EXPLANATORY MEMORANDUM TO

THE UK BORDERS ACT 2007 (BORDER AND IMMIGRATION INSPECTORATE)(JOINT WORKING ETC.) ORDER 2012

2012 No. 2876

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

2. Purpose of the instrument

2.1 This Order provides for the Chief Inspector of Borders and Immigration to act jointly with and assist a number of organisations that have responsibilities for oversight or complaints in relation to border and immigration matters.

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

3.1 None

4. Legislative Context

4.1 This is the first use of the order-making powers conferred on the Secretary of State by sections 52(2), 52(3) and 55(1) of the UK Borders Act 2007.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Chief Inspector is responsible for monitoring and reporting on the exercise of immigration and customs functions by, in the main, immigration officers, customs officials and officials of Secretary of State exercising functions in relation to customs, immigration, asylum or nationality. The UK Borders Act 2007, which established the function of the Chief Inspector, envisaged that it may be appropriate for him to have a relationship with other bodies and accordingly provided the Secretary of State with an order making power to oblige the Chief Inspector to co-operate with prescribed persons (s.52(1)), as well as enabling him to work jointly with (s.52(2)), assist (s.52(3)) or delegate his functions to (s.52(4)) prescribed persons. The Act also conferred an order making power to enable the Chief Inspector to issue non-interference notices to prescribed persons (s.53(2)). This Order prescribes persons for the purposes of sections 52(2) and 52(3) only, namely for the purposes of joint

working and assistance, as it is not considered necessary at this time to prescribe any persons for the purposes of sections 52(1), 52(4) and 53(2).

7.2 The list of persons in this Order has been developed in consultation with the Chief Inspector and represents the bodies we consider that it may be appropriate for him to assist or work jointly with. Such assistance and joint working is expected to happen on an occasional rather than frequent basis. The Order places no obligation or burden on the Chief Inspector or any of the other persons listed. The responsibilities of these organisations, in respect of border and immigration matters, is set out below:

a. HM Chief Inspector of Prisons is responsible for inspecting the Home Office's immigration removal centres and short term holding facilities and to report on the conditions and treatment of detainees

b. HM Inspectors of Constabulary are responsible for inspecting and reporting on the efficiency and effectiveness used to detain people for customs purposes, and for transportation of the persons to and from these premises.

c. The Independent Police Complaints Commissioner investigates serious complaints, allegations of misconduct (such as an allegation of serious corruption) and death or serious injury matters. Its remit covers immigration officers exercising specified enforcement functions in relation to immigration or asylum, as well as general customs and customs revenue officials and certain contractors. The Independent Police Complaints Commissioner only has jurisdiction to act in England and Wales.

d. The Police Complaints Commissioner for Scotland has the function to review the way in which police organisations in Scotland deal with complaints made by members of the public. Its remit also provides for it to establish and maintain procedures in relation to complaints made about immigration officers exercising specified enforcement functions in Scotland in relation to immigration or asylum, as well as general customs and customs revenue officials.

e. The Parliamentary and Health Service Ombudsman, comprising the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, investigates complaints from members of the public who claim to have suffered injustice because of maladministration by a government department or agency. In particular, they look into cases where people are dissatisfied with the Home Office's handling of complaints, including in relation to immigration or customs matters.

8. Consultation outcome

8.1 No formal consultation procedure has taken place in respect of this statutory instrument. This was not considered to be necessary owing to the minor nature of the change and the fact it places no burden or obligation upon any individuals who fall within the remit of the Chief Inspector or any of the bodies prescribed by this statutory instrument. The Chief Inspector and all bodies who are being prescribed have, however, provided their consent in relation to its making.

9. Guidance

9.1 There is no additional guidance on this statutory instrument.

10. Impact

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

10.2 The impact on the public sector is potentially beneficial in that the Chief Inspector will be able to work more efficiently and effectively with the other persons covered in the Order in the exercise of his existing responsibilities for inspecting borders and immigration functions.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will work with the Chief Inspector on an ongoing basis to ensure both that the Order continues to identify the appropriate organisations which he may need to work jointly with or assist and that the provisions in the Order reflect this.

13. Contact

Harjinder Dhesi at the Home Office Tel: 020 7035 3874 or email: harjinder.dhesi1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.