effect of regulation 5(6) is to disapply the restriction on the class of persons who may carry out particular investigations imposed by paragraph 16(4) of Schedule 3 to the 2002 Act. The restriction had no relevance in the context of HM Revenue and Customs. Regulation 5(5) makes a consequential

modification of paragraph 16(3) of that Schedule. A broadly corresponding restriction relevant to HM Revenue and Customs was created by paragraph 15(4A) of that Schedule (as inserted by paragraph 16(5) of Schedule 3 to the 2005 Regulations).

4.10 The effect of regulation 6(2) is to modify new regulation 24(ab) of the Police (Complaints and Misconduct) Regulations 2004 – referred to in paragraph 4.4 above. Regulation 24(ab) was inserted by regulation 2(9) of the Police (Complaints and Misconduct) (Amendment) Regulations 2006. Regulation 24(ab) requires a record to be kept of every incident of death or serious injury. The effect of the modification is to place the obligation under regulation 24(ab) on the Head of the Home Civil Service, the Commissioners and the Chairman of the Commissioners.The effect of regulation 6(3) is to revoke the modification to regulation 26(5) of those 2004 Regulations to reflect the revocation of regulation 26(5) by regulation 2(10) of the Police (Complaints and Misconduct) (Amendment) Regulations 2006 (S.I. 2006/1406).

5. Extent

These Regulations apply in England and Wales.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy Background

7.1 The 2005 Regulations came into force on 28th December 2005. The purpose of these Regulations was to confer functions on the Independent Police Complaints Commission (IPCC) to oversee the system for recording, handling and investigating serious incidents and complaints against officers of Revenue and Customs. The introduction of IPCC jurisdiction over HMRC officers forms an integral part of the Government's intention to establish independent external scrutiny arrangements over HMRC as announced by the Economic Secretary to the Treasury in his letter to John McFall, Chairman of the Treasury Select Committee, on 29 September 2004.

7.2 These Regulations set out the conditions subject to which a duty arises on the Commissioners for HM Revenue and Customs and the Head of the Home Civil Service to refer a complaint or conduct matter about certain types of conduct to the IPCC. Those conditions reflect the ongoing functions of the Parliamentary Commissioner for Administration and the Revenue Adjudicator respectively in dealing with complaints against HM Revenue and Customs and the disciplinary function of the Head of the Home Civil Service in relation to the most senior grades of the Senior Civil Service. In the case of complaints against staff of HM Revenue and Customs up to (but not including) the Deputy Chairman, the duty to refer arises where the Commissioners are satisfied that the complaint or matter contains an indication that a criminal

offence may have been committed or of conduct justifying dismissal. In the case of any complaint or matter involving the Chairman or Deputy Chairman, the duty to refer arises where the Head of the Home Civil Service is satisfied that the complaint or matter contains an indication that a criminal offence may have been committed.

7.3 The effect of the Regulations is that these conditions no longer apply in relation to the duty to record a conduct matter, and instead apply in relation to the duty to refer a complaint or conduct matter to the IPCC.

7.4 The conditions have no application to the duty to refer any complaint or conduct to the IPCC which it determines should be referred to it.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

David Alexander of Her Majesty's Revenue and Customs can assist with any queries on behalf of HM Treasury. Email David.Alexander@hmrc.gsi.gov.uk Tel: 0161 827 0472.