

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 2 August 2007

**Public Authority:** HM Revenue & Customs  
**Address:** 4<sup>th</sup> Floor  
100 Parliament Street  
London  
SW1A 2BQ

### Summary

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The complainant asked seven questions of HMRC in relation to the approval of a pension scheme. HMRC confirmed it held information relevant to the questions but withheld the information under section 44 of the Act. The Commissioner investigated and found that section 44 was engaged in respect of the information held and HMRC dealt with the request in accordance with the Act. The Commissioner requires no steps to be taken.

### The Commissioner's Role

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1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

### The Request

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2. On 12<sup>th</sup> April 2005, the Complainant, asked HMRC for the following information:

“1. Since the coming into force of SI 2000 / 117 on 6<sup>th</sup> April 2001, what application has been made on behalf of the Scottish Mutual for approval of its Income Withdrawal Plan as presently constituted.

2. What approval has been given by the Inland Revenue to that Scheme in terms of SI 2001/117 and to what pension policy documentation did that approval relate.

3. In the event that no approval has been given as regards question 2 above to the Standard Provisions, would any application now to the Inland Revenue for a scheme which includes as a governing instrument the Standard Provisions of the Income Withdrawal Plan in its present form be granted ?

4. Does the contradiction of Clauses 8 and 9 of the approved Deed of Trust by the Standard Provisions at clause 2(i)(c) nullify the approval given by the Board of Revenue to the Deed of Trust ?

5. In the event that approval has not and would not be given to a scheme which incorporates the said Standard Provisions in its present form, is the said Plan as constituted by the Deed of Trust and said Standard Provisions as governing instruments no longer an approved pension arrangement in terms of the relevant statutes?

6. Is the said scheme as so constituted now 'authorised'?

7(a). Does the Revenue provide model wording for the governing instruments in pension schemes,

7(b). And has it done so in this case where its approval has been obtained?"

4. The public authority first responded with its refusal notice on 16 May 2005. In its first response, HMRC advised that it treated the tax affairs of a pension scheme as it would for individuals and companies. In other words the tax affairs are treated as confidential. In addition to each of the above-stated specific requests, the public authority replied as follows:
5. To requests 1, 2, 4, 5, 6, and 7(b) above, HMRC stated that Section 44 (of the Act) related to prohibitions on disclosure and Sections 18 to 20 of the Commissioners for Revenue and Customs Act 2005 ("CRCA 2005") relating to the statutory duty of confidentiality, applied as an exemption from disclosing the requested information.
6. To request 3 above, the public authority advised that it had searched its paper and electronic records and that it did not hold that requested information.
7. To request 7(a) above, the public authority provided the requested information by stating that they "do provide model rules that can be used by pension providers when they are setting up new schemes that they want to be approved by this Department"
8. On 19 May 2005, the complainant requested an internal review of the refusal to be carried out by HMRC.
9. HMRC provided a holding reply on 25 May 2005, and then a detailed reply on the 9 June 2005.

10. HMRC stated that “the primary purpose of this office is to approve pension schemes, for tax purposes, both occupational and personal pension schemes, for tax purposes and to ensure that they are administered in a manner consistent with that approval status”. The reference to “this office” in the response was a reference to the Audit & Pension Schemes Services section of the public authority. HMRC upheld the application of the exemptions it initially relied upon. In doing so, the public authority provided more details in terms of the application of Section 44 of the Act and the public authority’s duty of confidentiality under Section 18 of the CRCA 2005.

## The Investigation

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### Scope of the case

11. On 12 June 2005, the complainant made a complaint to the Information Commissioner’s Office to consider HMRC’s refusal to provide the requested information and the exemptions applied as the basis for doing so. The complainant advised that HMRC had only answered his request as outlined in paragraph 7(a) above and stated it didn’t hold information in relation to part 3. HMRC stated that it was applying Sections 18 of CRCA 2005 as the Act’s Section 44 exemption to the balance of the requested information. Accordingly the Commissioner considered the application of the statutory exemption to all the recorded information withheld in relation to the request.
12. The decision notice will address whether HMRC was correct in its handling of the complainant’s request at the time the request was made. At the time the request was made HMRC refused to disclose the information it held in relation to questions one to six and seven (b) as posed by the complainant, by virtue of section 44 of the Act. The prohibition being applied is section 18 of the Commissioner for Revenue and Customs Act.

### Chronology of the case

13. On 13 February 2006 the Commissioner began his investigation by contacting the complainant. The Commissioner asked the complainant to confirm that the copy held by the Commissioner of Scottish Mutual Standard Provisions was the correct one.
14. The complainant responded on 14 February 2006, the complainant confirmed that the Standard Provisions reference IWP / 98 were the correct ones and asked the Commissioner if he was able to obtain a copy of the Deed of Trust or if he required the complainant to supply a copy.
15. The Commissioner responded on 7 March 2006 confirming that he would like the complainant to supply a copy of the Deed of Trust. The Commissioner also clarified with the complainant the scope of his powers, he explained that the investigation can only focus on whether the information requested should have been disclosed and if the exemptions have been applied correctly, he could not

comment on other issues raised by the complainant as they fell outside of the Commissioner's responsibility.

16. The Commissioner continued to ask specific questions related to each of the complainant's requests. In relation to the first two requests the Commissioner requested some background information to help in determination. In relation to the questions 3, 4, 5 and 6 the Commissioner explained that his first view was that these questions were either speculative, hypothetical or a request for opinion and explained that the Act only requires public authorities to provide the recorded information it holds that would answer his questions and not to 'create' information in order to answer a question. In relation to part 7 of this request, the Commissioner explained that he was satisfied that the first part had been answered and asked the complainant for further clarification as to the information being sought in the second part of the question.
17. The Commissioner also discussed with the complainant an issue the complainant had raised with HMRC on 19 May 2005. In this letter the complainant queried if section 18(2) (c) of the Commissioner for Revenue and Customs Act (CRCA) would allow for disclosure of the information in this case. Section 18(2) (c) states that the bar at section 18(1) does not apply to disclosure which is made for the purposes of civil proceedings. The complainant raised this as he is preparing for court action against his pension provider.
18. The complainant responded on 12 March 2006 enclosing a copy of the Deed of Trust dated 21 April 1997. The complainant highlighted to the Commissioner the provisions of the CRCA which he feels are relevant to his case, sections 18(2) (c), (e) and (h). Section (e) allows disclosure which is made in pursuance of an order of court and section (h) allows disclosure which is made with the consent of each person to whom the information relates. The complainant then continued to provide the Commissioner with a detailed background to his complaint and explained that his approach to the ICO is to try to establish if the pensions scheme and its rules comply with Section 630 of the Taxes Act 1988 which requires a scheme to be approved by the Board of Inland Revenue. The complainant also reiterated his opinion that HMRC should be able to provide all the information requested under FOI.
19. The Commissioner contacted HMRC on 7 April 2006. In his letter the Commissioner asked further questions regarding the application of the statutory bar. He specifically asked HMRC if it had obtained consent to disclose from Scottish Mutual. In relation to questions 3, 4 and 5 the Commissioner asked HMRC what, if any, information was held relevant to these parts of the request.
20. In the response of 11 May 2006, HMRC stated it would be writing to the complainant again. HMRC confirmed it was relying on section 18(1) of the CRCA which prevents an official of HMRC from disclosing any information that has been provided for the purposes of carrying out a function of HMRC. Information about Scottish Mutual is held for a function and is therefore exempt. Prior to April 6 2006 the role of HMRC Audit and Pension Scheme Services (APSS) was to approve pension schemes for tax purposes and to ensure they were administered in accordance with the approval status. For the purposes of

carrying out this function the relationship between APSS and the pension provider is the same as that as with an ordinary taxpayer.

21. HMRC indicated that in approving a pension scheme the only information required is a form PSPP101, a copy of the Trust Deed and Scheme Rules. HMRC stated they would make this clear to the complainant. HMRC also stated that it had not attempted to obtain consent as it was not required to do so and as this was a dispute between the complainant and his pension provider it had a duty to remain impartial.
22. HMRC wrote to the complainant on 19 May 2006. In this letter HMRC stated that section 18 of CRCA still prevented it from answering his specific questions but informed him of the availability of its Guidance Notes for approving personal pensions schemes. A copy of part 13 of the Guidance was enclosed giving guidance on what information was required in order for a scheme to receive approval under the Taxes Act. HMRC also enclosed a copy of 'Pensions Update 144' published March 2003 which announced a revised version of Integrated Model Rules for use by personal pensions providers and set out what action scheme administrators needed to take to comply with the requirements of Statutory Instrument (SI) 2001/117. This made it clear that HMRC would not make a ruling as to whether a scheme was compliant with the regulations.
23. The complainant responded on 22 May 2006. The complainant acknowledged the information provided by HMRC and confirmed that it appeared to answer question 1 and 2 of his request. The complainant outlined to HMRC his interpretation of the SI 2001/117 and his concerns over the schemes approval and re-iterated his need to have the rest of his questions answered.
24. HMRC responded to the complainant on 5 June 2006 informing him that he had misinterpreted the information provided and that the information was only intended to be general information about the practice and processes followed.
25. On 21 June 2006 the Commissioner wrote again to HMRC asking more questions around the application of the statutory bar. Specifically the Commissioner again asked HMRC if it had attempted to obtain consent from Scottish Mutual and what information relating to approval of pensions schemes already exists in the public domain.
26. On 24 June 2006 the Commissioner received a further letter from the complainant stressing the urgency to obtain the information he requires and requesting that the matter be resolved as quickly as possible.
27. The Commissioner responded on 30 June 2006 informing the complainant that he had contacted HMRC again regarding the issue of consent and outlining an initial view on the applicability of section 18 of CRCA.
28. The complainant responded to the Commissioner on 3 July 2006 expressing concern that the ICO believes that section 18 CRCA prevented the information from being disclosed. In his submission the complainant explained the

background to his request again and stressed that he is not asking for confidential information held by HMRC in the exercise of its tax functions but for details of the nature and extent of their continuing approval arising out of their administrative functions in connection with the approval of personal pension plans.

29. The Commissioner responded on 10 July 2006, the Commissioner confirmed with the complainant the scope of his powers in investigating his complaint and clarified that he was confining his consideration to the 7 questions posed to HMRC by the complainant on the 12 April 2005. The Commission also reminded the complainant that section 1 of the Act only applies to 'recorded information' in so far as it exists.
30. HMRC wrote on 12 July 2006, HMRC informed the Commissioner that it is not its practice to get consent in relation to requests for disclosure. HMRC stated that it tells applicants that if it had consent it would disclose and this gives the applicant the opportunity to approach the party from whom the information was obtained and seek their consent.
31. The complainant replied on 24 July emphasizing that he is preparing for court action and that this action is relevant to section 18(2) (c) which allows HMRC to disclose information which is made for the purpose of civil proceedings. The complainant stated that his questions were designed to establish if the scheme is actually compliant with SI 2001/117 and whether, since 6 April 2006, it was no longer approved by HMRC. The complainant stated that as he does not know what form the information is recorded in, he could not ask HMRC for specific documents.
32. The Commissioner wrote to the complainant on 16 August 2006 to update him of progress.
33. The complainant responded on 17 August 2006 informing the Commissioner that he had managed to obtain some information from Abbey National ("Abbey"), the parent company of Scottish Mutual. Abbey also informed him that he should be able to obtain confirmation from HMRC on the matter. The complainant confirmed that he wanted to now pursue his complainant in line with section 18(2) (h) of the CRCA which states that the information can be disclosed if consent has been obtained from the person to which it relates.
34. The Commissioner wrote to the complainant 29 August 2006 informing him that whilst the Commissioner could only address in a decision notice the situation at the time the request was made, he felt it would be advisable for the complainant to approach HMRC with the obtained consent and attempt to now get a fuller response to his questions. The Commissioner indicated that the issue of consent would only apply to information in recorded form and this would possibly not apply to all the questions asked.
35. On 10 September 2006 the complainant responded informing the Commissioner that he was not prepared to approach HMRC with the consent issue but asked the Commissioner to do so on his behalf. Additionally, the complainant pointed out that the information from Scottish Mutual indicated that there has been a



- change in the legislation and that from 6 April 2006 approval by HMRC is no longer required for a scheme. His questions posed in April 2005 were directed at establishing if the scheme was in compliance with the legislation in force, namely the Taxes Act 1988, which has now been replaced by the Finance Act 2004. The complainant asserts that HMRC should take into account the legislative changes brought in April 2006 by the Finance Act 2004 when answering his questions.
36. The Commissioner responded on 27 November 2006, he informed the complainant that HMRC needed to see the letter to Abbey requesting information and the reply which held the consent, the Commissioner then asked if he had the complainant's permission to send this information on to HMRC for their consideration. The Commissioner also stated that the letter of consent only relates to the approval status of the scheme and does not reference all the information requested in the 7 questions.
  37. On 1 December 2006 the complainant responded providing the Commissioner with the correspondence requested and reiterating his belief that HMRC should now deal with the questions originally posed with reference to the changes at the 6 April 2006.
  38. The Commissioner wrote to the complainant 6 December 2006 having viewed the information sent through. The Commissioner explained that in his view the letter supplied from Scottish Mutual suggests that the complainant pursue his grievances through HMRC and is not specifically a letter for consent. The Commissioner did however state he would forward the letter to HMRC and invite their view on disclosure under section 18(2) (h).
  39. The complainant responded on 10 December 2006 confirming he wished the Commissioner to proceed with approaching HMRC on the issue of consent and also asking the Commissioner to put an additional question to HMRC which is supplementary to question 5 in his original request.
  40. The Commissioner responded on 15 December 2006 informing the complainant that it was unable to put the additional question to HMRC as this did not form part of the Commissioner's investigation and any new questions would have to be treated as new requests under the Act.
  41. On 30 January 2007 the Commissioner wrote to HMRC enclosing the letters from Scottish Mutual to the complainant and asked HMRC whether it was now able to disclose the requested information in line with section 18(2) (h).
  42. HMRC responded on 19 February 2007 confirming that the letter from Scottish Mutual was not an acceptable consent letter. It stated that the letter was in vague terms and the suggestion that the complainant should contact HMRC to confirm the registration of the scheme is not sufficient authority to disclose the requested information.
  43. The Commissioner contacted the complainant on 20 February 2007 informing the complainant that HMRC does not view the letters from Scottish Mutual as

- amounting to consent. The Commissioner outlined the information HMRC stated it would require for it to consider disclosure made by consent.
44. The complainant contacted the Commissioner on 9 March 2007 informing him that he had contacted Resolution, the new parent company of Scottish Mutual, and they had agreed to submit a letter to HMRC indicating consent.
  45. The Commissioner telephone HMRC on 9 May 2007 to discuss the issue of consent and to request copies of the recorded information held which is relevant to the request.
  46. The Commissioner followed up this telephone call with a letter to HMRC on 21 May 2007 formally requesting the recorded information relevant to the request and for a formal consideration of the additional letter from Resolution consenting to disclosure of the information.
  47. HMRC responded on 19 June 2007 confirming that, in line with the letter from Scottish Mutual to the complainant, it had provided an answer to this question but confirming that the consent letter did not allow it to answer the seven questions.

## Analysis

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48. The Act gives an applicant a general right of access to all recorded information held by public authorities. Recorded information can be held in various forms, including documents, emails, notes, videos, letters and even audio tapes.
49. The Commissioner therefore focused his investigation on establishing what recorded information was held, in relation to the questions posed by the complainant, at the time the request was made.
50. During the course of the investigation the complainant made it clear that the purpose of his request is to try and establish if the Scottish Mutual pension scheme and its rules comply with, and always have, S630 of the Income and Corporation Taxes Act 1998. The complainant has also pointed out to the Commissioner a number of changes which have taken place in terms of the approval of pensions schemes since his original request and has asked the Commissioner to consider these in his investigation. However, the Commissioner can only investigate the handling of the request at the time the request was made. The Commissioner also notes that the Act is 'applicant blind', this means that it is irrelevant who makes the request and their reasons why, the issue to be considered is whether the information itself is exempt or not.
51. The Commissioner has therefore sought to establish what recorded information was held and whether HMRC was correct in applying section 44 to that information. The complainant posed 7 questions which he required HMRC to answer. HMRC has confirmed that the 'recorded' information held relevant to the request is:



- The Application for approval of a Personal Pension Scheme date 15 April 1996
- The Application for an Appropriate Scheme Certificate 15 April 1998.
- Original Trust Deed and Rules dated 6 April 1996
- Amended Trust Deed and Rules 21 April 1997
- Amended Trust Deed and Rules 12 March 2004.

### Exemptions 'Section 44 Prohibitions on Disclosure'

52. Section 44 provides that information is exempt if its disclosure by the public authority holding it is prohibited under any enactment. Section 44 is an absolute exemption and is therefore not subject to the public interest test at section 2 (1) (b).
53. The prohibition being applied by HMRC is section 18 of the Commissioner's for Revenue and Customs Act 2005 (CRCA). This states that Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs. Section 23 (1) (a) and (b) further clarifies that the information is exempt if its disclosure would specify the identity of the person to whom the information relates or would enable the identity of the person to be deduced.
54. HMRC explained that, prior to 6 April 2006; the role of HMRC Audit and Pension Scheme Services was to approve pension schemes for tax purposes and to ensure that they were administered in a manner consistent with that approval status. HMRC state for the purpose of this function the relationship between HMRC and the pension provider was the same as that for an ordinary tax payer and information provided to HRMC in connection with approval and continuing approval scheme is done so in accordance with the strict rules of confidentiality.
55. It is clear from the correspondence that the complainant is already in possession of one of the documents being withheld by HMRC, 'Amended Trust Deed and Rules 21 April 1997'. However, this document has been supplied to the complainant by Scottish Mutual and not from HMRC.
56. The Commissioner is satisfied that the information held by HMRC was obtained under one of its functions (as described in paragraph 20 above) and identifies the person to whom the information relates. Section 18(1) of the CRCA is therefore engaged in respect of the requested information.
57. Section 18 (2) of the CRCA provides some caveats to section 18 (1) and highlights circumstances in which disclosure is possible. The Commissioner has considered those relevant to the information requested and those specifically raised by the complainant.
58. Section 18(2) (a) provides that section 18(1) does not apply to disclosure which is made for the purposes of a function of the Revenue and Customers. In the recent Information Tribunal decision EA/2005/0019 '*Slann vs. Financial Services Authority*' the Tribunal found that the term public functions related to powers conferred on the FSA by legislation and not legislation such as the Freedom of

Information (FOI) Act, to which it was subject. Therefore making a disclosure under FOI was not carrying out a public function.

59. In line with this decision it would not be correct to say that making a disclosure under section 1(1) of the Act is a 'function' of HMRC. Complying with statutory requirements (including FOI obligations) is one of HMRC's general responsibilities as a public authority but it is not a specific or unique function of HMRC.
60. Section 18 (2) (c) provides that section (1) does not apply to a disclosure which is made for the purposes of civil proceedings relating to a matter in respect of which HMRC have functions, and 18 (2) (e) applies to disclosure which is made in pursuance of a court order. The complainant has indicated that he wishes to access the information in order to mount civil legal proceedings. Any claim which the complainant or any other person wishes to make against their pension provider would not, in itself, necessarily relate to functions of HMRC even though information held by HMRC might be relevant to the claim.
61. Section 18(2) (h) provides that section (1) does not apply to disclosure which is made with the consent of each person to whom the information relates. It is clear that at the time the request was made there was no consent from Scottish Mutual to disclose the information, Section 18 (2) (h) does not require HMRC to seek consent.
62. The Commissioner finds that section 18(1) of the CRCA is engaged in respect of the information requested and therefore that the information is exempt by virtue of section 44 of the Act. Section 44 confers an absolute exemption so the public interest test under section 2(2) of the Act does not apply.

## **The Decision**

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63. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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64. The Commissioner requires no steps to be taken.

## Right of Appeal

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65. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 2<sup>nd</sup> day of August 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

**Section 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

## **Prohibitions on disclosure**

**Section 44(1)** provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

**Section 44(2)** provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”

## **Commissioners for Revenue and Customs Act 2005**

### **18 Confidentiality**

(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

(2) But subsection (1) does not apply to a disclosure-

(a) which-

(i) is made for the purposes of a function of the Revenue and Customs, and

(ii) does not contravene any restriction imposed by the Commissioners,

(b) which is made in accordance with section 20 or 21,

(c) which is 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,

(d) which is made for the purposes of a 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,

(e) which is made in pursuance of an order of a court,

(f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,

(g) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or

(h) which is made with the consent of each person to whom the information relates.

(3) Subsection (1) is subject to any other enactment permitting disclosure.

(4) In this section-

(a) a reference to Revenue and Customs officials is a reference to any person who is or was-

- (i) a Commissioner,
- (ii) an officer of Revenue and Customs,
- (iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or
- (iv) a member of a committee established by the Commissioners,

(b) a reference to the Revenue and Customs has the same meaning as in section 17,

(c) a reference to a function of the Revenue and Customs is a reference to a function of-

- (i) the Commissioners, or
- (ii) an officer of Revenue and Customs,

(d) a reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27, and

(e) a reference to an enactment does not include-

- (i) an Act of the Scottish Parliament or an instrument made under such an Act, or
- (ii) an Act of the Northern Ireland Assembly or an instrument made under such an Act.