

**EXPLANATORY MEMORANDUM TO**

**THE CUSTOMS (INSPECTIONS BY HER MAJESTY'S INSPECTORS OF  
CONSTABULARY AND THE SCOTTISH INSPECTORS) REGULATIONS 2012**

**2012 No. 2840**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations enable Her Majesty's Inspectorate of Constabulary (HMIC) and, in Scotland, the Scottish inspectors, to provide independent inspection of the premises listed in the Schedule which are used by Border Force, which is part of the Home Office.
3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The Revenue and Customs (Inspections) Regulations 2005 conferred functions on inspectors of constabulary for England and Wales, Scotland, and Northern Ireland in relation to the Commissioners for Her Majesty's Revenue and Customs and officers of Revenue and Customs. The 2005 Regulations provided for the inspection of premises used for customs detention.
  - 4.2 In 2009, Parliament legislated to secure the transfer of certain customs functions from Her Majesty's Revenue and Customs to the Secretary of State. The Borders, Citizenship and Immigration Act 2009 provided the required powers to facilitate the transfer of these functions. Section 29 of that Act provided the power for the Secretary of State to make regulations to enable Her Majesty's Inspectorate of Constabulary and the Scottish inspectors to continue to have the remit to inspect these facilities after transfer to the Secretary of State.
5. **Territorial Extent and Application**
  - 5.1 This instrument extends and applies to all of the United Kingdom. However, it makes no express provision in respect of Northern Ireland as there are no customs detention facilities here.
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 There are ten customs custody premises currently operational within Border Force. These facilities transferred from HM Revenue and Customs along with the transfer of customs functions and officers in 2009.
- 7.2 The policy objective is to maintain the inspection regime in place for the customs custody premises prior to the transfer to the Secretary of State and to achieve consistency with external scrutiny applied to police custody. These arrangements will provide scrutiny of law enforcement activities not previously subject to regular, systematic, independent review. External scrutiny will encourage and improve professional standards.
- 7.3 These regulations provide Her Majesty's Inspectorate of Constabulary with the statutory footing to regularly inspect Border Force premises used for customs detention. By establishing an independent rolling inspection regime at all customs custody facilities Border Force will adhere to the United Kingdom's international commitment to comply with the United Nations Optional Protocol to the Convention against Torture.

## **8. Consultation outcome**

- 8.1 No formal consultation was deemed necessary. Section 7 above sets out that the regulations maintain the inspection regime in place prior to their transfer to the Secretary of State.

## **9. Guidance**

- 9.1 Internal guidance for Border Force is being updated to reflect Her Majesty's Inspectorate of Constabulary's oversight of customs custody premises.

## **10. Impact**

- 10.1 No regulatory impact assessment is considered necessary since it is not envisaged that there will be any implications impact on business, charities or voluntary bodies nor significant resource cost or implications for the public sector.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

- 12.1 Officials from the Home Department and Her Majesty's Inspectorate of Constabulary and the Scottish Inspectors will continue to engage in dialogue and meet to discuss matters related to the inspections. Periodically the Department will review

discussions held regarding these regulations and will consider whether it would be advantageous to make any modifications.

### **13. Contact**

- 13.1 Allister White at the United Kingdom Border Agency (Tel: 0161 261 1106 or email: [Allister.White@homeoffice.gsi.gov.uk](mailto:Allister.White@homeoffice.gsi.gov.uk)) can answer any queries regarding the instrument.