

## **Chapter 1 - Background**

### **Customs and Excise**

- 1.1 HM Customs and Excise (HMCE) is responsible for collecting indirect taxes and enforcing laws relating to the movement of goods into and out of the United Kingdom. Customs duties are EU-imposed charges or tolls which are payable on goods exported from or imported to the EU. Such charges may be contrasted with excise duties, which are payable on goods imported into or produced and consumed within the state.
- 1.2 The responsibility for the collection of revenue, particularly Value Added Tax and excise duties, is vested in HMCE under the provisions of the customs and excise Acts, principally the Customs and Excise Management Act 1979 as amended and the Value Added Tax Act 1994. HMCE is a Department of State with a Board of Commissioners operating under the direction of Treasury Ministers. The responsibilities vested in HMCE extend beyond the collection of revenue to the protection of society, particularly from drugs, and for the facilitation of international trade. The taxes and duties collected by the Department amount to over 40% of the Government's annual revenue. HMCE is vested with very considerable powers in order that it may fulfil the duties imposed upon it.
- 1.3 As part of its responsibility for the collection of revenue HMCE is responsible for enforcing compliance with the regulations under which Excise Duty is payable. Such enforcement includes the prevention, detection and deterrence of forms of fraud involving the evasion of payment of Excise Duty.

### **Historical Background**

- 1.4 Customs duties date back to Anglo-Saxon times when the King had a right to take a proportion of imported stores for his own use. A national customs system was established at the Winchester Assize of 1203 when King John directed that the "customary dues at the ports" should be accounted directly to the State Exchequer and payable to him. In 1275 officials, known as Collectors, were appointed at each principal port to receive the revenue. That title survived until very recently. Up until the year 2000 the operational activity of HMCE was split into regions known as Collections and the officer in charge of each Collection was known as the Collector.
- 1.5 In 1643 a Board of Excise was established by the Long Parliament to organise the collection of excise duties in London and the provinces. By Act of Parliament in 1660 Excise Duty was imposed on alcoholic liquor. Such a duty has continued in force uninterrupted for nearly 350 years. As a source of revenue for the Crown it has proved enormously valuable. In 1673 the collection of customs was

entrusted to a Parliamentary Committee whose members were appointed Commissioners and Collectors of customs, forming a Board of Customs. In that same year the Solicitor's Office was established. Charles II appointed a Board of Excise Commissioners in 1683. Excise Duty became payable on other commodities besides alcohol, such as salt, paper, soap, and candles. Windows, bricks, and even hats have been dutiable at one time or another.

- 1.6 In 1849 the Board of Excise combined with the Board of Stamps and Taxes to become the Board of Inland Revenue. There was pressure for the Board of Customs to merge with the Board of Inland Revenue to administer all general taxation collection. However that did not come about. Instead, 60 years after the creation of the Board of Inland Revenue, the collection and management of excise duty were transferred by section 4 of the Finance Act 1908 to the Commissioners of Customs. The Customs and Excise services were amalgamated by Order in Council of 1<sup>st</sup> April 1909 and were administered by the Board of Customs and Excise, which became known as HMCE. That remains the position today.

#### **The History of Investigative Functions of Customs and Excise**

- 1.7 As well as being responsible for collecting and administering customs and excise duties and Value Added Tax, HMCE is also responsible for preventing the evasion of revenue laws, and for enforcing a range of prohibitions and restrictions on the importation of certain classes of goods. As part of the machinery of enforcement HMCE has historically used an Investigative Division to act as a form of police force. As long ago as 1850, the Excise Department used a "detective force" based at Tower Hill to suppress the illicit distillation of spirits. In 1909, following the merger of the two departments of HMCE, the detective force became the Special Service Staff. There were nine officers then so engaged.
- 1.8 In 1921 the Special Service Staff was renamed the Special Inquiry Staff, mainly dealing with illicit distillation, illicit entertainment, duty frauds and large smuggling cases involving tobacco and alcohol. There were by then 21 officers so engaged. In 1946 the force had grown to 50 officers, and following a reorganisation within HMCE they became known as the Investigation Branch. Between 1946 and 1972 the Investigation Branch grew to deal with excise fraud, purchase tax fraud, and, for the first time, drug smuggling. Regional offices were established in six cities in England and Scotland. By 1973, following another reorganisation ahead of the introduction of VAT and membership of the European Economic Community, the Investigation Branch was formed into a new Investigation Division of 147 staff. In addition, however, investigation units were formed in each of the Collections, dealing with the less serious criminal cases. These units were called Collection Investigation Units.

- 1.9 The Investigation Division was responsible for major investigations arising out of the Department's three main areas of business, VAT, Customs and Excise. The purpose of the Investigation Division was to act as the criminal investigation arm of HMCE. By 1995 staff levels had risen in the Investigation Division to 1,100 and in the Collection Investigation Units to 500. Following yet further organisational changes arising out of the Fundamental Expenditure Review the National Investigation Service (NIS) was formed on 1<sup>st</sup> April 1996. The two-tier structure of investigation activity was replaced: the Investigation Division and the Collection Investigation Units combined to form one National Investigation Service with 1,600 staff. As at the end of 1999, the NIS had approximately 1,800 officers and operated from 14 offices in the United Kingdom.
- 1.10 The history outlined above demonstrates an exponential growth within the Investigation branch of HMCE. The speed and size of that growth, and the probable effect of it on the investigative services themselves is something to which I return later.
- 1.11 In 2000 the structure and organisation of the Investigation and Intelligence arms of HMCE were radically altered. Elsewhere in this Review I set out the changes made and the impact of those changes on the effectiveness of the Department in the detection, investigation and prosecution of offences.

### **Customs Prosecutions**

- 1.12 Prosecutions brought by HMCE are conducted by the Solicitor's Office, at the head of which is the Solicitor, currently David Pickup. The Solicitor himself sits on the Board of Commissioners, which is headed by the Chairman, now Sir Richard Broadbent. The appointment and duties of the Commissioners are set out in the Customs and Excise Management Act 1979. A Management Committee, comprising six of the Commissioners and chaired by the Chairman, is responsible for the day-to-day management of the Department. The Solicitor is responsible and answerable to the Chairman and the Board. Prior to January 2003 he was not a member of the Management Committee but attended its meetings when legal questions or issues arose which concerned his Office; since January 2003 he has been a Standing Member of that Committee.
- 1.13 An important aspect of the work of the Solicitor's Office is the prosecution of criminal offences. However the Office also deals with a range of other matters, including civil litigation, hearings before VAT Tribunals and Industrial Tribunals, insolvency proceedings, asset forfeiture, judicial review, and provision of advice on points of law arising out of the Department's operations. The Office is also involved in advising Ministers on policy and on proposed legislative changes and in drafting statutory instruments.

- 1.14 There were three legal groups: UK and EU Revenue Group, Corporate Legal Group and Prosecutions Group; the first two of which were amalgamated from April 2003. The Solicitor's Office is based in London and Manchester. The Manchester Office deals with prosecutions, VAT and excise duties appeals and civil litigation arising in Northern Ireland, Scotland, North Wales and all of England from Birmingham northwards. It also deals exclusively with the Department's employment litigation. The London Office deals with all other legal work. As at 31<sup>st</sup> March 2003 the Office comprised 129 lawyers including part-time staff and legal trainees, and 237 support staff plus one non-lawyer member of the Senior Civil Service. About 80% of the resources were in London.
- 1.15 HMCE is probably the largest Crown Court prosecutor outside the CPS. The range of prosecutions undertaken include cases relating to drug smuggling, alcohol and tobacco smuggling, arms embargo violations, money laundering, fuel oil fraud, and VAT offences. Often the prosecutions raise areas of difficulty and complexity. The cases regularly involve a number of defendants. There are frequently Public Interest Immunity issues to be considered. Disclosure in large cases can be an enormous undertaking in itself. The integrity of the investigation process is often the target of attack by the defence. There may be issues relating to undercover operations, informants, and the involvement of other agencies.
- 1.16 At the time of the events with which I am concerned the Solicitor was wholly responsible to the Board. His Office was an Executive Unit of HMCE. He was financially and in every other resource respect dependent on the Board. The Office provided its range of legal services to the Department in support of the Department's aims and objectives. Essentially there was a solicitor and client relationship between the Solicitor's Office and the Department in all respects.
- 1.17 Within the Prosecutions Group in London the prosecutions were handled by four teams. There were three teams within the Special Casework Division - Major Drugs Cases, Major Customs and Commercial Cases. These teams handled the more complex and difficult cases, mainly those investigated by the NIS. The fourth team was the Central Casework Unit (CCU), which handled the remaining prosecutions, mostly those generated by Collections. In Manchester the structure was similar, but not identical. At both sites the most senior lawyers were deployed on major casework only; and both sites had CCUs. But, whereas in London the CCU was headed by a Band 12 lawyer, in Manchester it too was managed by the head of the Special Casework Division, at Senior Civil Service level.

- 1.18 As with Investigations and Intelligence, there have been radical changes to the structure and organisation of the Prosecutions Group in the recent past. In the light of the changes it is unnecessary to rehearse in detail the management structures in place in the late 1990s.
- 1.19 Again, those changes and their impact are considered elsewhere in this Review. Essentially, however, the changes implement the recommendations made by His Honour John Gower QC and Sir Anthony Hammond KCB QC in their Review published on 5<sup>th</sup> December 2000 (The Gower/Hammond Review. See Chapter Nine and Appendix Eight). Whilst the Solicitor's Office remains part of HMCE, in relation to his prosecution function the Solicitor is accountable to the Attorney General and not to the Commissioners or their Chairman. The solicitor/client relationship between the Solicitor and the Commissioners of Customs and Excise has ceased in relation to the Solicitor's prosecution budget. In that respect he is no longer funded by the Commissioners. He has his own budget and is accountable for his own expenditure: his funding is "ring-fenced." A Memorandum of Understanding giving effect to the recommendations of Gower/Hammond in this area has recently been finalised (see Chapter Nine and Appendix Nine).
- 1.20 One of the major problems identified in the Gower/Hammond review was the lack of resources in terms of personnel in the Prosecution Group to cope with the workload and the increased responsibilities particularly in the area of disclosure. The recommendation that adequate resources be made available to enable the Prosecution Group to operate efficiently has at least in part been implemented. A detailed consideration of the Gower/Hammond recommendations, the extent to which they have been implemented and the effect of them is to be found at Appendix Six.