EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (REFUND OF TAX TO CHIEF CONSTABLES AND THE COMMISSIONER OF POLICE OF THE METROPOLIS) ORDER 2012

2012 No. 2393

1. This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This instrument specifies certain bodies for the purposes of section 33 of the Value Added Tax Act 1994 ("section 33"). The effect is that those bodies are entitled to claim refunds of VAT charged on supplies, acquisitions and importations even though those supplies, acquisitions and importations are not for the purpose of a business carried on by them.

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

3.1 None.

4. Legislative Context

4.1 This instrument is made under sub-section (3)(k) of section 33.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 Public bodies are not normally able to recover VAT paid on purchases made to support their statutory duties because these are not business activities and input VAT is only recoverable on purchases made to support taxable business activities. However, since 1973, certain public bodies – mainly in local government – have been entitled to recover this VAT under a special refund scheme provided for in section 33. This scheme exists to ensure that irrecoverable VAT does not become a cost that has to be met from local taxation.

7.2 To qualify, a body must be named in section 33(3), either generically or individually. The Treasury has the power under section 33(3)(k) to add new bodies to the list.

7.3 From the outset police authorities have been included and can recover VAT. They are named in section 33(3)(f). They precept on local taxes and, if they could not recover VAT, the cost would have to be included in the precept. In London the precept is by the GLA on behalf of the police authority, but nothing turns on this distinction.

7.4 As a consequence of the Police Reform and Social Responsibility Act 2011, in England and Wales, most police authorities are to be abolished and replaced by police and crime commissioners (or, in Greater London, the Mayor's Office for Policing and Crime). Police and crime commissioners will become precepting authorities – in London, the GLA will continue to precept on behalf of the Mayor's Office for Policing and Crime. The position in Scotland and Northern Ireland is presently unchanged.

7.5 Paragraph 217 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 made a consequential amendment to section 33(3)(f) to add police and crime commissioners and the Mayor's Office for Policing and Crime.

7.6 However, in practice, much of the budget of police and crime commissioners (and the Mayor's Office for Policing and Crime) will be delegated to chief constables (or, in London, to the Commissioner of Police of the Metropolis). These will be corporations sole. If they cannot recover VAT, the cost will need to be included in the precept by the police and crime commissioners and the GLA. This is unintended and the Treasury is using its powers under section 33(3)(k) to add these bodies to the list in section 33(3).

8. Consultation outcome

8.1 These changes are required as a result of the enactment of the Police Reform and Social Responsibility Act 2011 (c. 13) and have not been subject to consultation.

9. Guidance

9.1 Existing guidance is being updated to name these bodies. No further guidance is required at this stage.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins/htm.

11. Regulating small business

11.1 The changes will have no impact on small businesses.

12. Monitoring & review

12.1 For reasons of consistency, the VAT issues relating to the police are dealt with by a dedicated unit within HMRC. Normal audit activity will encompass these changes.

13. Contact

David Ogilvie at HMRC Tel: 0207 147 0473 or email:
David.Ogilvie@hmrc.gsi.gov.uk can answer any queries regarding this instrument.