

2005 No.1133

REVENUE AND CUSTOMS

The Revenue and Customs (Inspections) Regulations 2005

<i>Made</i> - - - -	<i>7th April 2005</i>
<i>Laid before Parliament</i>	<i>8th April 2005</i>
<i>Coming into force</i> -	<i>29th April 2005</i>

The Treasury, in exercise of the powers conferred on them by sections 27(1) and (2) of the Commissioners for Revenue and Customs Act 2005^(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Revenue and Customs (Inspections) Regulations 2005 and shall come into force on 29th April 2005.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Commissioners for Revenue and Customs Act 2005;

“appropriate inspectors” means in relation to—

- (a) an inspection in England and Wales, the inspectors of constabulary,
- (b) an inspection in Scotland, the inspectors of constabulary and the Scottish inspectors acting jointly,
- (c) an inspection in Northern Ireland, the Northern Ireland inspectors;

“Chairman” means the Commissioner for the time being designated as chairman of Her Majesty’s Revenue and Customs in Letters Patent under section 1(1) of the Act;

“civil penalty” means any penalty for which the Commissioners have power under any enactment to make an assessment or a demand;

“Commissioners” means the Commissioners for Revenue and Customs;

“criminal investigation” means any investigation for the purpose of considering whether an offence has been committed or discovering by whom an offence has been committed;

“Director” means the Director of Revenue and Customs Prosecutions;

“inspectors of constabulary” means Her Majesty’s Inspectors of Constabulary;

“officer” means an officer of Revenue and Customs;

“revenue” has the meaning given by section 5(4) of the Act;

(a) 2005 c.11.

“risk” means the likelihood of an officer or the Commissioners doing or omitting to do something which affects—

- (a) the prevention, detection or investigation of an offence by an officer or the Commissioners,
- (b) any criminal proceedings in England and Wales conducted by the Director,
- (c) any criminal proceedings conducted in Scotland under the direction of the Lord Advocate or a procurator fiscal, or
- (d) any criminal proceedings conducted in Northern Ireland by the Commissioners or the Director of Public Prosecutions for Northern Ireland,

and the possible effect of such an act or omission on the prevention, detection or investigation of that offence or those proceedings.

(2) A reference to the Scottish inspectors or to the Northern Ireland inspectors has the same meaning as in section 27(6) of the Act.

Inspection Functions: England and Wales

3.—(1) The inspectors of constabulary may carry out inspections in England and Wales for the purpose of assessing the effectiveness of the following conduct—

- (a) any acts or omissions of an officer or the Commissioners in connection with the prevention, detection or investigation of an offence by him or them, or
- (b) any acts or omissions of an officer or the Commissioners in connection with criminal proceedings conducted by the Director.

(2) The inspectors of constabulary may carry out inspections in England and Wales to assess the effectiveness of any matter described in regulation 6.

(3) The inspectors of constabulary may exercise the powers under this regulation on their own initiative or at the request of the Chancellor of the Exchequer or the Commissioners but the Chancellor of the Exchequer may not make a request to carry out an inspection in relation to a particular person.

(4) The chief inspector of constabulary may include in his report under section 54(4) of the Police Act 1996 (annual reports) (a) a report on the Commissioners and officers.

Inspection Functions: Scotland

4.—(1) The inspectors of constabulary and the Scottish inspectors may jointly carry out inspections in Scotland for the purpose of assessing the effectiveness of the following conduct—

- (a) any acts or omissions of an officer or the Commissioners in connection with the prevention, detection or investigation of an offence by him or them, or
- (b) any acts or omissions of an officer or the Commissioners in connection with criminal proceedings conducted under the direction of the Lord Advocate or a procurator fiscal.

(2) The inspectors of constabulary and the Scottish inspectors may jointly carry out inspections in Scotland to assess the effectiveness of any matter described in regulation 6.

(3) The inspectors of constabulary and the Scottish inspectors may jointly exercise the powers under this regulation on their own initiative or at the request of the Chancellor of the Exchequer or the Commissioners but the Chancellor of the Exchequer may not make a request to carry out an inspection in relation to a particular person.

Inspection Functions: Northern Ireland

5.—(1) The Northern Ireland inspectors may carry out inspections in Northern Ireland for the purpose of assessing the effectiveness of the following conduct—

(a) 1996 c.16.

- (a) any acts or omissions of an officer or the Commissioners in connection with the prevention, detection or investigation of an offence by him or them, or
- (b) any acts or omissions of an officer or the Commissioners in connection with criminal proceedings conducted in Northern Ireland by the Commissioners or the Director of Public Prosecutions for Northern Ireland.

(2) The Northern Ireland inspectors may carry out inspections in Northern Ireland to assess the effectiveness of any of the matters described in regulation 6.

(3) The Northern Ireland inspectors may exercise the powers under this regulation on their own initiative or at the request of the Chancellor of the Exchequer or the Commissioners but the Chancellor of the Exchequer may not make a request to carry out an inspection in relation to a particular person.

Inspection of means of dealing with risks

6.The matters to which regulations 3(2), 4(2) and 5(2) apply are—

- (a) any method devised by or for Her Majesty's Revenue and Customs for identifying and dealing with a risk;
- (b) any measures devised by or for Her Majesty's Revenue and Customs for assuring that an officer or the Commissioners are properly applying that method, and
- (c) the operation of any such method or measures by an officer or the Commissioners.

Access

7.—(1) This regulation applies to an inspection carried out under regulation 3, 4 or 5.

(2) For the purposes of an inspection the Commissioners shall provide to the appropriate inspectors such of the following as are reasonably required by the appropriate inspectors—

- (a) access to any premises belonging to the Commissioners;
- (b) access to any system operated by or on behalf of the Commissioners for storing and retrieving information electronically;
- (c) any information or documents held by the Commissioners.

(3) For the purposes of an inspection an officer shall provide to the appropriate inspectors such information or documents held by him as are reasonably required by the inspectors.

Inspections of guidance

8.The appropriate inspectors may, if the Chancellor of the Exchequer or the Commissioners request them to do so, carry out an inspection of—

- (a) the operation of any guidance issued by the Commissioners to officers for assessing or demanding a civil penalty instead of carrying out a criminal investigation into any matter or vice versa, or
- (b) the operation of any guidance issued by the Commissioners for using other powers to secure any revenue, for the collection and management of which the Commissioners are responsible, instead of assessing or demanding a civil penalty or carrying out a criminal investigation.

Reports

9.—(1) Where—

- (a) the inspectors of constabulary carry out an inspection under regulation 3 or 8,
- (b) the inspectors of constabulary and the Scottish inspectors jointly carry out an inspection under regulation 4 or 8, or
- (c) the Northern Ireland inspectors carry out an inspection under regulation 5 or 8,

they shall provide a report of the inspection to the Chancellor of the Exchequer.

(2) Subject to paragraph (3), the Chancellor of the Exchequer shall arrange for any report received by him to be published.

(3) The Chancellor of the Exchequer may exclude from publication under paragraph (2) any part of a report if, in his opinion, the publication of that part—

- (a) would be against the interests of national security;
- (b) might jeopardise the safety of any person;
- (c) would contravene section 29(2) of the Act, or
- (d) might prejudice the prevention or detection of crime or the apprehension or prosecution of offenders.

(4) The Chancellor of the Exchequer shall send a copy of the published report to the Chairman.

(5) The Commissioners shall—

- (a) prepare comments on the published report;
- (b) send a copy of the comments to the Chancellor of the Exchequer before such date as may be specified by him;
- (c) publish the comments in such manner as appears to the Commissioners to be appropriate.

(6) Where the inspectors of constabulary and the Scottish inspectors provide a report of an inspection to the Chancellor of the Exchequer he shall send a copy of the published report to the Scottish Ministers.

Appointment of assistant inspectors and staff officers

10.—(1) Section 56 of the Police Act 1996 (appointment of assistant inspectors and staff officers) shall have effect subject to the following modifications—

- (a) in section 56(1) after “constabulary” insert “for the purpose of carrying out functions under the Revenue and Customs (Inspections) Regulations 2005”, and
- (b) in section 56(2) for “Members of a police force” substitute “Officers of Revenue and Customs”.

(2) Section 34 of the Police (Scotland) Act 1967 (appointment of assistant inspectors and staff officers)(a) shall have effect subject to the following modifications—

- (a) in section 34(1) after “constabulary” insert “for the purpose of carrying out functions under the Revenue and Customs (Inspections) Regulations 2005”, and
- (b) in section 34(1A) for “Constables” substitute “Officers of Revenue and Customs”.

Payment

11.—(1) The Commissioners shall pay to the inspectors of constabulary, for functions carried out by those inspectors under these Regulations, such amount as may be agreed between the Commissioners and those inspectors or, in the absence of an agreement, such amount as the Treasury, after consultation with the Secretary of State, may determine.

(2) The Commissioners shall pay to the inspectors of constabulary and the Scottish inspectors, for functions carried out jointly by those inspectors under these Regulations, such amount as may be agreed between the Commissioners and those inspectors or, in the absence of an agreement, such amount as the Treasury, after consultation with the Secretary of State and Scottish Ministers, may determine.

(3) The Commissioners shall pay to the Northern Ireland inspectors for functions carried out by those inspectors under these Regulations such amount as may be agreed between the

(a) 1967 c.77. Section 34(1) was substituted, and section 34(1A) was inserted, by section 58 of the Police and Magistrates' Courts Act 1994 (c.29). Section 34(2) was amended by paragraph 41(4) of Schedule 2 to SI 1999/1820.

Commissioners and those inspectors or, in the absence of an agreement, such amount as the Treasury, after consultation with the Secretary of State, may determine.

John Heppell

Jim Murphy

7th April 2005

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations confer functions on inspectors of constabulary for England and Wales, Scotland, and Northern Ireland in relation to Her Majesty's Revenue and Customs. The Regulations define the scope of, and the arrangements for, inspections of Her Majesty's Revenue and Customs.

Regulation 3(1) enables Her Majesty's Inspectors of Constabulary to carry out inspections in England and Wales into the effectiveness of the actions of an officer or the Commissioners in relation to the prevention, detection or investigation of any offence, or any subsequent criminal proceedings conducted by the Director of Revenue and Customs Prosecutions. Regulation 3(2), read with regulation 6, provides for inspections of the methods by which Her Majesty's Revenue and Customs identify and manage risks in relation to its law enforcement activities. Regulation 3(3) sets out the circumstances in which an inspection may be carried out. Regulation 3(4) enables the chief inspector of constabulary to include in his annual report a report in respect of Her Majesty's Revenue and Customs.

Regulations 4 and 5 make provision similar to regulation 3 for Scotland and Northern Ireland respectively but make no provision similar to regulation 3(4). Regulation 7 requires the Commissioners to provide the inspectors with reasonable access to enable them to carry out their inspections.

Regulation 8 provides for inspection of the operation of guidance issued by the Commissioners to their officers about alternatives to criminal investigations or levying civil penalties. Inspections may only be undertaken at the request of the Chancellor of the Exchequer or the Commissioners.

Regulation 9 creates a scheme for publishing reports of inspections and a procedure for responding to reports.

The effect of regulation 10 is to enable officers of Revenue and Customs to be appointed as assistant inspectors and staff officers to carry out inspections of Her Majesty's Revenue and Customs in England and Wales and in Scotland.

Regulation 11 requires the Commissioners to pay for functions undertaken by inspectors of constabulary under these Regulations.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies.