

*These notes refer to the Commissioners for Revenue and Customs Act 2005 (c.11)  
which received Royal Assent on 7 April 2005.*

# COMMISSIONERS FOR REVENUE AND CUSTOMS ACT 2005

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Commissioners for Revenue and Customs Act which received Royal Assent on 7 April 2005. They have been prepared by HM Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### Background

3. In July 2003 the Chancellor of the Exchequer announced a major review of the organisations dealing with tax policy and administration:<sup>1</sup> HM Customs and Excise, the Inland Revenue, and HM Treasury. Gus O'Donnell, Permanent Secretary to the Treasury, was responsible for leading the review. He published his report<sup>2</sup> alongside the March 2004 Budget, and the Chancellor announced that he accepted its recommendations. This Act implements the main recommendation – to create a new department integrating the Inland Revenue and HM Customs and Excise. The new department is called “Her Majesty’s Revenue and Customs” (HMRC)<sup>3</sup>.

4. The Customs and Excise Prosecutions Office was created in April 2003 and operated under the terms of a Memorandum of Understanding agreed between the Attorney General, Treasury Ministers and the Commissioners of Customs and Excise. Following specific recommendations made in the Hon. Mr Justice Butterfield’s Review<sup>4</sup>, and accepted by Ministers in December 2003. The Act puts the prosecutions office on a statutory footing, and provides for it to undertake all the new department’s prosecutions in England and Wales (i.e. including those formerly carried out by the Inland Revenue). The new prosecutions office is called “the Revenue and

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<sup>1</sup> Treasury Press Notice, 2 July 2003, available at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

<sup>2</sup> *Financing Britain’s Future. Review of the Revenue Departments* by Gus O’Donnell, March 2004

<sup>3</sup> Treasury Press Notice, 13 May 2004, available at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

<sup>4</sup> *The Review of Criminal Prosecutions Conducted by HM Customs and Excise* (15 July 2003)

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Customs Prosecutions Office (RCPO)<sup>5</sup>. The new Memorandum of Understanding between the Attorney General, Treasury Ministers, the Commissioners for HMRC and the Director of RCPO is available on [www.rcpo.gov.uk](http://www.rcpo.gov.uk).

## **OVERVIEW OF THE ACT**

5. The Act establishes HMRC and RCPO. It includes provisions for the effective governance and operation of the new organisations. The following overview paragraphs summarise the purpose of the sections, with the detail of how each section achieves this set out in the commentary section.

### **HM Revenue and Customs general (sections 1, 2, 4, 9, 11 to 14)**

6. The new department, like its predecessor departments, is a non-ministerial government department. The Queen appoints Commissioners for Her Majesty's Revenue and Customs who exercise statutory functions on behalf of the Crown. They are able to appoint officers of Revenue and Customs, who work under their directions. Officers, subject to and acting under the direction of the Commissioners, are able to exercise any of the Commissioners' functions, apart from the making of statutory instruments; the giving of general instructions about on classes of disclosure of information under section 20(1)(a); and approving the making of applications for search warrants relating to former Inland Revenue functions.

7. The Act provides that, in the exercise of their functions, the Commissioners will comply with directions of a general nature given to them by the Treasury. It provides the legislative structure within which the Commissioners have the operational discretion to organise in the most appropriate way, and to make changes over time as necessary. With the agreement of at least half the Commissioners, they may decide on arrangements for the conduct of proceedings and of their committees, including matters such as quorum and delegations.

### **Functions and powers (sections 5 to 7 and 16 and Schedules 1 and 2, Part 1)**

8. The Commissioners are responsible for all the functions (bar prosecutions as a result of section 35), which were previously the responsibility of the Commissioners of Inland Revenue and the Commissioners of Customs and Excise. Officers of Revenue and Customs may exercise all of the functions of Inland Revenue and Customs and Excise officers, unless stated otherwise.

9. The Act identifies all of the functions previously carried out by the Inland Revenue (see Schedule 1). It provides that powers previously available to the Commissioners of Customs and Excise and their officers may not be used for these former Inland Revenue functions, while powers previously available to the Commissioners of Inland Revenue and their officers may only be used for these

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<sup>5</sup> Attorney General's written statement 12 October 2004 Column WS9.

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functions. This is to prevent any inadvertent widening of powers in the new department.

**Power to transfer functions (section 8) and Agency functions (section 15)**

10. Section 8 enables HMRC functions (other than revenue<sup>6</sup> or tax credit functions) to be transferred out of HMRC to a ministerial department, and any functions to be transferred into HMRC from such departments by Order in Council (rather than primary legislation). This is achieved by amending the Ministers of Crown Act 1975. Equivalent provisions apply to the Scotland Act 1998 and the Government of Wales Act 1998. And the Act also allows HMRC to enter into 'agency' arrangements with Scotland and Northern Ireland, where a function may be exercised on behalf of HMRC by a Scottish Minister or Northern Ireland Department, or HMRC may exercise a function on behalf of the Scottish Minister or Northern Ireland Department.

**Valuation Office (section 10)**

11. The Act puts on a statutory footing functions formerly undertaken by officers of the Inland Revenue through the Valuation Office Agency in respect of the valuation of property.

**Use of information (section 17 and Schedule 2, part 2)**

12. These enable information acquired by HMRC in connection with a function to be used for any of its other functions. Prior to the formation of HMRC information could be passed between the Inland Revenue and Customs and Excise through statutory gateways. This section enables the department to pool all its information, irrespective of the purpose for which it was originally obtained. The use of such information within the organisation is subject to any prohibition imposed by other enactments, including by the Data Protection Act 1998 and the Human Rights Acts 1998. Management controls ensure that the use of the information is appropriate and proportionate.

13. The Act also provides for HMRC to have the same statutory gateways for information to be passed to other government departments as Inland Revenue or Customs and Excise had.

**Confidentiality and wrongful and public interest disclosure (sections 3 and 18 to 23)**

14. Section 18 sets out the statutory duty of officers, Commissioners (and others acting on their behalf, and their committees) not to disclose information held by HMRC unless authorised to do so – and sets out the circumstances where disclosure may be allowed. Section 3 provides that Commissioners and officers newly appointed to HMRC shall make a declaration acknowledging this duty.

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<sup>6</sup> Revenue is defined as taxes, duties and national insurance contributions

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15. Section 19 makes unauthorised disclosure of information relating to an identifiable person a criminal offence carrying a maximum penalty of imprisonment for up to 2 years and an unlimited fine. This widens the previous criminal offence of unauthorised disclosure of information held in relation to tax and other functions, which did not cover information obtained in the course of Customs' non-revenue functions.

16. Section 20 introduces a provision enabling the Commissioners to instruct officers to disclose confidential information where it is in the public interest to do so, and sets out the conditions and circumstances under which such disclosures may be made. An affirmative regulation making power is provided enabling Treasury Ministers to respond to changes in circumstances.

17. Section 21 covers the circumstances when Revenue and Customs officials may disclose to a prosecuting authority, for advice or for the commencement of proceedings. Information disclosed in this way is subject to ongoing confidentiality safeguards.

18. Section 22 confirms that nothing in the confidentiality section contravenes the provisions of the Data Protection Act 1998 or the Regulation of Investigatory Powers Act 2000. Similarly, section 23 clarifies the interaction between the confidentiality sections and the Freedom of Information Act 2000.

#### **Proceedings (sections 24 to 26)**

19. These sections make provision for the effective working of HMRC and replace provisions which applied in a different way to the Inland Revenue and Customs and Excise:

- *Evidence* (section 24): provides for the legal admissibility of official departmental documents in court;
- *Conduct of civil proceedings* (section 25): This sets out the rights of officers to conduct civil proceedings in respect of HMRC functions; and
- *Rewards* (section 26): The Commissioners may pay rewards, at their discretion, for services to HMRC (e.g. to a member of the public who went out of their way to report suspicious circumstances that turned out to be drug smuggling).

#### **Inspection and complaints (section 27 to 29)**

20. The Act provides for HM Inspectors of Constabulary (HMIC) to scrutinise how HMRC ensures compliance with the laws, rules and procedures of the criminal justice system in the United Kingdom. It also provides for the expansion of the Independent Police Complaints Commission's (IPCC) remit to include investigations into complaints made about HMRC officers when conducting criminal investigations;

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and alleged criminal conduct or gross misconduct by an HMRC officer.

21. The Act provides that, in relation to information obtained in the course of their HMRC functions, HMIC and IPCC should be bound by a duty of confidentiality, and unauthorised disclosure should be an offence carrying a maximum penalty of 2 years imprisonment and an unlimited fine.

22. The Act provides regulation-making powers, with the detail of the inspection and complaints provisions to be in regulations. The regulations made under the section 27 powers (in relation to HMIC) are in force from 29 April 2005 and may be obtained from HM Stationery Office (The Revenue and Customs (Inspections) Regulations 2005 No. 1133). The regulations in respect of IPCC will be brought forward later in 2005.

#### **Offences (sections 30 to 33)**

23. The Act consolidates former criminal offence provisions relating to the Inland Revenue and HM Customs & Excise, to create a single framework for these offences within HMRC. In addition to consolidating those offence provisions, the Act brings their penalties into line with the equivalent Police offences. The offences are assaulting, obstructing or impersonating an officer of Revenue and Customs. Section 33 provides HMRC officers, where authorised by Commissioners, with the power of arrest for these offences.

24. The Act also repeals the existing offence of bribery and collusion in respect of Customs and Excise matters, without replacement. Matters of corruption are covered within HMRC by the Prevention of Corruption Act 1906 and the common law offences of misbehaviour in public office and bribery.

#### **Revenue and Customs Prosecutions Office (sections 34 to 42, 49 and Schedule 3)**

25. These sections put the independent prosecutions office (RCPO) on a statutory footing. A Director, appointed by the Attorney General, heads the Office and employs all RCPO staff. The remit of the Office is to provide legal advice and institute and conduct criminal prosecutions (and related proceedings such as the restraint and confiscation of assets) in England and Wales where there has been an investigation by HMRC. It does so in accordance with the Code for Crown Prosecutors and publishes an Annual Report detailing the exercise of the Director's functions during the previous financial year. The Director exercises his functions under the superintendence of the Attorney General.

26. Section 40 sets out that RCPO may not disclose information relating to an identifiable person except in specified circumstances. It provides that unauthorised disclosure is an offence carrying a maximum penalty of two years' imprisonment and an unlimited fine.

27. The Office is also subject of external inspections by HM Crown Prosecution Service Inspectorate. The Act (section 49) also made provision for the Treasury to

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identify Customs and Excise and Inland Revenue property, rights and liabilities which transferred to RCPO, and not to HMRC. Additionally, section 49 transferred to the Director those legal proceedings which, prior to commencement of the Act, were being conducted by the Commissioners of Customs and Excise and Inland Revenue, and which fall within his functions (being criminal prosecutions and related proceedings).

#### **Money (section 43 to 47)**

28. HMRC is funded by monies voted by Parliament. The Commissioners pay all money received on account of taxes, duties etc. into the Consolidated Fund, other than money that is required by law to be otherwise accounted for e.g. National Insurance Contributions, Student Loan repayments and National Minimum Wage fines. They may deduct disbursements from payments into the Fund, in particular for tax credits and tax (mainly VAT) repayments. Where it is likely that the amount of such disbursement and other contributions will exceed HMRC's receipts, the Treasury may make payments to the Commissioners out of the Consolidated Fund, such payments being subject to oversight by the Comptroller and Auditor General. The Commissioners must send daily accounts of the monies they receive, and the disposal of those monies, to the Comptroller and Auditor General.

#### **Transfer of property etc; transitional arrangements and consequential amendments and repeals. (Sections 48, 50, 52, 54 and 55; Schedules 4 and 5)**

29. The Act made provision for the effective transfer of Customs and Excise and Inland Revenue property, rights and liabilities etc. to HMRC. Transitional provisions ensured that all the authorisations, decisions, and actions that were valid within the two predecessor departments continued in the new department. Consequential amendments were made to other enactments, and section 50(4) also provides for further consequential amendments to be made through Treasury regulations. Obsolete provisions were repealed.

#### **Commencement (Section 53)**

30. The Act came into force by the Commissioners for Revenue and Customs Act 2005 (Commencement) Order 2005 No. 1126 (C.51). All sections except those listed below were brought into force from 7 April 2005. Sections 5 to 8, 16 and Schedule 2 Part 1, 35, 36, 50 and Schedule 4, 52 and 54 come into force on 18 April 2005 – the launch day of HMRC and RCPO. This enabled preparation for launch of the new departments to commence straight after Royal Assent.

#### **ANNEXES**

31. There are two annexes at the back of the Explanatory Notes.

32. Annex A lists many of the provisions in this Act which have counterparts in legislation relating to the Inland Revenue and Customs and Excise.

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33. Annex B lists the standard abbreviations of enactments and technical terms used in these notes.

## **COMMENTARY ON CLAUSES**

### **Section 1: The Commissioners**

34. This section establishes a body of Commissioners to be known as the Commissioners for Her Majesty's Revenue and Customs (HMRC) - or as *Comisynwyr Cyllid a Thollau Ei Mawrhydi* in Welsh. The section sets out the Commissioners' status and tenure.

35. *Subsection (1)* provides for the Crown to appoint Commissioners to hold office in accordance with the terms of their appointment in the Letters Patent. Such Letters Patent for the Commissioners of the predecessor departments traditionally designated one Commissioner as chairman. It is intended to continue that practice.

36. *Subsections (4) and (5)* provide that the Commissioners act on behalf of the Crown and are civil servants. This continues the arrangements for the predecessor departments, and it is intended that one of the Commissioners will be appointed by the Prime Minister to be Permanent Secretary of HMRC, and by the Treasury to be Principal Accounting Officer. In practice this will be the Commissioner designated chairman in the appointment Letters Patent.

### **Section 2: Officers of Revenue and Customs**

37. *Subsection (1)* provides for the Commissioners for HMRC to appoint staff to be known as officers of Revenue and Customs. Officers will support the conduct of HMRC's day-to-day work.

38. *Subsection (3)* requires officers to comply with the Commissioners' directions, when carrying out their functions or functions on behalf of the Commissioners.

39. *Subsection (4)* allows for continuity where actions, including proceedings, are begun by one officer of Revenue and Customs and continued by another.

40. *Subsections (5) and (6)* provide for officers to be civil servants. The terms of an officer of Revenue and Customs' appointment may include provision for suspension or discharge (*subsection (2)*).

41. The description of "officers of Revenue and Customs" replaces the previous nomenclature for describing staff who were empowered to exercise the functions of the predecessor departments, e.g. inspectors, collectors, receivers, authorised persons, etc. (see section 50(2)).

### **Section 3: Declaration of confidentiality**

42. *Subsection (1)* provides that Commissioners and officers appointed under

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sections 1 and 2 of the Act following the creation of the new department are to make a statutory declaration acknowledging the obligations of confidentiality imposed on them under section 18 of the Act.

43. *Subsection (2)* provides that the declaration shall be made as soon as reasonably practicable, following appointment, and in such form, and before such person as the Commissioners may direct. The reference to “reasonably practicable” recognises that officers will not sign the acknowledgement the moment they take up duty.

#### **Section 4: “Her Majesty’s Revenue and Customs”**

44. *Subsection (1)* provides that the Commissioners for HMRC and officers of Revenue and Customs together will constitute a non-ministerial government department called Her Majesty’s Revenue and Customs.

#### **Section 5: Commissioners' initial functions**

45. *Subsections (1)* and *(2)* transfer to the Commissioners for HMRC responsibility for the exercise of the revenue, tax credit and other functions previously the responsibility of the Commissioners of the predecessor departments, except for the conduct of prosecutions of Revenue and Customs offences in England and Wales (as a result of *subsection (3)* invoking section 35). The expression of Commissioners' responsibilities preserves the managerial discretion available to the predecessor Commissioners in the exercise of their functions. Details about arrangements for the Commissioners' exercise of functions are at section 12, for the exercise of Commissioners' functions by officers are at section 13, and for the exercise of delegated functions are at section 14.

46. The Commissioners' responsibility for the collection and management of revenue is defined in section 51(3) as meaning the same as "care and management" in previous enactments. It thus preserves continuity of treatment for those revenues that previously were subject to a duty of care and management, as this term is familiar to the wider business, legal and tax practitioner communities and to officials. *Subsection (4)* defines the expression "revenue" to include taxes, duties and national insurance contributions.

47. *Subsection (2)* gives the Commissioners for HMRC responsibility for all other functions, i.e. those which are neither revenue nor tax credits, of the predecessor departments. For example, the Commissioners of Customs and Excise have the function of investigating suspected offences of dealing in tainted cultural objects under section 4 Dealing in Cultural Objects (Offences) Act 2003. "Functions" is defined at section 51(2) to mean any power or duty.

#### **Sections 6 and 7 and Schedule 1: Transfer of officers’ powers.**

48. These sections transfer the functions of Inland Revenue and Customs and Excise staff to officers of Revenue and Customs. They also place a restriction on the transfer, so that powers previously used by Customs and Excise staff may not be used



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in respect of matters inherited from the Inland Revenue, and powers previously used by Inland Revenue staff may only be used for matters inherited from the Inland Revenue. This 'ring fencing' is intended to prevent any accidental widening of the scope of existing officers' powers. Accidental widening of Commissioners' powers is prevented by Schedule 2 Part 1.

49. Most powers are defined in their own legislation as relating only to specific functions, and these definitions will remain unchanged. For example, the Inland Revenue power to require someone to produce their financial records can only be used in order to enquire into their direct tax return. But some powers have a wider scope, relating to any matter assigned to the Commissioners of the department in question, or to any tax within the care of that department. Because of the general deeming provisions in section 50 they would come to apply to matters inherited from the other department as well, unless these restrictions in sections 6 and 7 and Schedule 2 Part 1 are introduced.

***Example:***

50. Customs officers currently have a power under the Proceeds of Crime Act to search premises or persons for cash which may have been obtained through unlawful conduct. This power is restricted to cases where the unlawful conduct relates to a matter dealt with by Customs and Excise, but it is not explicitly limited to indirect taxes and duties. If it were transferred to officers of Revenue and Customs without restriction it could be used, for instance, where the unlawful conduct related to income tax. These sections prevent such an accidental widening of the scope of officers' powers.

**Section 6: Officers' initial functions**

51. This section transfers the powers and duties of Customs and Excise staff to the officers of Revenue and Customs. The transfer is made by *subsection (1)*, and the various descriptions of Customs and Excise staff are given in *subsection (2)*. *Subsection (3)* makes this section subject to section 7(4). This means that the powers transferred may not be used in relation to matters inherited from the Inland Revenue. The transfer is also subject to section 35, which transfers functions relating to criminal prosecutions to the Director of the Revenue and Customs Prosecutions Office.

**Section 7 and Schedule 1: Former Inland Revenue matters**

52. *Subsection (1)*: This applies to former Inland Revenue matters, and those matters are listed in Schedule 1. The list is supplemented by a list of obsolescent functions at section 54(4).

53. *Subsection (2)*: The functions of Inland Revenue staff are transferred to officers of Revenue and Customs. But they are only transferred to the extent that they relate to former Inland Revenue matters. An officer of Revenue and Customs can use all of the current Inland Revenue powers, but only in relation to former Inland Revenue matters. This is the first half of the ring-fence.

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54. *Subsection (3)*: This lists the various descriptions of Inland Revenue staff, whose functions are being transferred.

55. *Subsection (4)*: This disapplies the transfer of Customs and Excise officers' powers to the extent that an officer of Revenue and Customs is exercising a former Inland Revenue function. So an officer of Revenue and Customs may not use Customs and Excise powers in relation to former Inland Revenue matters. This is the second half of the ring-fence.

56. *Subsection (5)*: This makes the transfer of Inland Revenue functions to HMRC subject to the transfer of criminal prosecutions to the Director of the Revenue and Customs Prosecutions Office.

### **Section 8: Power to transfer functions**

57. The Act establishes HMRC as a non-Ministerial department. It would therefore not ordinarily be covered by the provisions of the Ministers of the Crown Act 1975, which allows the transfer of functions between Ministerial departments by Order in Council, thereby removing the need for primary legislation to achieve this.

58. This section amends the Ministers of the Crown Act 1975 to allow HMRC to be treated as a Ministerial department solely for the purposes of transferring functions under that Act. Functions may therefore be transferred into or out of HMRC by Order in Council subject to negative resolution procedures.

59. *Subsection (1)* inserts the required text into the Ministers of the Crown Act. The effect of that text is:

- *Subsections (1) and (2)* of the section to be inserted into the Ministers of the Crown Act provide that the functions that may be transferred are those conferred upon either the Commissioners for HMRC, or officers of Revenue and Customs. This distinction reflects the fact that legislation confers some functions (such as responsibility for administering a particular tax regime) upon the Commissioners, while other linked functions (such as the powers required to administer that regime) are conferred upon officers of Revenue and Customs. *Subsections (1) and (2)* ensure that both sets of functions may be transferred under this provision.

60. There are, however, a number of restrictions imposed upon the ability to transfer functions under this section.

61. *Subsection (3)* operates to prevent the transfer from HMRC of any of the functions specified in section 5(1) of the Act, including the collection and management of revenues (i.e. taxes, duties and contributions) and the payment and management of tax credits.

62. *Subsection (4)* provides that an Order transferring functions to HMRC may

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limit the powers available to exercise those functions, and it may provide that the function can only be exercised with the consent of a Minister.

63. Arrangements also exist within the Scotland Act 1998 to allow the transfer of functions between Ministers of the Crown and Scottish Ministers. *Section 8(2) and (3)* therefore extend those arrangements to include the transfer of functions between HMRC and Scottish Ministers. *Subsection (2)* allows HMRC to be treated in the same manner as other ministerial departments for the transfer of functions to or from Scotland, while *subsection (3)* restricts this ability to prevent the transfer of HMRC functions specified in section 5(1) of the Act under this provision. *Subsection (3)* also permits limitations on the exercise of powers when a function is transferred *into* HMRC, and allows for the order to provide that a function may only be exercised with the consent of a specified member of the Scottish Executive.

64. *Subsections (4) and (5)* of section 8 introduce arrangements to permit the transfer of functions from HMRC to Welsh Ministers (but not from Welsh Ministers to HMRC), in a reflection of arrangements that already exist for other ministerial departments in the Government of Wales Act 1998. *Subsection (4)* permits the transfer of functions from HMRC to the Welsh Assembly, however *subsection (5)* prevents the transfer of those HMRC functions specified at section 5(1).

### **Section 9: Ancillary powers**

65. This section provides the Commissioners with ancillary powers to do anything necessary in connection with the exercise of their functions or incidental business. Examples are:

- the gathering of information relating to the exercise of their functions;
- establishing advisory bodies;
- entering into agreements;
- acquiring and disposing of property; and
- promoting, or assisting in the promotion of, publicity about the tax system.

### **Section 10: The Valuation Office**

66. This section enables HMRC to carry on the work currently undertaken by the Valuation Office Agency of the Inland Revenue.

67. *Subsection (1)* lists the duties of the officers within the Valuation Office Agency. They are to provide any valuations of property needed in relation to the functions of HMRC. They may provide property valuations at the request of any other public authority. They may also provide property valuations where these are needed in connection with a public function (for example, a multiple compulsory purchase by a public utility), or with the management of property distributed in the exercise of a

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public function (for example advising government and third party partners on policy programmes such as the Sustainable Communities agenda).

68. *Subsection (2)* allows the Commissioners to charge fees for valuation services provided to other public authorities.

69. *Subsection (3)* makes clear that the functions of such officers cover giving related advice, as well as providing actual valuations.

### **Section 11: Treasury directions**

70. This section sets out the relationship between the Treasury and the Commissioners' exercise of their functions.

71. It carries forward the existing oversight by the Treasury of the predecessor Commissioners' exercise of their statutory functions. "Any directions of a general nature" replaces a variety of expressions in previous legislation, and applies to all the functions of the Commissioners for HMRC conferred on them by section 5. In the exercise of those functions, it gives the right for the Treasury, for example, to direct the Commissioners' strategies and call them to account for the overall effect of actions taken by them, but not to direct day-to-day or operational decisions. Thus it does not provide for the Treasury to be able to decide or be otherwise involved in, for example and in particular, an individual taxpayer's affairs.

### **Section 12: Commissioners' arrangements**

72. This section provides for the Commissioners to determine the arrangements for the conduct of their proceedings, including any of their committees under *subsection (1)(b)*, subject to the condition at *subsection (3)* that agreement to such arrangements must be taken by more than half of the Commissioners holding office at the time the arrangements are adopted.

73. *Subsection (2)* describes how particular arrangements may be made for the exercise of Commissioners' functions. *Paragraph (a)* allows for the Commissioners, if desired, to make arrangements for a quorum at meetings. *Paragraph (b)* allows for Commissioners to make arrangements for a function of Commissioners to be exercised by two or more Commissioners or a specified number of Commissioners greater than two. Part 1 of Schedule 2 places restrictions on the exercise of functions.

### **Section 13: Exercise of Commissioners' functions by officers**

74. This section provides for officers of Revenue and Customs to exercise any function of the Commissioners, other than a function as reserved to Commissioners by *subsection (3)*. It closely follows existing arrangements for the officers of the predecessor departments. In the exercise of a function of the Commissioners, *subsection (2)(b)* places a duty on officers of Revenue and Customs to comply with the directions of the Commissioners made under section 2(3) and with arrangements made under section 12 (which may limit or exclude the exercise of the Commissioners' functions by officers). Part 1 of Schedule 2 places restrictions on the

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exercise of functions.

75. *Subsection (3)(a) to (c)* reserve to the Commissioners entirely the exercise of certain functions. *Paragraph (a)* prevents the exercise by officers of the Commissioners' function of making, by statutory instrument, a regulation, rule or order, and *paragraphs (b) and (c)* similarly prevent the exercise by officers of the function of approving an application for a warrant to search premises under section 20C of the Taxes Management Act 1970 (c.9), or to enter premises under Part 7 of Schedule 13 to the Finance Act 2003 (c.14). *Subsection (3)(d)* reserves to Commissioners the giving of instructions generally in relation to the disclosure of information under the Public Interest Disclosure arrangements in section 20, but a limited exception is made, allowing officers to make a specific disclosures about one or more specified persons or transactions, or specified goods.

#### **Section 14: Delegation**

76. *Subsection (1)* provides for the Commissioners, or a number of Commissioners, to delegate a function of the Commissioners to a single Commissioner, a committee established by the Commissioners, or to any other person, other than matters reserved for the Commissioners by *subsection (2)* or for a single Commissioner by a delegation under *subsection (3)*. These delegations would be made in accordance with the arrangements determined under section 12, and Part 1 of Schedule 2 places restrictions on the exercise of functions.

77. *Subsection (1)(b)* provides for the delegation of a function of the Commissioners to one of their committees, which may include committees whose members are neither Commissioners nor officers of Revenue and Customs. This allows the Commissioners, for example, to adopt sound corporate governance practice such as setting up an Audit Committee, to be chaired by a person who is neither a Commissioner nor an officer, and whose membership may include persons of a similar status. Such non-executives may join with the Commissioners to form a board, with the intention of bringing from outside HMRC different experience and an independent perspective to the work of the board.

78. *Subsection (2)* reserves to Commissioners the exercise of certain functions, which, because they cannot be delegated under *subsection (1)* to a single Commissioner, means that two or more Commissioners must exercise these functions. These reserved functions are the same as those that apply to the exercise of Commissioners' functions by officers of Revenue and Customs at section 13(3)(a) to (c). In addition, *subsection (3)* provides that the function of instructing public interest disclosures under section 20(1)(a) can only be *delegated* to a single Commissioner. This, coupled with the limitation on the *exercise* of the Commissioners' functions by officers, in section 13(3)(d), means that while officers can give instructions for public interest disclosures in specific cases, subject always to the directions of the Commissioners under section 2(3), and any Commissioners' arrangements under section 12, only a Commissioner can give a general instruction, authorising disclosure

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in a class of cases.

79. *Subsection (4)(a)* provides that, if a function of the Commissioners is delegated, such delegation does not prevent the Commissioners, or a number of Commissioners (under the arrangements made under section 12), from exercising that function themselves. Similarly, under *paragraph (b)*, the delegation of a function of the Commissioners (other than matters reserved for Commissioners under *subsection (2)* or subject to express provision to the contrary in a direction issued by the Commissioners under section 2(3)) does not prevent the exercise of that function by an officer of Revenue and Customs. This clarifies that, although Commissioners' functions can be delegated, that does not prevent the Commissioners from exercising those functions themselves.

80. *Subsection (5)* places certain conditions on the delegation of Commissioners' functions, made under *subsection (1)(c)*, to any other person who is neither a Commissioner nor an officer. *Paragraph (a)* places a duty on the Commissioners to monitor the exercise of the function by that person. *Paragraph (b)* places a duty on the delegate to comply with directions of the Commissioners, or a number of Commissioners (if the function was delegated by Commissioners to a quorum of Commissioners or a number of Commissioners under the arrangements at section 12).

### **Section 15: Agency: Scotland and Northern Ireland**

81. The Scotland Act 1998 and the Northern Ireland Act 1998 both contain provisions that permit Ministers of the Crown and Scottish Ministers or Northern Ireland Departments to act as 'agents' for one another – that is, it allows them to make arrangements to exercise specific functions on behalf of the other party. This 'agency' arrangement does not affect the accountability of the person whose functions are being exercised under the agency agreement.

82. For example, in the case of an environmental tax which involves tax reliefs based upon compliance with best environmental practice, the tax would remain a reserved matter under the collection and management of HMRC, but HMRC could engage the devolved administration's environmental expertise by engaging them as agents in respect of the technical and specialised aspects of the scheme.

83. Section 15 introduces provisions permitting HMRC to be treated as a Minister of the Crown for the purposes of entering into an agency agreement with Scottish Ministers or Northern Ireland Departments.

84. *Subsection (1)* permits agency agreements between HMRC and Scottish Ministers, allowing both Commissioners' and officers' functions to be subject to such an agreement. *Subsection (2)* introduces similar provisions for Northern Ireland.

### **Section 16: Restrictions, &c.**

85. This section introduces Part 1 of Schedule 2, which applies restrictions and makes other provisions on the exercise of certain functions. For example, it prevents

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which received Royal Assent on 7 April 2005.*

the accidental widening of Commissioners' powers.

### **Section 17: Use of information**

86. This section allows the new department, subject to suitable safeguards, to use any of its information, including information inherited from the predecessor departments, to support any function of the department, not just the particular function from which the information was originally derived. This will supersede existing provisions to pool information within a department, together with the existing provision in section 127 Finance Act 1972. Section 127 authorises either set of predecessor Commissioners or their officers to disclose information to the other set of Commissioners or officers for the purpose of assisting the receiving set in the performance of their duties. It will be repealed, as no longer required, on the coming into existence of the new department.

87. *Subsection (1)* states the general principle that information acquired by "the Revenue and Customs" (as defined in *subsection (3)*) in connection with one of their functions may be used by them in connection with any other function. A similar provision is contained in section 435 Proceeds of Crime Act 2002 in relation to the use of information, including taxpayer information, by the Asset Recovery Agency.

88. *Subsection (2)* makes the general principle subject to certain exceptions. These are any restriction or prohibition which expressly limits the use of information, as imposed by:

- this Act itself, such as section 22, or Part 2 of Schedule 2, which limits the use of certain information in relation to disclosures to other government departments, to prevent the integration of the former departments extending the scope of the information that may be disclosed;
- any other enactment, such as the Human Rights Act 1998; *and*
- any international or other agreement of the United Kingdom or Her Majesty's Government. An example of an international agreement would be a Double Tax Treaty concluded under section 815 C Income and Corporation Taxes Act 1988, containing an express limitation on use of information obtained from a foreign tax authority. A further example of an "other" agreement would be the UK and Isle of Man Revenue Sharing Agreement of 15 October 1979, as amended, containing a limitation on use of information obtained from the Isle of Man Customs and Excise Service. As the Isle of Man is not a state in international law, it does not have the capacity to conclude "international" agreements.

89. *Subsection (3)* defines "the Revenue and Customs" for the purposes of *subsection (1)* as the Commissioners for HMRC, their officers, those, such as contractors, who act on their behalf, and members of committees established by the Commissioners under *section 12(1)(b)*. It also includes the former Commissioners of

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Customs and Excise and Inland Revenue and their officers, thereby bringing the holdings of information inherited from those organisations within the new Commissioners' information pool.

90. *Subsection (4)* defines "function" in *subsection (1)* to mean a function of any of the persons who are defined as constituting "the Revenue and Customs". In this way, information derived from any spent, or obsolescent functions of the former Commissioners or officers may also be included in the new Commissioners' information pool.

91. *Subsection (5)* provides that the reference to "enactment" in *subsection (2)(b)* does not include legislation of the devolved institutions, which is not relevant here.

92. *Subsection (6)* introduces Part 2 of Schedule 2 to the Act, which deals with certain exceptions.

### **Section 18: Confidentiality**

93. The section lays down a code of confidentiality for the new Commissioners and their officers in relation to information held by "the Revenue and Customs", and the circumstances in which disclosures can be made. The section is based on the provisions of the Inland Revenue statutory declaration (Schedule 1 Taxes Management Act 1970), extended as a statutory duty to all Commissioners and officers of the new department.

94. *Subsection (1)* lays down the general principle that "Revenue and Customs officials" may not disclose information held by "the Revenue and Customs". The terms are defined in *subsection (4)*.

95. *Subsection (2)* then provides for a limited number of specific circumstances where disclosure may be allowed.

96. *Paragraph (a)* allows a disclosure to be made for the purposes of a function of the Revenue and Customs, which does not contravene any restriction imposed by the Commissioners. This would cover, for example, a disclosure made in connection with the levy of distress for unpaid taxes, or disclosure to a bank by paying in a tax refund.

97. *Paragraph (b)* allows a disclosure in the public interest, or to the prosecuting authority (in accordance with procedures laid down in section 20 and 21).

98. *Paragraph (c)* allows a disclosure to be made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions. This would cover, for example, a disclosure in the course of Special Commissioners, VAT and Duties Tribunal or other civil proceedings, or a disclosure to a foreign revenue authority to assist the recovery of UK tax debts abroad, under EU mutual recovery arrangements.



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99. *Paragraph (d)* allows a disclosure to be made for the purposes of criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions. This would cover, for example, disclosure to the court under the disclosure provisions (sections 3 to 9) of the Criminal Procedure and Investigation Act 1996. It would also cover disclosure to a person other than the prosecutor for the purposes of criminal investigation, such as the Sheriff in connection with the grant of a search warrant at common law in Scotland, or to a foreign police or judicial authority for authority to continue a hot pursuit surveillance into a foreign jurisdiction, pursuant to the foreign equivalent of section 83 Crime (International Co-operation) Act 2003. In addition this would cover further HMRC investigations abroad, under the direction of RCPO, following commencement of proceedings with a foreign component or straddling EU Member State boundaries (e.g. in respect of the offence under section 71 Criminal Justice Act 1993).

100. *Paragraph (e)* allows a disclosure in pursuance of any order of a court. This would cover, for example, a disclosure in accordance with a witness summons.

101. *Paragraph (f)* covers a disclosure to HM Inspectors of Constabulary and their Scottish and Northern Ireland counterparts, termed “the Scottish Inspectors” and “the Northern Ireland inspectors”, who are to take on an inspectorial function for the new department, under section 27.

102. *Paragraph (g)* covers a disclosure to the Independent Police Complaints Commission, who are to take on an oversight of complaint handling about allegations of criminal conduct or gross misconduct for the new department, under section 28.

103. *Paragraph (h)* covers a disclosure made with the consent of each person to whom the information relates. This would cover for example an individual case where a taxpayer raised their circumstances with their Member of Parliament, asked them to take the case up with Treasury Ministers, and authorised the Commissioners to disclose what they knew of the case to the Minister for that purpose.

104. *Subsection (3)* makes *subsection (1)* subject to any other enactment permitting disclosure, e.g. section 8 Finance Act 1988, which authorises the Commissioners of Customs and Excise (and in future the Commissioners for HMRC, by virtue of the working of section 50(1)) to disclose information about imported goods.

105. *Subsection (4)(a) to (c)* defines "Revenue and Customs officials" and "the Revenue and Customs" for the purposes of the section. The definition looks forward to the time when there will be persons who were Commissioners and officers of the new department, but have ceased to be so, e.g. by retirement or resignation. "Revenue and Customs officials", the persons to be subject to the statutory duty imposed by *subsection (1)*, are therefore defined to be any current or former:

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- Commissioner for HMRC;
- officer of Revenue and Customs;
- person acting on behalf of the Commissioners or an officer, for example a contractor; and
- member of a committee established by the Commissioners under section 12(1)(b).

106. *Subsection 4(d)* defines the meaning of the terms “Scottish inspectors” and “Northern Ireland inspectors” with reference to section 27.

107. *Subsection 4(e)* defines that the term enactment referred to in the section does not relate to an Act of the Scottish Parliament or an Act of the Northern Ireland Assembly or any statutory instrument made under these Acts.

108. "The Revenue and Customs", whose holdings of information define the subject matter of the statutory duty under *subsection (1)*, has the same meaning as in section 17 above, and therefore includes the holdings of information inherited from the predecessor departments within the scope of the statutory duty of confidentiality of the new department.

### **Section 19: Wrongful disclosure**

109. Section 18 lays down a code of confidentiality for the new Commissioners and their officers. *Section 19* establishes a criminal offence, in relation to disclosures about identifiable persons, to buttress the duty of confidentiality, which widens the ambit of the existing offence, and lays down how such an offence will be prosecuted. The section is based on the existing offence provision of section 182 Finance Act 1989, which applied to both predecessor departments, but now extended to cover all functions of the new department.

110. *Subsection (1)* makes it an offence for any person to contravene the non-disclosure provisions of section 18(1), or of section 20(9), in relation to “revenue and customs information relating to a person” whose identity is revealed by the disclosure. The term “person” includes both natural and legal persons, and, for example, the tax affairs of a limited company are also protected by the provisions of the subsection.

111. *Subsection (2)* then defines “revenue and customs information relating to a person” to mean information acquired or held in connection with the exercise of a function of the Revenue and Customs, as defined in section 18(4)(c), in respect of the person, but *excluding* information about HMRC internal administrative arrangements, and the activities of its contractors .

112. *Subsection (3)* provides certain defences for a person charged with the *subsection (1)* offence. In particular, he will not be guilty of the offence if he proves

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that he reasonably believed that the disclosure was lawful, that is that the disclosure fell within the terms of section 18(2) and (3). Similarly, he would not be guilty if he proved that he reasonably believed that the information had already been made available to the public, and that this had been done lawfully; it would be no defence as regards a subsequent unlawful disclosure to say that the information had been disclosed previously, if that previous disclosure was itself unlawful.

113. *Subsection (4)* lays down the penalties for those found guilty of the offence under *subsection (1)*. The offence is triable either way, that is:

- either summarily, when the maximum penalty will be 12 months imprisonment, or a fine not exceeding the statutory maximum (currently £5000), or both; *or*
- on indictment, when the maximum penalty will be two years imprisonment, or an unlimited fine or both.

114. *Subsection (5)* provides that a prosecution for the offence may be instituted in England and Wales only by the Director of Revenue and Customs Prosecutions, or with the consent of the Director of Public Prosecutions.

115. *Subsection (6)* provides that prosecutions for the offence may be instituted in Northern Ireland (where the Director of Revenue and Customs Prosecutions has no functions) only by the Commissioners, or with the consent of the Director of Public Prosecutions for Northern Ireland.

116. No comparable provision is needed in Scotland, because the Procurator Fiscal and the Crown Office automatically have exclusive cognisance of summary and indictable offences in Scotland, under the law relating to Scotland, without the need for specific enabling provision.

117. *Subsection (7)* provides that the maximum penalty on summary conviction in Scotland and Northern Ireland is to be six months, rather than twelve, to accord with their arrangements for maximum summary penalties.

118. It should also be noted that section 55(1) makes a temporary change to the maximum penalty of imprisonment on summary conviction in England and Wales, provided for under *subsection (4)(b)*, reducing it to six months from twelve months, pending the coming into force of a general amending provision about the maximum penalties on summary conviction (section 282 Criminal Justice Act 2003).

119. *Subsection (8)* provides that the prosecution of the *subsection (1)* offence is without prejudice to other remedies for unlawful disclosure contrary to the section 18(1) and section 20(9) duties of confidentiality e.g. the seeking of an injunction to restrain an unlawful disclosure.

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## **Section 20: Public interest disclosure**

120. The section lays down the circumstances under which disclosures of information in the public interest by the new department will be lawful, following the creation of the new department, the commencement of the new all embracing duty of confidentiality under section 18(1).

121. *Subsection (1)* provides that a disclosure is lawful for the purposes of section 18(2) (confidentiality) if it

- is made on the instructions, either general or specific, of the Commissioners,
- is a disclosure of a kind to which *subsections (2) to (7)* apply (specified kinds of public interest disclosure described on the face of the Bill), or is specified in regulations of the Treasury, made under *subsection (8)*, and
- the Commissioners are satisfied it is in the public interest.

122. The lawful kinds of disclosure specified by *subsections (2) to (7)* are as follows:

123. *Subsection (2)*- to a person exercising public functions, whether in the UK or abroad, for the purpose of preventing or detecting crime, in order to comply with an obligation of the United Kingdom or Her Majesty's Government, under an international or other agreement relating to the movement of persons, goods or services. The reference to "person exercising public functions" draws on the definition of "public authority", under the Human Rights Act 1998, and the agreements in question will typically be Memoranda of Understanding, drawn up by or on behalf of the Commissioners or their predecessors, with public authorities abroad, for the purposes of securing the due administration of their respective customs laws, (cf section 9(b) CEMA).

124. *Subsection (3)* – to a body regulating a profession, in relation to misconduct on the part of a member, which relates to a Revenue and Customs function. This would cover a disclosure about the misconduct of a person preparing accounts or returns for tax purposes, but would also extend to other professionals whose misconduct related to a function of the new department, eg in relation to the valuation of assets, or to a professional determination in relation to more recent taxes such as landfill tax, aggregates levy or climate change levy.

125. *Subsection (4)* – to a constable who is exercising functions relating to the movement of persons or goods into or out of the UK, or for the prevention or detection of crime. This will cover the provision of criminal intelligence to such officers collocated with frontier staff of the new department, and with immigration service staff, in joint intelligence cells, formed at the larger ports and airports to enhance control of the UK frontier for all purposes, through intelligence and other

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closer working.

126. *Subsection (5)* – to the National Criminal Intelligence Service (NCIS), to allow NCIS to undertake its statutory role of providing a criminal intelligence service to all law enforcement agencies.

127. *Subsection (6)* – to a person exercising public functions in relation to public safety or public health, for the purpose of those functions. This is designed to cover disclosures to health and safety or environmental bodies of information acquired by staff of the new department about imminent threats to public health or safety, eg discovery of the marketing of poisonous food, or of unsafe working practices at an oil depot, acquired in the course of their duties.

128. *Subsection (7)* - to the Police National Computer, which is maintained by the Police Information Technology Organisation (PITO), on behalf of all participating law enforcement agencies. This holds the national record of outstanding warrants, suspected persons, arrests, seizures, convictions etc.

129. *Subsection (8)* sets out the arrangements which are to apply where the Treasury propose to add to the list of categories of lawful public interest disclosures, by means of regulations under *subsection (1)(b)(ii)*. Under *paragraph (a)*, the Treasury must be satisfied that any new category of disclosure relates to national security, public safety, public health or the prevention or detection of crime. *Paragraph (b)* then sets out a list of ways in which the disclosures to be authorised under the regulations may be limited or restricted, that is - the nature of the information to be disclosed, the person or class of person to whom disclosure may be made, the person by whom the disclosure is made, or some combination of factors. *Paragraph (c)* provides that the regulations shall be made by statutory instrument, and *paragraph (d)* that they must be laid in draft before and be approved by each House of Parliament, before coming into force (the affirmative procedure).

130. Finally, *subsection (9)* provides that information disclosed both under subsections (2) to (7) and under any Treasury regulations made under the section may not be disclosed further without the consent of the new Commissioners, which may be general or specific. It also gives immediate statutory expression to the Commissioners' consent to further disclosure of information disclosed to the Police National Computer under *subsection (7)*, as the purpose of the Police National Computer is the secure sharing of such information, between participating law enforcement agencies, subject to confidentiality controls and checks overseen by PITO.

## **Section 21: Disclosure to prosecuting authority**

131. The section codifies the arrangements for disclosure of HMRC information to the three territorial prosecutors who will deal with HMRC prosecutions in their respective parts of the UK where disclosure is for the purposes specified in *subsection (1)*. Once HMRC information is in their hands, it may only be further disclosed, or

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made public, for a purpose connected with the exercise of the prosecutor's functions, or with HMRC consent, eg disclosure in open court in the course of a prosecution, or for associated civil proceedings, e.g. for an interlocutory injunction.

132. *Subsection (1)* provides that disclosure by HMRC will be lawful in accordance with section 18, if made to a "prosecuting authority", as defined in *subsection (2)*, for the purpose of enabling the authority to decide whether to institute criminal proceedings in its jurisdiction within the United Kingdom in relation to an RCPO investigation, or to advise in relation to such an investigation.

133. *Subsection (2)* defines "prosecuting authority" as the Director of Revenue and Customs Prosecutions, in England and Wales, as the Lord Advocate or a Procurator Fiscal, in Scotland, and as the Director of Public Prosecutions for Northern Ireland, in that jurisdiction.

134. *Subsection (3)* then provides that once HMRC information is in the hands of a prosecutor, it may only be further disclosed, or made public, for a purpose connected with the exercise of the prosecutor's functions, or with the consent of HMRC. This would include disclosure in open court in the course of a prosecution, or for associated civil proceedings, e.g. for an order freezing the suspected proceeds of crime. An onward disclosure with consent would cover a disclosure to another specialised prosecutor, like the Department of Trade and Industry, who have special functions in relation to fraud in an insolvency, if an HMRC investigated fraud was found to be insolvency related.

135. *Subsection (4)* makes it an offence to contravene *subsection (3)*, and *subsection (5)* gives a person charged with the offence various defences, which parallel those provided in section 19(3) in relation to HMRC. In particular, he will not be guilty of the offence if he proves that he reasonably believed that the disclosure was lawful, that is that the disclosure fell within the terms of *subsection (1)*. Similarly, he would not be guilty if he proved that he reasonably believed that the information had already been made available to the public, and that this had been done lawfully; it would be no defence as regards a subsequent unlawful disclosure to say that the information had been disclosed previously, if that previous disclosure was itself unlawful.

136. *Subsection (6)* lays down the penalties for those found guilty of the offence under *subsection (4)*. The offence is triable either way, that is:

- either summarily, when the maximum penalty will be 12 months imprisonment, or a fine not exceeding the statutory maximum (currently £5,000), or both; *or*
- on indictment, when the maximum penalty will be two years imprisonment, or an unlimited fine, or both.

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which received Royal Assent on 7 April 2005.*

137. *Subsection (7)* provides that a prosecution for the offence may be instituted in England and Wales only by the Director of Revenue and Customs Prosecutions, or with the consent of the Director of Public Prosecutions.

138. *Subsection (8)* provides that prosecutions for the offence may be instituted in Northern Ireland (where the Director of Revenue and Customs Prosecutions has no functions) only by the Commissioners, or with the consent of the Director of Public Prosecutions for Northern Ireland.

139. No comparable provision is needed in Scotland, because the Procurator Fiscal and the Crown Office automatically have exclusive cognisance of summary and indictable offences in Scotland, under the law relating to Scotland, without the need for specific enabling provision.

140. *Subsection (9)* provides that the maximum penalty on summary conviction in Scotland and Northern Ireland is to be six months, rather than twelve, to accord with their arrangements for maximum summary penalties.

141. It should also be noted that section 55(2) makes a temporary change to the maximum penalty of imprisonment on summary conviction in England and Wales, provided for under *subsection (6)(b)*, reducing it to six months from twelve months, pending the coming into force of a general amending provision about the maximum penalties on summary conviction (section 282 Criminal Justice Act 2003).

## **Section 22: Data protection, &c.**

142. *Section 22* confirms that nothing in the five sections 17 to 21 authorises the making of a disclosure which contravenes the Data Protection Act 1998, or Part 1 of the Regulation of Investigatory Powers Act 2000. There is no intention to do so, but the section puts the issue beyond any possible doubt.

## **Section 23: Freedom of information**

143. *Section 23* clarifies the interaction between the confidentiality sections and the Freedom of Information Act 2000. Where information relates to a person (as defined in section 19) it will be exempt from disclosure under section 44(1)(a) of the Freedom of Information Act 2000. But this exemption does not apply to all other information held by HMRC. As such, this information will be subject to the requirements of that Act.

## **Section 24: Evidence**

144. This section consolidates former provisions relating to the proof of documents.

145. *Subsection (1)* provides for any document purporting to be issued or signed by one or more Commissioners for HMRC, or by any other person with their authority, to be treated as having been so issued or signed until the contrary is proved. Such documents are admissible in any legal proceedings.

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146. *Subsection (2)* provides for any document purporting to be issued by the Commissioners and certifying any of the matters specified in *subsection (3)* to be treated as accurate until the contrary is proved.

147. The matters specified in *subsection (3)* concern the appointment of any particular person as a Commissioner for HMRC or as an officer of Revenue and Customs. They also concern the time and purpose for which a function was delegated to a particular Commissioner, committee or person.

148. *Subsection (4)* provides that a photographic or other copy of a document acquired by the Commissioners, which is certified by them to be an accurate copy is admissible in any legal proceedings to the same extent as the document itself

149. *Subsection (5)* applies section 2 the Documentary Evidence Act 1868 to any document issued by the Commissioners for HMRC. In all courts of justice and in any proceedings, the 1868 Act authorises proof of such things as orders in the ways set out in section 2 of that Act. These include production of a copy or extract of *the London Gazette* containing the orders in question. Thus any notice published in the Gazette will be admissible in proceedings.

150. *Subsection (6)* applies section 2(3) of the 1868 Act so as to authorise proof by production of a copy or extract, purporting to be certified to be true, by the Commissioners for HMRC or any other person acting on their authority.

151. *Subsection (7)* defines a reference in this section to a document as meaning a document issued by the Commissioners for HMRC and makes provision for the section to apply also to any document issued by the Commissioners of Customs and Excise and the Commissioners of Inland Revenue prior to their dissolution.

## **Section 25: Conduct of civil proceedings**

152. This section specifies those persons who may conduct civil proceedings in relation to any function of the Commissioners for HMRC or an officer of Revenue and Customs ('function of the Revenue and Customs').

153. *Subsection (1)* provides that an officer of Revenue and Customs, or any person authorised by the Commissioners, whether or not legally qualified, may conduct any civil proceedings in a magistrates' court or the sheriff court in relation to any function of the Revenue and Customs.

154. *Subsection (2)* in conjunction with *subsection (5)(e)* provides that a member of the Commissioners' staff, who has been admitted as a solicitor and holds a practising certificate, as regards Scotland, and whether or not he holds a practising certificate, as regards elsewhere in the United Kingdom, may act as a solicitor in relation to a function of the Revenue and Customs in connection with civil proceedings in the United Kingdom.



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which received Royal Assent on 7 April 2005.*

155. *Subsection (3) and subsection (5)(c)* provides that a member of the Commissioners' staff who has been admitted as a solicitor or called to the Bar (whether or not he holds a practising certificate) may conduct civil proceedings in the county court in England and Wales and Northern Ireland, in relation to the former Inland Revenue matters specified in section 7.

156. *Subsection (4)* requires a court to grant any rights of audience necessary for a person to perform any function under this section.

157. *Subsection (5)* gives definitions of terms used in the section.

158. *Paragraph (a)* defines a "function of the Revenue and Customs" as meaning either a function of the Commissioners for HMRC or a function of an officer of Revenue and Customs.

159. *Paragraph (b)* defines a reference in this section to "civil proceedings" as meaning proceedings other than criminal proceedings in respect of an offence.

160. *Paragraphs (d) and (e)* determine the necessary qualification for a "legally qualified" and a "solicitor" member of the Commissioners' staff for the purposes of this section.

### **Section 26: Rewards**

161. This section gives the Commissioners for HMRC a discretionary power to pay rewards for service to them or their officers by any person in relation to a function of the new department or its officers. The power conferred by the section would replace a similar power in relation to Customs and Excise matters, under section 165 Customs and Excise Management Act (CEMA) 1979, and a more limited power to pay rewards to informers in relation to Inland Revenue matters, under section 32 Inland Revenue Regulation Act 1890. The exercise of this function by the Commissioners is subject to the power of the Treasury to give directions of a general nature as to its exercise, under section 11 of the Act.

### **Section 27: Inspection**

162. This section provides for Her Majesty's Inspectors of Constabulary (HMIC) Her Majesty's Inspectors of Constabulary for Scotland (defined as "the Scottish inspectors") and Her Majesty's Inspectors of Constabulary for Northern Ireland (the "Northern Ireland inspectors") to scrutinise how HMRC ensures compliance with the laws, rules and procedures of the criminal justice system.

163. *Subsection (1)* provides for the Treasury to make regulations to enable HMIC, the Scottish inspectors and Northern Ireland inspectors to undertake inspection functions in relation to the Commissioners for HMRC and the officers of Revenue and Customs.

*These notes refer to the Commissioners for Revenue and Customs Act 2005 (c.11)  
which received Royal Assent on 7 April 2005.*

164. *Subsection (2)(a) to (e)* lists the matters in relation to which regulations may be made.

165. *Paragraph 2(a)(i)* provides for HMIC to carry out a programme of inspections in HMRC in England and Wales similar to those carried out by them of Police Forces in England and Wales. The approach is not simply to apply the relevant provisions of the Police Act 1996 because arrangements will need to be tailored to the circumstances of HMRC.

166. *Paragraph 2(a)(ii)* provides for the Scottish inspectors to carry out a programme of inspections in HMRC in Scotland similar to those carried out by them of Police Forces in Scotland. The relevant provisions of the Police (Scotland) 1967 Act may be applied or modified to meet the circumstances of HMRC.

167. *Paragraph 2(a)(iii)* provides for the Northern Ireland inspectors to carry out a programme of inspections in HMRC in Northern Ireland similar to those carried out by them of the Police Service of Northern Ireland. The relevant provisions of the Police (Northern Ireland) 1998 Act may be applied or modified to meet the circumstances of HMRC.

168. *Paragraph 2(b)* provides for Ministers and the Commissioners for HMRC to require the carrying out of specific inspections of functional business activities of, and operational business units within, HMRC.

169. *Paragraph 2(c)* provides for reports on inspections to be made. Such reports may be edited according to provisions in the regulations and then published. Examples of reasons for editing might include national security or where it is felt that individual's safety might be jeopardised. It is expected that the regulations will specify that reports shall be made to the Chancellor and the Commissioners for HMRC.

170. *Paragraph 2(d)* provides for an annual report by HMIC. It is envisaged that this report will be made to the Chancellor and the Commissioners for HMRC in respect of the inspections performed in HMRC during the year and be published.

171. *Paragraph 2(e)* provides the option for payment arrangements to be made if necessary and appropriate by the Commissioners for HMRC in respect of inspections carried out by HMIC, the Scottish inspectors or the Northern Ireland inspectors.

172. Inspections will not cover the full range of HMRC's activity, but will be focussed on those areas involved in law enforcement where their expertise is most relevant.

173. *Subsection (3)* ensures that there is no duplication between the inspection functions under the section and wider public audit functions by providing that an

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inspection by HMIC, the Scottish inspectors or the Northern Ireland inspectors should not cover the issues of overall efficiency, effectiveness and economy in use of resources that are conducted on behalf of the Comptroller and Auditor General under the National Audit Act 1983.

174. *Subsection (4)* requires that an inspection, or any part of inspection, of HMRC activities in Scotland should be performed jointly by HMIC and the Scottish inspectors.

175. *Subsection (5)* provides that the regulations to be made under *subsection (1)* are to be made by Statutory Instrument subject to annulment by either House of Parliament (negative resolution procedure).

176. *Subsection (6)* defines the term “Scottish inspectors” as those inspectors of constabulary appointed under the Police (Scotland) Act 1967 and the “Northern Ireland” inspectors as those inspectors of constabulary appointed under the Police (Northern Ireland) 1998 Act.

## **Section 28: Complaints and misconduct: England and Wales**

177. This section provides for the Independent Police Complaints Commission's (IPCC) remit to be expanded to provide coverage of HMRC.

178. *Subsection (1)* provides for the Treasury to make regulations setting out the arrangements for such coverage. This covers both Commissioners and officers to ensure comprehensive coverage.

179. *Subsection (2)(a)* provides for the IPCC to carry out for HMRC a similar role to that it performs in respect of Police Forces in England and Wales where it examines police complaint handling procedures and undertakes or supervises investigations. The approach is not simply to apply the relevant provisions of the Police Reform Act 2002 because arrangements will need to be tailored to the circumstances of HMRC. The IPCC will look at allegations of criminal conduct or gross misconduct within HMRC. Again reflecting the practice for the Police, where IPCC has a role, they may choose not to investigate directly, but decide to supervise or manage an investigation instead, depending on the circumstances.

180. *Subsection(2)(b)* provides for IPCC or a person acting on its behalf, to be given, as necessary, the same powers as an officer of Revenue and Customs, to enable the discharge of its responsibilities in respect of HMRC.

181. *Subsection (2)(c)* provides the option for payment arrangements to be made if necessary and appropriate by the Commissioners for HMRC in respect of the functions carried out by the IPCC.

182. *Subsection (3)* provides that the IPCC and the Parliamentary Commissioner for Administration (“PCA”) may disclose information to each other for the purposes

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which received Royal Assent on 7 April 2005.*

of IPCC exercising a function under this section and PCA exercising functions under the Parliamentary Commissioner for Administration Act 1967.

183. *Subsection (4)* provides that the IPCC and the PCA may jointly investigate a matter in relation to which the IPCC has functions under this section and PCA has functions under the 1967 Act.

184. *Subsection (5)* provides that the regulations to be made under *subsection (1)* are to be made by Statutory Instrument subject to annulment by either House (negative resolution procedure).

185. *Subsection (6)* confines the scope of the regulations to functions exercised in or in relation to England and Wales.

### **Section 29: Confidentiality, &c.**

186. This section covers the use and disclosure by HMIC, the Scottish Inspectors, the Northern Ireland inspectors and the IPCC of information obtained in the course of their functions.

187. *Subsection (1)* requires that information obtained by HMIC, the Scottish inspectors or the Northern Ireland inspectors may only be used by them for the purposes of carrying out an inspection and may not be disclosed without the consent of the Commissioners for HMRC.

188. *Subsection (2)* requires that any report made by HMIC, the Scottish inspectors or the Northern Ireland inspectors may not include information relating to a specified person without his consent.

189. *Subsection (3)* requires that information obtained by the IPCC from HMRC or the Parliamentary Commissioner for Administration in the course of an investigation may only be used by it for the purposes of that investigation. Any disclosure of such information is subject to any restrictions imposed by or under regulations made under section 28 (Complaints and misconduct: England and Wales).

190. *Subsection (4)* specifies that an offence will be committed by any persons contravening the provisions in respect of disclosure.

191. *Subsection (5)* provides a defence for any person charged with an offence of disclosing or using information where he can prove that he reasonably believed disclosure or use was lawful, or that the information had already been lawfully made available to the public.

192. *Subsection (6)* sets out the penalties where a person is found guilty of unlawful disclosure under these provisions.

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which received Royal Assent on 7 April 2005.*

193. *Subsection (7)* lays down the roles and responsibilities for mounting prosecutions under these provisions in England and Wales.

194. *Subsection (8)* sets out the maximum term for imprisonment on summary conviction for a person found guilty of unlawful disclosure in Scotland.

195. *Subsection (9)* defines the meaning of the terms “Scottish inspectors” and “Northern Ireland inspectors” by reference to section 27.

196. It may be noted that section 55(3) specifies liability to a reduced sentence on summary conviction in England and Wales where the offence under these provisions was committed before the commencement of section 282 of the Criminal Justice Act 2003.

### **Section 30: Impersonation**

197. Under *subsection (1)* it is a criminal offence for any person to attempt to pass themselves off as a Commissioner for HMRC or officer of Revenue and Customs in order to gain any form of benefit. A ‘benefit’ includes obtaining entry to property or obtaining information. The individual does not actually have to receive any benefit from the impersonation for an offence to be committed – an intention to obtain a benefit is sufficient.

198. *Subsection (2)* provides for the penalty for committing the offence. A person may, upon conviction in England and Wales, be imprisoned for a maximum of 51 weeks, may be fined (up to £5,000), or may be both imprisoned and fined. This maximum penalty is, however, subject to section 55(4). Where an offence is committed before section 281 of the Criminal Justice Act 2003 comes into force, the maximum sentence for the offence will be 6 months and / or a fine (the Criminal Justice Act provisions increase the maximum sentence for summary only offences, such as this, from 6 months to 51 weeks).

199. *Subsection (3)* provides for a lower penalty of 6 months for offences committed in Scotland and Northern Ireland to accord with their arrangements for maximum summary penalties.

### **Section 31: Obstruction**

200. *Subsection (1)* of the section provides for an offence of obstructing:

- a officer of Revenue and Customs;
- a person acting on behalf of either the Commissioners or an officer of Revenue and Customs; *or*
- a person assisting an officer of Revenue and Customs.

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201. The provision applies only when the officer or other person specified in *subsection (1)* is acting in accordance with his statutory duties. So obstruction of an officer when they are not exercising statutory duties – for example when they are not at work – would not be an offence under this provision. Furthermore, a person will not be guilty of an offence if they have a reasonable excuse for the obstructing behaviour. The type of activities that could constitute obstruction in the context of HMRC might include:

- an action to impede a lawful search;
- an action intended to prevent a lawful arrest;
- an action intended to impede the seizure of smuggled goods that are liable to forfeiture; *or*
- an action which prevents giving of evidence as to whether such goods are liable to forfeiture.

202. *Subsection (2)* provides for the penalty for committing the offence. A person may, upon conviction in England and Wales, be imprisoned for up to 51 weeks, or fined (up to £1,000), or both imprisoned and fined. This maximum penalty is, however, subject to the provisions at section 55(5). Where an offence is committed before section 281 of the Criminal Justice Act 2003 comes into force, the maximum sentence for the offence will be 1 month and / or a fine (the Criminal Justice Act provisions increase the maximum sentence for summary only offences, such as this, to 51 weeks).

203. *Subsection (3)* provides for a lower penalty of 6 months for offences committed in Northern Ireland and Scotland to accord with their arrangements for maximum summary penalties.

### **Section 32: Assault**

204. This section provides for assault on an officer of Revenue and Customs to be a criminal offence. The provision applies only when the officer is acting in the course of his duties, so an assault on an off-duty officer would not be an offence *under this provision*.

205. *Subsection (2)* provides for the penalty for committing the offence. A person may, upon conviction in England and Wales, be imprisoned for up to 51 weeks, fined (up to £5,000), or both imprisoned and fined. This maximum penalty is, however, subject to the provisions at section 55(6). Where an offence is committed before the provisions of section 281 of the Criminal Justice Act 2003 come into force, the maximum sentence for the offence will be 6 months and / or a fine (the Criminal Justice Act provisions increase the maximum sentence for summary only offences,

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such as this, from 6 months to 51 weeks).

206. *Subsection (3)* provides for a lower penalty of 6 months for offences committed in Northern Ireland and Scotland to accord with their arrangements for maximum summary penalties.

### **Section 33: Power of arrest**

207. This section permits a person to be arrested for the offences at sections 30 to 32, and specifies who may make that arrest.

208. Under *subsection (1)*, an arrest may be made on the basis of reasonable suspicion that a person has committed an offence specified at sections 30 to 32, is in the process of committing such an offence, or is about to commit such an offence. No arrest warrant is required for an arrest to be made.

209. *Subsection (1)* provides for the arrest to be made by an authorised officer of Revenue and Customs. *Subsection (2)* confirms that authorisation must be given by the Commissioners. So an officer who is not the subject of a valid authorisation by the Commissioners may not exercise the power of arrest for these offences.

210. *Subsection (3)* specifies the forms in which an authorisation may be given. Authorisations may be:

- by specific designation, whereby the Commissioners authorise a specified individual to exercise the power of arrest; *or*
- by general designation, whereby the Commissioners authorise a certain type or group of officers based upon criteria that the Commissioners may specify.

211. So, for example, the Commissioners could generally designate all officers working in particular law enforcement jobs who have up to date training in arrest matters.

212. In accordance with section 24(2) and (3)(e) (evidence), the Commissioners may confirm in writing that an officer was the subject of a designation under this provision at a specified time.

213. *Subsections (4) and (5)* confer a power of arrest for the offences in the Act upon Police officers in Scotland and Northern Ireland respectively. Police officers may exercise this power under the same circumstances as an authorised HMRC officer, namely:

- if they reasonably suspect that the person has committed an offence under this Act;

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- if they reasonably believe that a person is committing such an offence; or
- if they reasonably believe that a person is about to commit such an offence.

### **Section 34: The Revenue and Customs Prosecutions Office**

214. This section and Schedule 3 establish the Revenue and Customs Prosecutions Office (RCPO) as a separate department, independent of HMRC and the two predecessor departments. Together they set out the structure of the Office by creating the office of the Director of Revenue and Customs Prosecutions, who will have responsibility for employing RCPO staff. The Director's jurisdiction to conduct Revenue and Customs prosecutions extends to England and Wales only. The present arrangements will continue in respect of prosecutions, following investigations by officers of Revenue and Customs, in Scotland and in Northern Ireland.

215. *Subsection (1)* provides for the appointment by the Attorney General of a Director of Revenue and Customs Prosecutions.

216. *Subsection (2)* gives the Director power to appoint staff subject to the approval of the Minister of the Civil Service as to their terms and conditions.

217. *Subsection (3)* provides for the Director and his staff to be known as the Revenue and Customs Prosecutions Office.

218. *Subsection (4)* introduces Schedule 3, which makes further provision relating to the Office.

### **Section 35: Functions**

219. This section sets out the functions of the Director in relation to the provision of legal advice and the institution and conduct of certain prosecutions. The Director's power to institute proceedings does not preclude HMRC from instituting such proceedings themselves. In addition to the institution and conduct of a criminal prosecution for offences investigated by HMRC, the Director will have the power to institute and conduct all proceedings related to that prosecution, including (but not confined to) proceedings for the restraint and confiscation of assets held by those subject to (or potentially subject to) prosecution.

220. *Subsection (1)* provides that the Director has both a power to institute and to conduct all criminal proceedings in England and Wales arising from an investigation by HMRC and a duty to take over criminal proceedings instituted by HMRC in England and Wales.

221. *Subsection (2)* enables the Director to provide such advice as he considers appropriate in relation to investigations carried out by HMRC and criminal proceedings in England and Wales in relation to such investigations. He may provide advice to all those involved in such investigations, including officers from other agencies working alongside HMRC on HMRC investigations and officers who may



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be carrying out investigations in Scotland or Northern Ireland which are expected to result in the institution of criminal proceedings in England and Wales.

222. *Subsection (4)* provides that the Attorney may, if he considers appropriate, additionally assign to the Director the function of instituting or assuming the conduct of proceedings other than those set out in *subsection (1)*. Following such assignment, the Director may also provide advice in relation to the investigations, prosecutions and related proceedings which have been so assigned.

223. *Subsection (5)* construes references to the institution of criminal proceedings for the purposes of this section and defines “criminal investigations” for the purposes of the section.

### **Section 36: Functions: supplemental**

224. *Subsection (1)* provides that the Director is required to discharge his functions under the superintendence of the Attorney. The Attorney has a similar power of superintendence in relation to the functions of both the Director of Public Prosecutions (DPP) and the Director of the Serious Fraud Office. Accordingly the Director RCPO is accountable to the Attorney for the exercise of his functions and, in turn, the Attorney will answer to Parliament for the exercise of these functions by the Director. The provision of information to the Attorney about individual cases or persons, in the context of statutory independence, is a disclosure for the purposes of a function of the Prosecutions Office, within the provisions of section 40(2)(a).

225. *Subsection (2)* requires the Director and prosecutors to have regard to the Code of Crown Prosecutors at all key stages prior to and during criminal proceedings.

226. *Subsection (3)* provides the Director with a power to discontinue proceedings of which he has conduct. An equivalent power has been exercised by the DPP in relation to proceedings of which he has conduct before the magistrates` courts since the inception of the Crown Prosecution Service and latterly in relation also to those of his proceedings which are before the Crown Court.

227. *Subsection (4)* confirms that the Director may be provided in an enactment with the power to institute proceedings in England and Wales only. The present arrangements will continue in respect of prosecutions, following investigations by officers of Revenue and Customs, in Scotland and in Northern Ireland.

### **Section 37: Prosecutors**

228. This section provides that the Director may designate legally qualified members of his staff as Revenue and Customs Prosecutors. They will be able to exercise all those functions of the Director set out in section 35: giving advice in certain criminal investigations and proceedings and the institution and conduct of criminal prosecutions and related proceedings. It additionally stipulates that all Revenue and Customs Prosecutors must act in accordance with any instructions given

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to them by the Director.

### **Section 38: Conduct of prosecutions on behalf of the Office**

229. This section confers a power on the Director to appoint legally qualified persons who are not employed by him to institute and conduct any specified criminal proceedings or class of proceedings. These persons must hold a general qualification under the Courts and Legal Services Act 1990, i.e. they must be able to exercise a right of audience in proceedings in the Supreme Court, county courts or magistrates' courts. They must act in accordance with instructions given to them either by the Director or by a Revenue and Customs Prosecutor

### **Section 39: Designation of non-legal staff**

230. This section provides for the Director to designate members of his staff who are not legally qualified, as having a right of audience before the magistrates' courts in relation to certain procedural hearings which may arise in the course of a prosecution of which the Director has conduct. Such procedural hearings are principally remands, bail applications and directions hearings. A number of these hearings are currently conducted by officers but this will cease and, after appropriate training, designated RCPO staff will take over these functions. The section does not provide for a right of audience in trials at magistrates' courts or any hearing before other tribunals. Any such designated person must exercise the function for which he is designated in accordance with instructions given to him by the Director or a Revenue and Customs Prosecutor.

### **Section 40: Confidentiality**

231. The section lays down a code of confidentiality for the Revenue and Customs Prosecutions Office, and the circumstances in which disclosures of information can be made. The section also establishes a criminal offence to buttress the duty of confidentiality, and lays down how such an offence will be prosecuted.

232. *Subsection (1)* lays down the general principle that the Revenue and Customs Prosecutions Office may not disclose information held by the Office, in connection with any of its functions, which relates to an identifiable person.

233. *Subsection (2)* then provides for a limited number of specific circumstances where disclosure may be allowed.

234. *Paragraph (a)* allows a disclosure to be made for the purposes of a function of the Prosecutions Office, which does not contravene any restriction imposed by the Director. This would cover, for example, a disclosure made in connection with a civil proceeding ancillary to a prosecution, which might well be a public act.

235. *Paragraph (b)* allows RCPO to make a disclosure to HMRC in connection with any function of the Revenue and Customs, in accordance with the definition of such functions in section 25, namely 25(5)(a). This would include disclosing to HMRC information gained in the context of the prosecution of one HMRC case,

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which turned out to reveal a linked but different case which should be further investigated by HMRC.

236. *Paragraph (c)* allows RCPO to disclose for the purposes of criminal investigation or proceedings (whether or not within the United Kingdom), which is the principal business of the Office. Disclosures may have to be made outside the United Kingdom when seeking further evidence from abroad in cases concerning offences planned abroad, or straddling EU member state boundaries, e.g. under section 71 Criminal Justice Act 1993. The provision is designed to parallel the HMRC disclosure power in section 18(2)(d), so that in investigations where more evidence is to be procured after commencement of proceedings, there should be no artificial differences in the respective powers to disclose, enabling flexibility in the conduct of such investigations.

237. *Paragraph (d)* covers a disclosure of information which in the opinion of the Director of RCPO is desirable for the purpose of safeguarding national security. Such information may come into RCPO hands in carrying forward the conduct of a variety of prosecutions for which HMRC conducts the investigations, notably the offences under section 53 Anti-terrorism, Crime and Security Act 2001, section 1B Biological Weapons Act 1974 and section 30A of the Chemical Weapons Act 1996.

238. *Paragraph (e)* covers disclosure in pursuance of an order of a court, such as a *subpoena* or witness summons.

239. *Paragraph (f)* covers disclosure made with the consent of each person to whom the information relates.

240. *Paragraph (g)* covers disclosure pursuant to any other enactment. This would include, for example, the disclosure under section 8(1) National Audit Act 1983 to the Comptroller and Auditor General of departmental documents which he reasonably requires for the purposes of his audit.

241. *Subsection (3)* makes it an offence for any person to contravene the non-disclosure provisions of *subsection (1)* in relation to information relating to a person whose identity can be identified, either directly from the disclosure, or which can be deduced from it. The term “person” includes both natural and legal persons, and, for example, the tax affairs of a limited company are also protected by the provisions of the subsection. Meanwhile *subsection (4)* makes it clear that the offence does not apply to information about the internal arrangements of RCPO, whether relating to RCPO staff or other persons.

242. *Subsection (5)* provides certain defences for a person charged with the *subsection (3)* offence. In particular, he will not be guilty of the offence if he proves that he reasonably believed that the disclosure was lawful, that is that the disclosure fell within the terms of *subsection (2)*. Similarly, he would not be guilty if he proved that he reasonably believed that the information had already been made available to

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the public, and that this had been done lawfully; it would be no defence in a subsequent unlawful disclosure to say that the information had been disclosed previously, if that previous disclosure was itself unlawful.

243. *Subsection (6)* defines “the Revenue and Customs Prosecution Office” for the purposes of the section. The definition looks forward to the time when there will be persons who were members of the Office, or who were appointed to conduct prosecutions under section 38, but have ceased to be so, e.g. by retirement, resignation, or expiry of appointment. “The Revenue and Customs Prosecutions Office”, the set of persons to be subject to the statutory duty imposed by *subsection (1)*, is therefore defined to be the aggregate of:

- the Revenue and Customs Prosecutions Office, being the Director and his current staff, as defined in section 34(3); and
- former members of the Office, and persons holding or who have held appointments to conduct proceedings on the Director’s behalf, under section 38.

244. *Subsection (7)* lays down the penalties for those found guilty of the offence under *subsection (3)*. The offence is triable either way; that is:

- either summarily, when the maximum penalty will be 12 months imprisonment, or a fine not exceeding the statutory maximum (currently £5000), or both; *or*
- on indictment, when the maximum penalty will be two years imprisonment, or an unlimited fine, or both.

245. *Subsection (8)* provides that a prosecution for the offence may be instituted in England and Wales only by the Director of Revenue and Customs Prosecutions, or with the consent of the Director of Public Prosecutions.

246. *Subsection (9)* provides that prosecutions for the offence may be instituted in Northern Ireland (where the Director of Revenue and Customs Prosecutions has no functions) only by the Commissioners, or with the consent of the Director of Public Prosecutions for Northern Ireland.

247. No comparable provision is needed in Scotland, because the Procurator Fiscal and the Crown Office automatically have exclusive authority to prosecute summary and indictable offences in Scotland, under the law in Scotland, without the need for specific enabling provision.

248. *Subsection (10)* provides that the maximum penalty on summary conviction in Scotland and Northern Ireland is to be six months, rather than twelve, to accord with

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normal Scottish and Northern Ireland arrangements for maximum summary penalties.

249. *Subsection (11)* provides that the reference to an enactment in *subsection (2)(g)* does not include legislation of the devolved institutions, which is not relevant here.

250. It should also be noted that section 55(7) makes a temporary change to the maximum penalty of imprisonment on summary conviction in England and Wales, provided for under *subsection (7)(b)*, reducing it to six months from twelve months, pending the coming into force of a general amending provision about the maximum penalties on summary conviction (section 282 Criminal Justice Act 2003).

#### **Section 41: Disclosure of information to Director of Revenue and Customs Prosecutions**

251. *Subsections (1)* and *(2)* of the section lists the persons, other than HMRC, who may disclose information to RCPO for a purpose connected with a specific investigation or prosecution. This follows a standard format, being comparable with the list of persons who may disclose to the Asset Recovery Agency, under section 436 Proceeds of Crime Act 2002, modified to reflect the imminent creation of the Serious Organised Crime Agency, which is intended to subsume the functions of the National Criminal Intelligence Service (NCIS) and the National Crime Squad (NCS).

252. *Subsection (2)(h)* and *subsection (3)* provide that the Attorney General may by Order, subject to affirmative resolution by both Houses of Parliament, add other persons exercising public functions to the list. Under *subsection (4)*, this power will, as regards Northern Ireland in the longer term, be exercisable by the Advocate General for Northern Ireland. But it will be exercised by the Attorney General for Northern Ireland until the commencement of section 27(1) of the Justice (Northern Ireland) Act 2002. And as regards Scotland, under *subsection (5)*, references to the Attorney General are to be read as references to a Minister of the Crown (including the Treasury).

253. Finally, *subsection (6)* again declares, in parallel with the equivalent provision in section 22, that nothing in *section 41* authorises any disclosure in contravention of the Data Protection Act 1998, or Part 1 of the Regulation of Investigatory Powers Act 2000. There is no intention to do so, but the section puts the issue beyond any possible doubt.

#### **Section 42: Inspection**

254. This section provides for the inspection by HM Chief Inspector of the Crown Prosecution Service of the operation of the Revenue and Customs Prosecutions Office and provides that the Chief Inspector will report any findings arising out of that inspection to the Attorney General. The Chief Inspector may designate an inspector to carry out the inspection.

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### **Section 43: Expenditure**

255. The section provides that the expenses incurred in managing HMRC (for example, staff and accommodation costs) should be paid from funds provided by Parliament – this is the normal way of financing a Government Department. This Act does not provide for the detailed financial and accounting arrangements that will apply to HMRC's departmental expenditure. These arrangements, including the provisions governing the preparation and audit of resource accounts, and the appointment of accounting officers, are specified within the Government Resources and Accounts Act 2000. In accordance with that Act, Parliament will annually vote upon a resource allocation for HMRC on the basis of Estimates laid before it. And HMRC will prepare annual resource accounts, setting out its expenditure for the year. Those accounts will be audited by the Comptroller & Auditor General.

### **Section 44: Payment into Consolidated Fund**

256. This section stipulates how the Commissioners should handle revenues (e.g. taxes and duties) and other monies received in the course of their functions (so this section does not apply to departmental funding). *Subsection (1)* requires the Commissioners to pay monies received into the Consolidated Fund. *Subsection (1)(b)*, however, introduces a number of exceptions to this rule, which are specified at *subsection (2)*:

- national insurance contributions (which are dealt with under the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and which are payable to the National Insurance Fund or National Insurance Fund for Northern Ireland);
- sums due to be paid into the National Loans Fund (for example, sums received for certificates of tax deposits);
- student loan repayments (which are paid to the Secretary of State before disposal into the Consolidated Fund);
- penalties in respect of the National Minimum Wage (which are also paid to the Secretary of State before disposal into the Consolidated Fund); *and*
- sums due to the Scottish Consolidated Fund (there are a small number of items that must be paid in to the Scottish Consolidated Fund such as forfeited monies under the Proceeds of Crime Act and fines under SI 2004/953 Scotland Act 1998 (Designation of Receipts Order).

257. *Subsection (1)(a)* of the section allows the Treasury to issue directions stipulating the detailed arrangements for how and when payments into the Consolidated Fund are to be made. The Commissioners must comply with these directions.

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258. *Subsection (1)(c)* permits the Commissioners to deduct certain sums from revenue receipts before those receipts are paid over to the Consolidated Fund, thus giving parliamentary authority for the making of certain payments out of revenue. Those deductions are specified at *subsection (3)*.

259. The list of permitted deductions at *subsection (3)* is inclusive, so if a deduction does not fall within the descriptions at this paragraph, it may not be deducted from revenue receipts, but the gross amount must be paid over in some other manner. *Paragraph (a)* permits deduction of repayments of revenues (such as VAT repayments) and deduction of drawbacks and discounts, such as excise drawbacks, any deduction under the Excise Duties (Surcharges or Rebates) Act 1979, or discounts under regulations made under Schedule 38 paragraphs (1) and (2)(a) Finance Act 2000. *Paragraph (b)* allows the deduction of amounts due to be paid to the Scottish Consolidated Fund in respect of the Scottish Variable Rate of tax. *Paragraph (c)* allows the deduction of payments that are required by law to be made to the Isle of Man, allowing the Isle of Man's share of revenues due under the UK and Isle of Man Revenue Sharing Agreement to be paid out of UK revenue. And *paragraph (d)* permits the Commissioners to deduct payments of tax credits from revenues received.

260. *Subsection (4)* defines the "repayments" that fall within the permitted deductions at *subsection (3)(a)*. It ensures that repayments include not only the repayment of the tax or duty itself, but also any interest or repayment supplement that is due to be paid alongside that repayment of tax or duty.

#### **Section 45: Remuneration, &c.**

261. *Subsection (1)* provides for the Commissioners' own salaries and related costs to be paid, in accordance with the terms set by the Minister for the Civil Service, out of the money provided by Parliament for the costs of running HMRC.

262. *Subsection (2)* confirms the authority for the Commissioners to pay for staff, through salaries and similar related costs.

263. *Subsection (3)* requires the Commissioners to pay sums in respect of superannuations out of the money provided by Parliament for the costs of running HMRC.

264. These sums will all be accounted for through the process applying to all expenditure specified at section 43.

#### **Section 46: Accounts**

265. This section places a requirement upon the Commissioners to place accounts before the Comptroller and Auditor General – a House of Commons office holder, and head of the National Audit Office.

266. *Subsection (1)* covers accounting for the revenues (i.e. money) received and paid out by the Commissioners (this requirement relates to revenues and not to

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departmental resources). Each day, the Commissioners must send the Comptroller & Auditor General accounts showing how much they have received in revenues, and what they have done with that money. The Treasury will issue a direction to the Commissioners specifying the form that these accounts are to take.

267. *Subsection (2)* covers property received in lieu of money (which would therefore fall outside the scope of *subsection (1)*, as no revenue would be received), and requires the Commissioners to account for the liabilities satisfied by the acceptance of this property at such times as the Treasury directs. The Treasury direction will also stipulate the form that the accounts should take. This requirement specifically covers Heritage Assets received in lieu of inheritance tax under the Conditional Exemption Tax Incentive scheme, but *paragraph (b)* ensures that any other enactment permitting the satisfaction of tax liabilities by property is also covered by this accounting requirement.

#### **Section 47: Payment out of Consolidated Fund**

268. This section permits HMRC to receive cash from the Consolidated Fund on days when revenue incomings are insufficient to fund the outgoing payments that HMRC is obliged to make.

269. *Subsection (1)* specifies the outgoing payments that may be funded by a draw down of cash from the Consolidated Fund. These payments are any payment into the National Insurance Fund or National Insurance Fund for Northern Ireland, and any of the other exceptions or disbursements specified within sections 44(2) and 44(3).

270. *Subsection (2)* provides that the Treasury may make a payment to the Commissioners out of the Consolidated Fund to allow a payment specified in *subsection (1)* to be made. In order to make use of this facility, HMRC would be required to apply to the Treasury for funding from the Consolidated Fund. Payment out of the Consolidated Fund under this section would constitute a payment for standing services (that is a payment for a service that, under an Act, is due to be made out of the Consolidated Fund) under section 13 of the Exchequer and Audit Departments Act 1866 and would therefore be subject to the Treasury obtaining permission from the Comptroller and Auditor General for a draw down of funds from the Consolidated Fund. The form of such a permission would be governed by section 3 of the Government Resources and Accounts Act (GRAA) 2000, and would be subject to the Comptroller & Auditor General being satisfied that the draw down of funds was appropriate and necessary. If the Comptroller & Auditor General granted permissions, the Treasury would pay the required cash to HMRC. This process ensures that Parliamentary scrutiny of this facility is maintained.

271. *Subsection (3)* ensures that the facility to draw down cash from the Consolidated Fund can be utilised to fund all payments specified in *subsection (1)*, even where the payment is being made in order to correct a previous allocation of funds that was based upon an incorrect estimate of the amounts to be paid into the



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Consolidated Fund or other funds.

272. It should be noted that the facility to draw down cash from the Consolidated Fund under this section applies only to revenue and other outgoings permitted under section 44 – it does not apply to the department's own expenditure which is provided for at section 43.

#### **Section 48: Transfer of property &c.: general**

273. This section effects the transfer of all matters, other than functions, from the Inland Revenue and Customs and Excise to the new department. It is subject to section 49, which provides for the appropriate property, rights and liabilities of the old departments to be transferred to the Director of Revenue and Customs Prosecutions.

274. *Subsection (1)* provides for the transfer of all property, rights and liabilities of the Commissioners of Inland Revenue and of Customs and Excise to be transferred to the Commissioners for HMRC. It will be effective from the time the functions set out in section 5 are vested in the Commissioners for HMRC.

275. *Subsections (2) and (3)* provide for anything being done, or in the process of being done, by or on behalf of the Commissioners of the old departments immediately before the commencement to take effect as if done, or may continue to be done by the new Commissioners. This includes legal proceedings which are in progress at the time of the transfer (other than those which transfer to RCPO under section 49(5)).

276. *Subsections (4) to (6)* effect the same provisions in respect of officers' property etc.

277. *Subsection (7)* provides that, where necessary and appropriate, references to the Commissioners or officers of the old departments in any documents, shall be treated as a reference to the new Commissioners or new officers respectively, on and after commencement.

#### **Section 49: Transfer of property &c.: Prosecutions Office**

278. *Subsection (1)* allows for the making of a scheme by the Treasury identifying the property, rights and liabilities which are to transfer to the Director of Revenue and Customs Prosecutions on the creation of his office rather than transfer to the Commissioners for HMRC.

279. *Subsection (2)* sets out the timing of the effect of the scheme set out in *subsection (1)*. Where the scheme identifies property, rights and liabilities which should be excluded from the provisions of section 48, it comes into force at the same time as section 48. Where the scheme transfers property, rights and liabilities to the Director RCPO, it comes into force at the same time as section 35 (which sets out the functions of the Director).

280. *Subsection (3)* provides that the above scheme may apply to and / or modify

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which received Royal Assent on 7 April 2005.*

section 48 and may require, if appropriate, that the ownership and use of such property, rights and liabilities be shared between the Director and the Commissioners.

281. *Subsection (4)* provides that the Treasury may require the Commissioners for HMRC to transfer such property, rights and liabilities to the Director and the Commissioners must comply with any such requirement.

282. *Subsection (5)* modifies specified subsections of section 48 to incorporate a reference to the Director RCPO. An effect of this modification is that any criminal legal proceedings (including associated proceedings for the restraint and confiscation of assets) instituted, or being conducted, by or on behalf of the Commissioners or officers of HM Customs and Excise or Inland Revenue immediately prior to the commencement of section 5 are continued by the Director.

**Section 50: Consequential amendments, &c.**

283. Sections 5 to 7 vest the functions of the former Commissioners and officers of Inland Revenue and Customs and Excise in the Commissioners for HMRC and officers of Revenue and Customs. In consequence of this vesting *section 50 (1)* and *(2)* provide that references to the Commissioners and officers of the predecessor departments in existing enactments, instruments and documents shall be taken as references to the Commissioners for HMRC and officers of Revenue and Customs. This ensures that the body of legislation (both Acts and other instruments) referring to the Commissioners or officers of the predecessor departments shall apply to the new department where appropriate. *Subsection (3)* makes similar provision in respect of the Valuation Office of the Inland Revenue which will become the Valuation Office of HMRC.

284. *Subsection (4)* allows for the Treasury to make regulations making appropriate textual changes to references in legislation dealing with the predecessor departments as a consequence of the establishment through this Act of HMRC and the Revenue and Customs Prosecutions Office.

285. *Subsection (5)* allows regulations under *subsection (4)* to amend primary legislation. Therefore, affirmative resolution procedure has been adopted. This subsection limits the purposes that the Treasury may specify in the regulations to those that are by way of incidental and consequential provision.

286. *Subsection (6)* introduces Schedule 4, which makes detailed consequential amendments to a range of legislation, in consequence of the creation of the new department, and the dissolution of the predecessor departments.

287. *Subsection (7)* ensures that *subsections (1) to (4)* shall have effect in respect of all relevant legislation and documents, including legislation not coming into force until after the passing of this Act, and gives continued legal validity to documents that continue to be issued in the old form (and referring to the predecessor departments)

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for some period after the creation of the new department.

### **Section 52: Repeals and Schedule 5: Repeals**

288. This section repeals obsolete provisions either where the provisions were no longer relevant prior to the formation of HMRC, or where this Act contains provisions that replace older statute.

289. *Subsection (1)(a)* provides for a number of obsolete or superseded provisions in the Customs and Excise Management Act (CEMA) 1979 to cease to have effect. The provisions are as follows:

- *sub-paragraph (i)* section 12 (inquiries) – the provision has not been used in recent times and is no longer required;
- *sub-paragraph (ii)* section 15 (bribery and collusion) – in practice, such conduct is now prosecuted under the Prevention of Corruption Act 1906 and under common law as misconduct in public office, which make available heavier and more appropriate penalties;
- *sub-paragraph (iii)* section 32 (kidnapping officers) – the conduct involves carrying officers away aboard vessels etc that depart for abroad before final customs clearance has been given. In practice the conduct would be penalised, on return of the vessel etc to the United Kingdom, as obstruction;
- *sub-paragraph (iv)* section 84 (signalling to smugglers) – the specific provision is no longer seen as required, as the conduct in question constitutes an offence of being knowingly concerned in an attempt at evasion of duty or prohibition, and is arrestable under section 170 (2) CEMA. Under the Police and Criminal Evidence Act 1984 (PACE) as applied to customs and excise matters (by the PACE (Application to Customs and Excise) Order SI 1985 No 1800, as amended) an officer may enter premises under section 17 PACE to effect such an arrest;
- *sub-paragraph (v)* section 86 (higher penalty where offender armed etc.) – the three year maximum penalty under section 86 has been overtaken by the increase to seven years in the maximum mainstream penalties for smuggling under CEMA, and it is now the Firearms Act 1968 which provides for enhanced penalties for armed crime of all sorts;
- *sub-paragraphs (vi) and (vii)* sections 152(c) and (d) (mitigation and remission of penalties and early discharge from prison) – this is no longer seen as an appropriate function for the Commissioners; *and*
- *sub-paragraph (viii)* section 169 (false scales etc.) – in practice the use of false scales would be penalised as obstruction, and as an aggravating factor in

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relation to any fraud of which it was part.

290. *Subsection (1)(b)* This causes an obstruction provision specific to valuation work, in section 111(2) Taxes Management Act 1970 to cease to have effect. This is superseded by the general obstruction provision in section 31.

291. *Subsection (2)* introduces Schedule 5, which deals with repeals.

### **Section 56: Extent.**

292. This section defines the geographical limitations upon the content of the Act. *Subsection (1)* of the section provides that the Act applies to the United Kingdom (England, Wales, Scotland and Northern Ireland).

293. However, the following sections specifically state that they shall extend otherwise:

- sections 28 – complaints and misconduct - which applies only to England and Wales; and
- sections 34 to 42, plus Schedule 3 - Revenue and Customs Prosecutions Office - which operates only in England and Wales.

294. *Subsection (2)* ensures that, where the CRC Act amends or repeals another Act of Parliament, the amendment will have the same extent as the provision that it amends. So, for example, an amendment to a provision that applied only to Scotland would also apply only to Scotland, while an amendment to a provision that extended to the Isle of Man would extend there too.

## **SCHEDULES**

### **Schedule 1: Former Inland Revenue Matters.**

295. See section 7.

### **Schedule 2: Functions of Commissioners and officers: Restrictions, &c.**

#### ***Part 1 – General***

296. Part 1 of this Schedule places some specific restrictions on the exercise of certain functions. Except for the conduct of prosecutions of revenue and customs offences in England and Wales covered in the section on the Prosecutions Office (sections 34 to 42), all of the functions of the Commissioners and staff of both Inland Revenue and Customs and Excise are transferred to the Commissioners and staff of HMRC by sections 5 to 7. This includes some powers which can be used widely in one of the two predecessor departments, but less widely or not at all in the other. In order to prevent the accidental spread of the wider powers to the whole of the new department's business, it is necessary to ring fence these powers by reference to the

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matters inherited from each predecessor department. This Schedule supplements the generic restriction on officers' powers in section 7 by some specific restrictions for matters not otherwise covered, such as Commissioners' powers. Most Commissioners' powers do not need to be included here, because they are already defined as relating to particular functions, and would not apply generally anyway.

297. *Paragraph 1* limits the Commissioners' powers to intercept wireless telegraphy to obtain or disclose information about the contents, sender or addressee of any message. This power is currently only available to Customs and Excise, and this paragraph prevents it from being used in relation to matters inherited from the Inland Revenue.

298. *Paragraph 2* restricts the Commissioners' powers to require various types of information return relating to securities. The powers, inherited from the Inland Revenue, will only be able to be used in relation to former Inland Revenue matters.

299. *Paragraph 3* restricts the Commissioners' power to prescribe the form of notices to matters relating to functions inherited from the Inland Revenue. The particular power in question currently relates only to Inland Revenue matters. Powers to prescribe forms for Customs and Excise matters are differently worded, and are often particular to types of form. This ring fencing prevents any confusion.

300. *Paragraph 4* limits to previous Customs and Excise functions the Commissioners' power to depute other persons to exercise the powers of officers, e.g. to enable Ministry of Defence police to undertake anti-smuggling functions in relation to imports and exports of sensitive military equipment.

301. *Paragraph 5* restricts the matters in connection with which a member of the armed forces or police can be required to give assistance. At the moment they only do so in relation to Customs and Excise functions, and *sub-paragraph (1)* prevents the requirement from applying to former Inland Revenue matters. *Sub-paragraph (2)* gives an assurance to members of the armed forces or police that they are entitled to rely on the word of an officer of Revenue and Customs in interpreting this restriction.

302. *Paragraph 6* confines the current Customs and Excise penalties for false declarations and counterfeiting to their current scope by preventing them from applying to former Inland Revenue matters.

303. *Paragraph 7* restricts the application of the Police and Criminal Evidence Act 1984 (PACE) in relation to HMRC. (It does not apply in Scotland, because the relevant provisions of PACE do not apply in Scotland.) PACE contains various police powers, such as powers of arrest, search and seizure. Most of these powers are regulated by reference to the conduct of a given police investigation. PACE contains a provision enabling its provisions to be applied by order in respect of Customs and Excise investigations. The general consequential amendments in section 50 of this Act will deem this to refer to any Revenue and Customs investigation, but *sub-paragraph*

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(1) excludes investigations relating to former Inland Revenue matters. This maintains the *status quo*.

304. *Sub-paragraph (2)* disapplies the generic restriction on officers' powers (section 7) from PACE powers used by HMRC. This is because Customs and Excise officers using PACE powers for their primary investigation are legally entitled to carry on doing so in relation to an ancillary matter, which could happen to be an Inland Revenue matter. This limited flexibility is being preserved. Thus at present a Customs and Excise officer who has entered premises during a Customs and Excise investigation, to search for evidence of a Customs-related offence, may also seize any evidence he comes across of any other offence, which could include income tax offences. If the generic restriction on officers' powers were to apply, that capability would be lost. The combined effect of *sub-paragraphs (1) and (2)* is to maintain the *status quo*, so that an officer of Revenue and Customs may use ancillary PACE powers in respect of former Inland Revenue matters, but only where he has used primary powers in the context of an investigation relating to former Customs and Excise matters.

305. *Paragraph 8* confines to its current scope the Customs and Excise provision which extends information powers to cover electronic media. The provision allows Customs and Excise to gain access to documents stored electronically, and to inspect computers used to store such documents. The equivalent Inland Revenue provision, section 127 Finance Act 1988, applying to the Board of Inland Revenue and persons authorised by them, is already expressly limited to direct taxation. The *status quo* is preserved by preventing the Customs and Excise power from being used in relation to former Inland Revenue matters.

306. *Paragraph 9* performs the same function as *paragraph 7*, but in relation to PACE as it applies to Northern Ireland.

307. *Paragraph 10* restricts the scope for making regulations that might be needed as a result of other EU member states adopting the single currency. Such regulations can currently be made only in relation to matters dealt with by the Inland Revenue, and this maintains the *status quo*.

308. *Paragraph 11* deals with differences in the powers which the two predecessor departments have under the Regulation of Investigatory Powers Act (RIPA). In several areas Customs and Excise have wider powers than the Inland Revenue. *Sub-paragraph (1)* provides that these wider powers may not be used in respect of former Inland Revenue matters, and *sub-paragraph (2)* lists them. The wider powers in question are:

- the interception of communications under a warrant;
- intrusive surveillance;

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- seeking a disclosure notice for encrypted material received by lawful means other than under statute or a warrant; and
- making an anti-tipping-off order in relation to a disclosure notice.

309. *Paragraph 12* restricts the use of a regulation-making power relating to mandatory electronic filing. It ensures that the power can only be used in relation to a taxation matter formerly dealt with by the Inland Revenue, thereby maintaining its current scope.

310. *Paragraph 13* adjusts the way the generic restriction on officers' powers applies to a provision of the Proceeds of Crime Act (POCA). POCA allows a customs officer who is lawfully at any place, e.g. at the frontier, or on premises executing a search warrant, to seize any cash which he suspects is either recoverable property (such as the proceeds of crime), or intended for use in unlawful activity. The power is not limited in its scope, so that a Customs officer could use it if, for instance, he came across money which he suspected to be the proceeds of PAYE fraud, even though PAYE is not currently a responsibility of Customs and Excise. *Paragraph 13* maintains the *status quo*. An officer of Revenue and Customs is only allowed to use the POCA power when exercising a function which is not a former Inland Revenue function. In that case he is allowed to use the POCA power in relation to a suspicion about a former Inland Revenue function. This means that an officer of HMRC would not be able to use the power at all if he were carrying out a PAYE inspection. But if he were carrying out a VAT assurance visit, he would be able to use the power to seize suspect cash, even if he suspected that it related to a PAYE fraud.

311. *Paragraph 14* restricts the scope for enabling the Commissioners to exercise powers relating to the provision of evidence of crime to other jurisdictions. The current provision relates only to the Commissioners of Customs and Excise, and that position is maintained by excluding matters relating to former Inland Revenue functions, and their overseas equivalents.

## **Part 2 – use of information**

312. *Part 2 of Schedule 2* makes modifications to the terms of various provisions that authorise the supply of information to and by the existing Commissioners and their officers (provisions termed “statutory gateways”), so that they can be applied to the new department. In most cases the information to be supplied is itself specified by the gateway provision, or is in practice specific to the functions of one or other of the predecessor departments. Most gateway provisions, therefore, fall to be converted for use by the new department by a simple change of name of the body authorised to supply or receive it, as the case may be, and that is achieved by the working of section 50 (1) and (2). So, for example, the reference to the Commissioners of Customs and Excise in section 8 Finance Act 1988 (power for those Commissioners to disclose to interested parties the consignee and description of imported goods) becomes a reference to the Commissioners for HMRC, and the power thereby devolves on them,

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without any change in subject matter.

313. But there are a few gateway provisions, such as section 20 Immigration and Asylum Act 1999, where the information to be supplied to the Home Secretary is described at large only as “information held” by the Commissioners of Customs and Excise. By contrast, the Commissioners of Inland Revenue are authorised under section 130 Nationality, Immigration and Asylum Act 2002 to supply only address details of persons thought to be present or working in the United Kingdom in breach of immigration control. To prevent an inadvertent widening of the scope of these gateways by the integration of the predecessor departments, specific provision is made by *paragraphs 15 to 20* to limit the scope of six outward gateway provisions where this might be an issue. In *paragraphs 15, 16, 18, and 20*, the gateways are inherited from the Commissioners of Inland Revenue, and the limitation is to information obtained or held in exercise of functions related to former Revenue matters, as defined in section 7. In *paragraphs 17 and 19*, the gateways in question are inherited from the Commissioners of Customs and Excise, and the limitation is to information other than that held solely in the exercise of functions related to former Revenue matters. This reflects the fact that information may now be held for multiple purposes, such as an address held on a common name and address file used for a number of functions, and updated from any of them.

### **Schedule 3: Revenue and Customs Prosecutions Office (RCPO)**

314. *Paragraph 1* sets out the qualification for appointment of the Director RCPO: the person to be appointed must have been in practice as a solicitor or barrister for at least 10 years, reflecting the seniority of his position. A similar qualification is required for appointment as the Director of Public Prosecutions.

315. *Paragraph 2* provides for the Director to hold and vacate office in accordance with the terms of his appointment.

316. *Paragraphs 3 to 5* set out the arrangements for the financing of the Office. *Paragraph 3* stipulates that the Director shall be paid such remuneration, expenses and allowances as the Attorney, with the approval of the Minister for the Civil Service, shall determine. *Paragraph 4* obliges the Director to follow directions issued by the Attorney with the consent of the Treasury in incurring expenditure to carry out the functions of his Office. *Paragraph 5* provides that this expenditure shall be paid out of money provided by Parliament.

317. *Paragraphs 6 and 7* stipulate that after the end of each financial year the Director must provide an Annual Report to the Attorney General, which will be published and laid before Parliament. The Report will contain details of the exercise of the Director’s functions during the proceeding year. With the exception of the first financial year, which begins when section 34 comes into force, a financial year is defined as beginning on 1<sup>st</sup> April and ending on the following 31<sup>st</sup> March.

318. *Paragraph 8* makes it clear that both the Director and his staff will be Civil



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Servants.

#### **Schedule 4: Consequential amendments**

319. This schedule sets out the amendments to Acts identified as necessary as a consequence of the creation of the new department, the abolition of the old departments and the creation of the new Prosecutions Office.

320. The general provision in section 50 is necessary as well as the specific amendments set out in Schedule 4 in order to ensure coverage of all references in the very large body of legislation covering the business of Customs and Excise and Inland Revenue.

#### **COMMENCEMENT**

321. The Commissioners for Revenue and Customs Act 2005 (Commencement) Order 2005 No. 1126 (C.51) brought into force all sections except those listed below from 7 April 2005. Sections 5 to 8, 16 and Schedule 2 Part 1, 35, 36, 50 and Schedule 4, 52 and 54 come into force on 18 April 2005 – the launch day of HMRC and RCPO.

#### **HANSARD REFERENCES**

322. The following table sets out the dates and, where appropriate, the *Hansard* references for each stage of this Act's passage through Parliament.

<b>Stage</b>	<b>Date</b>	<b><i>Hansard</i> reference</b>
<b>House of Commons</b>		
1 <sup>st</sup> Reading	24 November 2004	vol: 428, col: 102
2 <sup>nd</sup> Reading	8 December 2004	vol: 428 col: 1169
Committee first & second sitting	11 January 2005 am & pm	SCE
Committee third sitting	13 January 2005	SCE
Committee fourth sitting	18 January 2005	SCE
Remaining Stages	26 January 2005	Vol: 430. col 394 - 428

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which received Royal Assent on 7 April 2005.*

<b>House of Lords</b>		
1 <sup>st</sup> Reading	27 January 2005	vol: 668, col: 1395
2 <sup>nd</sup> Reading	7 February 2005	vol: 669, col: 587-615
Committee first sitting	22 February 2005	vol: 669, col 227-86 GC
Committee second sitting	24 February 2005	vol: 669, col: 353-410 GC
Committee third sitting	2 March 2005	Vol: 670, col: 93-126 GC
Report stage	22 March 2005	Vol: 671, col: 133-179
3 <sup>rd</sup> Reading	5 April 2005	Vol: 671, col: 652-677
Commons consideration of Lords' Amendments	6 April 2005	Vol: 432, col: 520 -1524
Royal Assent	7 April 2005	Vol: 671, col: 950

*These notes refer to the Commissioners for Revenue and Customs Act 2005 (c.11)  
which received Royal Assent on 7 April 2005.*

## **ANNEX A: TABLE OF PROVISIONS RELATING TO THE PREDECESSOR DEPARTMENTS**

Many of the provisions in the Act have counterparts in existing legislation relating to the Inland Revenue and Customs and Excise. The table set out below gives an indication of enactments relating to the Inland Revenue and Customs and Excise that currently deal with similar matters to those provided for in the Commissioners for Revenue and Customs Act. It should be noted that the provisions in the Act are not restatements of the existing provisions and in some cases elements of the existing provisions will still have effect in relation to HMRC. The table should not be relied on as exhaustive or conclusive.

<b>Commissioners for Revenue and Customs Act</b>	<b>Enactments relating to Customs and Excise</b>	<b>Enactments relating to Inland Revenue</b>
<i>Commissioners and Officers</i>		
Section 1 - The Commissioners	Section 6(1) of the Customs and Excise Management Act 1979 (c. 2)	Section 1(1) of the Inland Revenue Regulation Act 1890 (c. 21) and section 1 of the Taxes Management Act 1970 (c. 9)
Section 2 - Officers of Revenue and Customs	Section 6(3) and (4) of the Customs and Excise Management Act 1979	Section 4 of the Inland Revenue Regulation Act 1890
Section 3 – Declaration of Confidentiality	None	Section 6(4) and Schedule 1 to the Taxes Management Act 1970
Section 4 - ‘Her Majesty’s Revenue and Customs’	None	None
<b>Functions</b>		
Section 5- Commissioners initial functions	Section 6 of the Customs and Excise Management Act 1979	Section 1(2) of the Inland Revenue Regulation Act 1890
Section 6 - Officers initial functions	Not applicable	Not applicable
Section 7 - Former Inland Revenue matters	Not applicable	Not applicable
Section 8 - Power to transfer functions	None	None

*These notes refer to the Commissioners for Revenue and Customs Act 2005 (c.11)  
which received Royal Assent on 7 April 2005.*

Section 9 - Ancillary Powers	No express provision	Section 1(2) of the Inland Revenue Regulation Act 1890
Section 10- The Valuation Office	Not applicable	None
<b><i>Exercise of functions</i></b>		
Section 11 - Treasury Directions	Section 6(2) of the Customs and Excise Management Act 1979	Section 1(2) of the Inland Revenue Regulation Act 1890
Section 12 - Commissioners arrangements	Section 8 of the Customs and Excise Management Act 1979	Section 2 of the Inland Revenue Regulation Act 1890
Section 13 - Exercise of Commissioner's functions	Section 8 of the Customs and Excise Management Act 1979 (c. 2)	Section 4A of the Inland Revenue Regulation Act 1890 (c. 21)
Section 14 - Delegation	Section 8 of the Customs and Excise Management Act 1979	Sections 2 and 4A of the Inland Revenue Regulation Act 1890
Section 15 - Agency: Scotland and Northern Ireland	No express provision but section 93 of the Scotland Act 1998 (c. 46) and section 28 of the Northern Ireland Act 1998 (c. 47) apply to Customs and Excise as a government department	No express provision but section 93 of the Scotland Act 1998 and section 28 of the Northern Ireland Act 1998 apply to the Inland Revenue as a government department
Section 16 - Restriction, &c.	Not applicable	Not applicable
<b><i>Information</i></b>		
Section 17 - Use of information	Section 127 of the Finance Act 1972 (c. 41) (as regards disclosure to Inland Revenue)	Section 127 of the Finance Act 1972 (as regards disclosure to Customs and Excise), section 7 of the Social Security Contributions (Transfer of Functions etc) Act 1999 (c. 2), section 148 of the Finance Act 2000 (c. 17) and Schedule 5 of the Tax Credits Act 2002 (c. 21)

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which received Royal Assent on 7 April 2005.*

Section 18 - Confidentiality	Section 182 of the Finance Act 1989 (c. 26)	Section 182 of the Finance Act 1989 and Section 6(4) and Schedule 1 to the Taxes Management Act 1970 (c. 9)
Section 19 - Wrongful disclosure	Section 182 of the Finance Act 1989	Section 182 of the Finance Act 1989
Section 20 - Public interest disclosure	Section 182(6)(a) and (c) of the Finance Act 1989	Section 182(6)(a) and (c) of the Finance Act 1989
Section 21 - Disclosure to prosecuting authority	Not applicable	Not applicable
Section 22 - Data protection	None	None
Section 23 - Freedom of Information	None	None
<b><i>Proceedings</i></b>		
Section 24 - Evidence	Section 153 of the Customs and Excise Management Act 1979	Section 24 of the Inland Revenue Regulation Act 1890
Section 25 - Conduct of civil proceedings	Section 155 of the Customs and Excise Management Act 1979	Section 27 of the Inland Revenue Regulation Act 1890
Section 26 - Rewards	Section 165 of the Customs and Excise Management Act 1979 (c. 2)	Section 32 of the Inland Revenue Regulation Act 1890 (c. 21)
<b><i>Inspection and complaints (sections 27-29)</i></b>	Not applicable	Not applicable
<b><i>Offences</i></b>		
Section 30 - Impersonation	Section 13 of the Customs and Excise Management Act 1979	Section 12 of the Inland Revenue Regulation Act 1890
Section 31 - Obstruction	Section 16 of the Customs and Excise Management Act 1979	Section 11 of the Inland Revenue Regulation Act 1890 and section 111(2) of the Taxes Management Act 1970 (c. 9)

*These notes refer to the Commissioners for Revenue and Customs Act 2005 (c.11)  
which received Royal Assent on 7 April 2005.*

Section 32 - Assault	Section 16 of the Customs and Excise Management Act 1979	None
Section 33 - Power of arrest	Section 138 of the Customs and Excise Management Act 1979	None
<b><i>Prosecutions (sections 34-42)</i></b>	Not applicable	Not applicable
<b><i>Money and Property</i></b>		
Section 43	Section 18 of the Customs and Excise Management Act 1979 and section 303 of the Merchant Shipping Act 1995 (c. 21)	Section 1 and Schedule B of the Public Revenue and Consolidated Fund Charges Act 1854 (c. 24) and section 34 of the Inland Revenue Regulation Act 1890
Section 44(1) - Payment in to the Consolidated Fund	Section 10 of the Exchequer and Audit Departments Act 1866 (c. 39) and section 17 of the Customs and Excise Management Act 1979	Section 10 of the Exchequer and Audit Departments Act 1866 and section 1 of the Public Accounts and Charges Act 1891 (c. 94)
Section 44(2) -exemptions	Section 300 of the Proceeds of Crime Act 2002 (c. 29) and article 3 of the Scotland Act 1998 (Designation of Receipts) Order (S.I. 2004/953)	Part I of the Social Security Contributions and Benefits Act 1992 (c. 4), part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), section 12 of the National Loans Act 1968 (c. 13), regulation 4(2) of the Education (Student Support) Regulations 2000 (S.I. 2000/944), regulation 4(2) of the Education (Student Support) Regulations (Northern Ireland) 2000 (S.I. 2000/121), section 21 of the National Minimum Wage Act 1998 (c. 39), section 300 of the Proceeds of Crime Act and article 3 of the Scotland Act 1998 (Designation of Receipts) Order (S.I. 2004/953)

*These notes refer to the Commissioners for Revenue and Customs Act 2005 (c.11)  
which received Royal Assent on 7 April 2005.*

Section 44 (3) - disbursements	Section 10 of the Exchequer and Audit Departments Act 1866 (c. 39) and section 2 of the Isle of Man Act 1979 (c. 58)	Section 10 of the Exchequer and Audit Departments Act 1866, section 77 of the Scotland Act 1998 (c. 46) and section 2 of the Tax Credits Act 2003 (c. 21)
Section 44 (4) - 'repayments'	Section 158 of the Finance Act 1995 (c. 4)	Section 158 of the Finance Act 1995
Section 45 - Remuneration, &c.	Sections 6(1), (3) and 18 of the Customs and Excise Management Act (c. 2)	There is no specific provision, but the general power provided by section 1 and Schedule B of the Public Revenue and Consolidated Fund Charges Act 1854 (c. 24) would cover expenditure for these purposes.
Section 46 – Accounts	Section 10 of the Exchequer and Audit Departments Act 1866 and section 6(2) of the Customs and Excise Management Act 1979	Section 13 of the Inland Revenue Regulation Act 1890 (c.21), section 2 of the Tax Credits Act 2002 and section 145 of the Finance Act 1998 (c. 36)
Section 47 – Payment out of the Consolidated Fund	None	None
Sections 48 - 49 – transfer of property	Not applicable	Not applicable
<b>General (sections 50 - 57)</b>	Not applicable	Not applicable

*These notes refer to the Commissioners for Revenue and Customs Act 2005 (c.11)  
which received Royal Assent on 7 April 2005.*

## **ANNEX B: LIST OF ABBREVIATIONS**

CEMA	Customs and Excise Management Act 1979
CEPO	Customs and Excise Prosecutions Office
CPS	Crown Prosecution Service
CRC	Commissioners for Revenue and Customs
DPA	Data Protection Act 1998
DPP	Director of Public Prosecutions
DVLA	Driver and Vehicle Licensing Agency
EADA	Exchequer and Audit Departments Act 1866
GRAA	Government Resources and Accounts Act 2000
HMCE	Her Majesty's Customs and Excise
HMIC	Her Majesty's Inspectorate of Constabulary
HMRC	Her Majesty's Revenue and Customs
HRA	Human Rights Act 1998
IPCC	Independent Police Complaints Commission
MOCA	Ministers of the Crown Act 1975
MP	Member of Parliament
NAO	National Audit Office
NMW	National Minimum Wage
PACE	Police and Criminal Evidence Act 1984
PAYE	Pay as you earn
POCA	Proceeds of Crime Act 2002
RCPO	Revenue and Customs Prosecutions Office
RIA	Regulatory Impact Assessment
RIPA	Regulation of Investigatory Powers Act 2000
TMA	Taxes Management Act 1970
VAT	value added tax
VOA	Valuation Office Agency

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