

*Draft Order laid before Parliament under section 37(3) of the Borders, Citizenship and Immigration
Act 2009, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2013 No.

**IMMIGRATION, ENGLAND AND WALES
IMMIGRATION, NORTHERN IRELAND
REVENUE AND CUSTOMS,
ENGLAND AND WALES
REVENUE AND CUSTOMS,
NORTHERN IRELAND**

The Police and Criminal Evidence Act 1984
(Application to immigration officers and designated
customs officials in England and Wales) Order 2013

Made - - - - *******
Coming into force - - *******

The Secretary of State makes the following Order in exercise of the powers conferred by section 23(1), (3) and (5) and section 37(2)(b) and (c) of the Borders, Citizenship and Immigration Act 2009(1).

In accordance with section 37(3) of that Act, a draft of this Order was laid before and approved by resolution of each House of Parliament.

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013 and shall come into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

“the Act” means the Police and Criminal Evidence Act 1984(2);

“the customs and excise Acts” has the meaning given to it by section 1 of the Customs and Excise Management Act 1979(3);

“customs office” means premises wholly or partly occupied by designated customs officials;

“function” means any power or duty (including a power or duty that is ancillary to another power or duty);

“immigration officer” means a person appointed as an immigration officer by the Secretary of State under paragraph 1 of Schedule 2 to the Immigration Act 1971(4);

“immigration or nationality matter” is a matter in relation to which an immigration officer exercises functions relating to immigration or nationality or in relation to which the Secretary of State has functions relating to immigration or nationality;

“office of Revenue and Customs” means premises wholly or partly occupied by Her Majesty’s Revenue and Customs;

(2) A person is in customs detention for the purposes of this Order if—

- (a) the person has been taken to a customs office after being arrested for an offence; or
- (b) the person is arrested at a customs office,

and is detained there or detained elsewhere in the charge of a designated customs official.

(3) A person is in Revenue and Customs detention for the purposes of this Order if—

- (a) the person has been taken to an office of Revenue and Customs after being arrested for an offence; or
- (b) the person is arrested at an office of Revenue and Customs,

and is detained there or detained elsewhere in the charge of an officer of Revenue and Customs.

PART 2

INVESTIGATIONS CONDUCTED BY IMMIGRATION OFFICERS

Application of the Police and Criminal Evidence Act 1984

3.—(1) This article applies in relation to England and Wales.

(2) 1984 c. 60.

(3) 1979 c. 2. Section 1 was amended by the Finance (No 2) Act 1992 (c.48), section 82, Schedule 18, Part 3. There are further amendments to section 1 of this Act, which are not relevant to this Order.

(4) 1971 c. 77 to which there are amendments not relevant to this Order.

(2) Subject to the modifications in paragraphs (3) and (4) and articles 4 to 11, the provisions of the Act specified in Part 1 of Schedule 1 to this Order shall apply in relation to investigations conducted by immigration officers.

(3) Those provisions shall apply in relation to investigations conducted by immigration officers as if the words and phrases in Column 1 of Part 2 of Schedule 1 to this Order were replaced by the substitute words and phrases in Column 2 of that Part.

(4) Where in those provisions any thing is to be done by a constable of a rank specified in Column 1 of Part 3 of Schedule 1 to this Order, that thing shall be done by an immigration officer of at least the grade specified in the corresponding entry of Column 2 of that Part, and the Act shall be construed accordingly.

(5) Where a person is detained by the police under Part IV of the Act, in connection with an investigation conducted by an immigration officer, the Act applies as if the following references included references to an immigration officer—

- (a) in section 39(2) and (3), “a police officer”, “an officer” and “the officer”;
- (b) in sections 41(2)(c), 43(1), 44(1) and the first reference in section 118(2)(5), “constable”.

(6) In the Act as it applies by virtue of this article, an expression defined in this Order has the same meaning as in this Order.

Exceptions

4.—(1) Nothing in the application of the Act by virtue of article 3 confers on an immigration officer any power—

- (a) to charge a person with any offence; or
- (b) to release a person on bail.

(2) Accordingly, in the Act as it applies by virtue of article 3—

- (a) references to a person being charged with an offence are to a person being charged with an offence by a constable, and
- (b) references to a person being released on bail are to a person being released on bail by a constable.

(3) Nothing in the application of the Act by virtue of article 3 confers on an immigration officer any power to detain a person for an offence after the person has been charged with that offence.

Authorisation

5. Powers and functions in the provisions of the Act, as applied by article 3, may be exercised by an immigration officer only if the officer is acting with the authority (which may be general or specific) of the Secretary of State.

Use of reasonable force

6. Where any provision of the Act as applied by article 3—

- (a) confers a power on an immigration officer, and
- (b) does not provide that the power may only be exercised with the consent of some person other than the immigration officer upon whom the power is conferred,

the immigration officer may use reasonable force, if necessary, in the exercise of the power.

(5) Section 118(2) of the Act was amended by the Police Reform Act 2002 (c.30), section 107(1), Schedule 7, paragraph 9(9); and the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraph 5(1) and (12).

Arrest without warrant

7. Section 24(2) of the Act(6), as applied by article 3, does not limit any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon an immigration officer the power to arrest or detain a person.

Search of persons found on premises

8.—(1) This article applies where an immigration officer searches premises in reliance on a warrant under section 8 of, or paragraph 12 of Schedule 1 to, the Act(7), as applied by article 3.

(2) The immigration officer may search any person found on the premises where the immigration officer has reasonable cause to believe that person to be in possession of material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence for which the warrant was issued.

(3) The power to search conferred by paragraph (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering any such material.

(4) The power to search conferred by paragraph (2) is not to be construed as authorising an immigration officer to require a person to remove any of his clothing, other than an outer coat, jacket or gloves but they do authorise a search of a person's mouth.

(5) No person may be searched except by a person of the same sex.

Seizure and retention of things found upon search

9.—(1) The power of an immigration officer to seize and retain evidence found upon a lawful search of a person or premise under section 19 of the Act(8), as applied by article 3, shall have effect notwithstanding that the offence to which the evidence relates does not relate to an immigration or nationality matter.

(2) Nothing in the application of the Act by virtue of article 3 prevents any thing lawfully seized by a person under any enactment from being accepted and retained by an immigration officer.

(3) Section 21 of the Act (access and copying)(9), as applied by article 3, shall not apply to any thing seized or retained by an immigration officer under the Immigration Acts.

Modification of section 18 of the Act (entry and search after arrest)

10. Section 18 of the Act(10), as applied by article 3, has effect as if for subsection (8) there were substituted—

“(8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is made, the officer shall ensure that the record is included as part of the person's custody record.”.

(6) Section 24 of the Act was amended by the Serious Organised Crime and Police Act 2005 (c.15), section 110(1).

(7) Section 8 of the Act was amended by the Serious Organised Crime and Police Act (2005) (c.15), sections 113(3), (4), 114(2) and section 111, Schedule 7, Part 3, paragraph 43(1) and (3); the Immigration and Asylum Act 1999 (c.33), section 169(1), Schedule 14, paragraph 80(1) and (2); and the Finance Act 2007 (c.11), section 86. Paragraph 12 of Schedule 1 to the Act was amended by the Serious Organised Crime and Police Act 2005 (c.15), section 113(1), (10); and (13) and the Courts Act 2003 (c.39), section 65, Schedule 4, paragraph 6(1), but the latter amendment is not yet in force.

(8) Section 19 of the Act was amended by the Criminal Justice and Police Act 2001 (c.16), section 70, Schedule 2, Part 2, paragraphs 13(1) and 2(a).

(9) Section 21 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 3.

(10) Section 18 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 2; and the Serious Organised Crime and Police Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43(1) and (5).

Modification of section 22 of the Act (retention)

11. Section 22 of the Act(11), as applied by article 3, has effect as if for subsection (5) there were substituted—

“(5) Nothing in this section affects any power of a court to make an order under section 26 of the UK Borders Act 2007(12).”.

PART 3

INVESTIGATIONS CONDUCTED, AND PERSONS DETAINED, BY DESIGNATED CUSTOMS OFFICIALS

Application of the Police and Criminal Evidence Act 1984

12.—(1) This article applies in relation to England and Wales.

(2) Subject to the modifications in paragraphs (3) and (4) and articles 13 to 31, the provisions of the Act specified in Part 1 of Schedule 2 to this Order shall apply in relation to investigations conducted by designated customs officials and in relation to persons detained by designated customs officials.

(3) Those provisions shall apply in relation to investigations conducted by designated customs officials and to persons detained by designated customs officials as if the words and phrases that are contained in the provisions specified in Column 1 of Part 2 of Schedule 2 to this Order were replaced by the substitute words and phrases in Column 2 of that Part.

(4) Where in those provisions any thing is to be done by a constable of a rank specified in Column 1 of Part 3 of Schedule 2 to this Order, that thing shall be done by a designated customs official of at least the grade specified in the corresponding entry of Column 2 of that Part, and the Act shall be construed accordingly.

(5) Where a person is detained by the police under Part IV of the Act, in connection with an investigation conducted by designated customs officials, the provisions of the Act apply subject to paragraphs (6) to (8).

(6) The following references are to be treated as including references to a designated customs official—

- (a) in section 39(2) and (3), “a police officer”, “an officer” and “the officer”;
- (b) in sections 41(2)(c), 43(1), 44(1) and the first reference in section 118(2), “constable”.

(7) In the following provisions, the references to transferring a person to another police area are to be treated as including references to transferring the person to a customs office—

- (a) section 42(3);
- (b) section 43(13).

(8) The reference to “police detention” in section 38(2) and (3) is to be treated as including a reference to customs detention.

(9) In the Act as it applies by virtue of this article—

- (a) “designated customs official” has the same meaning as in section 38 of the Borders, Citizenship and Immigration Act 2009, and
- (b) an expression which is defined in this Order has the same meaning as in this Order.

(11) Section 22 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 4. There was another amendment to this section by the Immigration and Asylum Act 1999 (c.33), which is not relevant to this Order.

(12) 2007 c. 30.

Exceptions

13.—(1) Nothing in the application of the Act by virtue of article 12 confers on a designated customs official any power—

- (a) to charge a person with any offence; or
- (b) to release a person on bail.

(2) Accordingly, in the Act as it applies by virtue of article 12—

- (a) references to a person being charged with an offence are to a person being charged with an offence by a constable, and
- (b) references to a person being released on bail are to a person being released on bail by a constable.

Detention

14.—(1) Nothing in the application of the Act by virtue of article 12 shall prevent a detained person from being transferred between—

- (a) Revenue and Customs detention and customs detention;
- (b) police detention and customs detention;
- (c) customs detention and police detention.

(2) Subject to the modification in article 24(2), where a person is transferred from Revenue and Customs detention to customs detention, any period required to be calculated for the purposes of Part IV of the Act, as applied by article 12(2), is to be calculated as if the period for which the person was in Revenue and Customs detention was a period of customs detention.

(3) Subject to the modification in article 24(2), where a person is transferred from police detention to customs detention, any period required to be calculated for the purposes of Part IV of the Act as applied by article 12(2) is to be calculated as if the period for which the person was in police detention was a period of customs detention.

(4) Where a person is transferred from customs detention to police detention, any period required to be calculated for the purposes of Part IV of the Act is to be calculated as if the period for which the person was in customs detention was a period of police detention.

(5) In paragraph (4), the reference to a period of customs detention includes any period treated as a period of customs detention by virtue of paragraph (2) or by virtue of paragraph (3).

(6) The power of a custody officer to authorise a person to be kept in customs detention after they have been charged with an offence under section 38(2) of the Act applies only where that person has been charged with an offence against section 5(2) of the Misuse of Drugs Act 1971 (restriction of possession of controlled drugs)(13) or a drug trafficking offence and where that person is to be detained for the purpose of bringing him before a magistrates' court to request his remand to customs detention under section 152(1) of the Criminal Justice Act 1988 (remand of suspected drug offenders to detention)(14).

(7) In this article, “drug trafficking offence” has the meaning given to it by section 151(5) of the Criminal Justice Act 1988 (customs and excise power of arrest)(15).

(8) In this article, “police detention” has the meaning given to it by section 118(2) of the Act, as modified by Article 12(6)(b).

(13) 1971 c. 38.

(14) 1988 c. 33; Section 152 has been amended by section 8 of the Drugs Act 2005 (c.17).

(15) 1988 c. 33; Section 151 has been amended by sections 456, 457 and paragraphs 1, 17(1) and 17(3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

Use of reasonable force

15. Where any provision of the Act as applied by article 12—
- (a) confers a power on a designated customs official, and
 - (b) does not provide that the power may only be exercised with the consent of some person other than the designated customs official upon whom the power is conferred,

the designated customs official may use reasonable force, if necessary, in the exercise of the power.

Arrest without warrant

16. Section 24(2) of the Act, as applied by article 12, does not limit any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon a designated customs official the power to arrest or detain a person.

Search of persons found on premises

17.—(1) This article applies where a designated customs official searches premises in reliance on a warrant under section 8 of, or paragraph 12 of Schedule 1 to, the Act, as applied by article 12.

(2) The designated customs official may search any person found on the premises where the designated customs official has reasonable cause to believe that person to be in possession of material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence for which the warrant was issued.

(3) The power to search conferred by paragraph (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering any such material.

(4) The power to search conferred by paragraph (2) is not to be construed as authorising a designated customs official to require a person to remove any of his clothing, other than an outer coat, jacket or gloves but they do authorise a search of a person's mouth.

(5) No person may be searched except by a person of the same sex.

Seizure and retention of things found upon search

18.—(1) The power of a designated customs official to seize and retain evidence found upon a lawful search of a person or premise under section 19 of the Act, as applied by article 12, shall have effect notwithstanding that the offence to which the evidence relates does not relate to a general customs or customs revenue matter.

(2) Nothing in the application of the Act by virtue of article 12 prevents any thing lawfully seized by a person under any enactment from being accepted and retained by a designated customs official.

(3) Section 21 of the Act (access and copying), as applied by article 12, shall not apply to any thing seized as liable to forfeiture under the customs and excise Acts.

Modification of section 8 of the Act (power of justice of the peace to authorise entry and search of premises)

19. Section 8 of the Act, as applied by article 12, has effect as if for subsection (7) there were substituted—

“(7) Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English Courts in Scotland) shall apply to a warrant issued on the application of a designated

customs official under this section by virtue of section 23 of the Borders, Citizenship and Immigration Act 2009(16).”.

Modification of section 18 of the Act (entry and search after arrest)

20. Section 18 of the Act, as applied by article 12, has effect as if for subsection (8) there were substituted—

“(8) If the person who was in occupation or control of the premises at the time of the search is in police detention or customs detention at the time the record is made, the officer shall ensure that the record is included as part of the person’s custody record.”.

Modification of section 30 of the Act (arrest elsewhere than at a police station)

21. Section 30 of the Act(17), as applied by article 12, has effect as if the references to release on bail under section 30A in subsections (1B), (7A), (10) and (12) were omitted.

Modification of section 35 of the Act (designated police stations)

22. Section 35 of the Act(18), as applied by article 12, has effect as if for that section there were substituted—

“35 Designated Police Stations

(1) The Secretary of State shall designate the customs offices which, subject to section 30(3) and (5), are to be the offices to be used for the purposes of detaining arrested persons.

(2) The Secretary of State’s duty under subsection (1) above is to designate customs offices appearing to the Secretary of State to provide enough accommodation for that purpose.

(3) Without prejudice to section 12 of the Interpretation Act 1978 (continuity of duties) the Secretary of State—

- (a) may designate a customs office which was not previously designated; and
- (b) may direct that a designation of an office previously made shall cease to operate.

(4) In this Act, as it has effect by virtue of the Police and Criminal Evidence Act 1984 (Application to the UK Border Agency and Border Force in England and Wales) Order 2013, “designated customs office” means a customs office designated under this section (as modified by that Order).”.

Modification of section 36 of the Act (custody officers at police stations)

23. Section 36 of the Act(19), as applied by article 12, has effect as if for subsection (2) there were substituted—

“(2) A custody officer for a designated customs office shall be appointed—

(16) 2009 c. 11.

(17) Section 30 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 4(1) to (6); and the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraph 5(1) and (2). There is another amendment not relevant to this Order.

(18) Section 35 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 6; and the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 101, Schedule 7, paragraphs 11 and 12.

(19) Section 36 of the Act was amended by the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 101, Schedule 7, paragraphs 11, 13(1) and (2); the Serious Organised Crime and Police Act 2005 (c.15), section 121(1), (4) and (5)(a); the Policing and Crime Act 2009 (c.26), section 112(1), Schedule 7, Part 13, paragraphs 123(1) and (3) and Schedule 8, Part 13; and the Police Reform and Social Responsibility Act 2011 (c.13), section 99, Schedule 16, Part 3, paragraphs 160 and 162.

- (a) by the Secretary of State; or
- (b) by such designated customs official as the Secretary of State may direct.”.

Modification of section 41 of the Act (limits on period of detention without charge)

24.—(1) Section 41 of the Act(20), as applied by article 12, has effect as if for subsection (2) (b) there were substituted—

- “(b) in the case of a person arrested outside England and Wales, shall be—
- (i) the time at which that person arrives at the customs office in England and Wales at which the offence for which the person was arrested is being investigated; or
 - (ii) the time 24 hours after the time of that person’s entry into England and Wales, whichever is the earlier.”.

(2) Section 41 of the Act, as applied by article 12, has effect as if for subsection (5) there were substituted—

- “(4A) Subsection (5) applies where,
- (a) a person is in customs detention at one customs office and the offence for which the person has been arrested is being investigated at another customs office; or
 - (b) a person is in police detention at a police station and the offence for which the person has been arrested is being investigated at a customs office; or
 - (c) a person is in Revenue and Customs detention and the offence for which the person has been arrested is being investigated at a customs office,

and the person is taken to the customs office where the offence is being investigated for the purpose of investigating that offence, without being questioned at the first customs office, police station or office of Revenue and Customs in order to obtain evidence in relation to it.

- (5) Where this subsection applies, the relevant time shall be—
- (a) the time 24 hours after he leaves the first customs office, the police station or the office of Revenue and Customs where he was detained; or,
 - (b) the time at which he arrives at the customs office where the offence is being investigated,

whichever is the earlier.”.

Modification of section 42 of the Act (authorisation of continued detention)

25. Section 42 of the Act(21), as applied by article 12, has effect as if for subsection (3) there were substituted—

- “(3) If it is proposed to transfer a person in customs detention to a police station or a customs office other than that in which the person is detained, the designated customs official determining whether or not to authorise keeping the person in detention under subsection (1) above shall have regard to the distance and time the journey would take.”.

(20) Section 41 of the Act was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 29(4)(b). There is another amendment not relevant to this Order.

(21) Section 42 of the Act was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 29(4)(b); the Criminal Justice Act 2003 (c.44), section 7; and the Serious Organised Crime Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43(1) and (7).

Modification of section 43 of the Act (warrants of further detention)

26. Section 43 of the Act(**22**), as applied by article 12, has effect as if for subsection (13) there were substituted—

“(13) If it is proposed to transfer a person in customs detention to a police station or a customs office other than that in which the person is detained when the application for a warrant of further detention is made, the court hearing the application shall have regard to the distance and the time that the journey will take.”.

Modification of section 46 of the Act (detention after charge)

27. Section 46 of the Act(**23**), as applied by article 12, has effect as if for subsection (3) there were substituted—

“(3) If no magistrates’ court in that area is due to sit either on the date on which he is charged or on the next day, the custody officer at the customs office where he is kept in customs detention shall inform the designated officer for the area that there is a person in the area to whom subsection (2) applies.”.

Modification of section 50 of the Act (records of detention)

28.—(1) Section 50 of the Act(**24**), as applied by article 12, has effect as if for that section there were substituted—

“50 Records of detention

- (1) The Secretary of State shall keep written records showing on an annual basis—
- (a) the number of persons kept in customs detention for more than 24 hours and subsequently released without charge;
 - (b) the number of applications for warrants of further detention and the results of the applications; and
 - (c) in relation to each warrant of further detention—
 - (i) the period of further detention authorised by it;
 - (ii) the period which the person named in it spent in customs detention on its authority; and
 - (iii) whether the person was charged or released without charge.

(2) The Secretary of State must publish information about the matters mentioned in subsection (1) above once in each calendar year and the published information must relate to the records of persons kept in customs detention in the preceding calendar year.”.

(2) The modification to section 50 of the Act, as applied by paragraph (1) above, shall have effect in relation to the period beginning with the day on which this Order comes into force and ending with 31 December 2013 as if it required records to be kept showing the information about the matters mentioned in subsection (1) for that period and, in relation to the duty to publish information in 2014, as if it required information to be published about persons kept in customs detention for that period.

(22) Section 43 of the Act was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 29(4)(b); the Criminal Justice Act 2003 (c.44), section 7; and the Serious Organised Crime Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43(1) and (8).

(23) Section 46 of the Act was amended by the Courts Act 2003(c.39), section 109(1), Schedule 8, paragraph 282.

(24) Section 50 of the Act was amended by the Police Act 1996 (c.16), section 103, Schedule 7, paragraph 35.

Modification of section 54 of the Act (searches of detained persons)

29. Section 54 of the Act(25), as applied by article 12, has effect as if for subsection (6A) there was substituted—

“(6A) A person who is in custody at a customs office or is otherwise in customs detention may at any time be searched in order to ascertain whether he has anything with him which he could use for any of the purposes specified in subsection (4)(a) above.”.

Modification of section 55 of the Act (intimate searches)

30.—(1) Section 55 of the Act(26), as applied by article 12, has effect as if for subsection (14) there were substituted—

“(14) The Secretary of State must keep written records showing on an annual basis the information about searches carried out under this section by designated customs officials that is mentioned in subsection (15) below.

(14A) The Secretary of State must publish information about the records referred to in subsection (14) above once in each calendar year and the published information must relate to the records of searches carried out by designated customs officials under this section in the preceding calendar year.”.

(2) The modification to section 55 of the Act, as applied by paragraph (1) above, shall have effect in relation to the period beginning with the day on which this Order comes into force and ending with 31 December 2013 as if it required records to be kept showing the information about searches carried out by designated customs officials mentioned in subsection (15) for that period and, in relation to the duty to publish information in 2014, as if it required information to be published about searches carried out in that period.

Modification of section 64 of the Act (destruction of fingerprints and samples)

31. Section 64 of the Act(27), as applied by article 12, shall have effect as if it related only to samples taken from a person under section 62 (Intimate samples) of the Act as applied by virtue of that article.

PART 4

AMENDMENTS

Amendment of section 22 of the Borders, Citizenship and Immigration Act 2009

32.—(1) Section 22 of the Borders, Citizenship and Immigration Act 2009 (application of the PACE Orders) is amended as follows.

(2) Omit paragraph (a) of subsection (2).

(25) Section 54 of the Act was amended by the Criminal Justice Act 1988 (c.33), section 147; the Criminal Justice and Public Order Act 1994 (c.33), section 168(2), Schedule 10, paragraph 55; the Criminal Justice Act 2003 (c.44), section 147; and the Police and Justice Act 2006 (c.48), section 46(1), (6).

(26) Section 55 of the Act was amended by the Criminal Justice Act 1988 (c.33), section 170(1), Schedule 15, paragraphs 97 and 99; the Police Act 1996 (c.16), section 103, Schedule 7, paragraph 36; the Criminal Justice and Police Act 2001 (c.16), section 79; the Drugs Act 2005 (c.17), section 3; and the Policing and Crime Act 2009 (c.26), section 112(1) and (2), Schedule 7, Part 13, paragraph 123(1), (5) and Schedule 8, Part 13. There are other amendments not relevant to this Order.

(27) Section 64 of the Act was amended by the Criminal Justice Act 1988 (c.33), section 148; the Criminal Justice and Public Order Act 1994 (c.33), section 57(2); the Police Act 1996 (c.16), section 103, Schedule 7, Part 2, paragraph 37, and Schedule 9, Part 1; the Criminal Justice and Police Act 2001 (c.16), sections 82 and 137, Schedule 7, Part 2(1); and the Serious Organised Crime and Police Act 2005 (c.15), section 117 and 118. Section 64 will, on a date to be appointed, be repealed by the Protection of Freedoms Act 2012 (c.9), Schedule 10, Part 1.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK
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officers and designated customs officials in England and Wales) Order 2013 No. 1542

- (3) Omit paragraphs (a) to (d) of subsection (5).
- (4) After subsection (6) insert—
 - “(6A) Subsection (6) has effect only in relation to Northern Ireland.”.
- (5) Omit paragraph (a) of subsection (7).

Home Office
Date

Name
Minister of State

SCHEDULE 1

PART 1

Provisions of the Act applied to investigations conducted by immigration officers

Section 8(1) to (6) (power of justice of the peace to authorise entry and search of premises) (subject to the modification in article 8)

Section 9(1) (special provisions as to access)(**28**) and Schedule 1 (special procedure)(**29**)

Section 15 (search warrants-safeguards)(**30**)

Section 16 (execution of warrants)(**31**)

Section 17(1)(a)(i), (1)(b), (1)(cb)(i), (1)(d), (2) and (4) (entry for purpose of arrest etc)(**32**)

Section 18 (entry and search after arrest) (subject to the modification in article 10)

Section 19 (general power of seizure etc)(subject to the modification in article 9(1))

Section 20 (extension of powers of seizure to computerised information)(**33**)

Section 21 (access and copying)(subject to the modification in article 9(3))

Section 22(1) to (4) and (7) (retention) (subject to the modification in article 11)

Section 24(1) to (5)(c)(iii) and (5)(d) to (5)(f) (arrest without warrant: constables) (subject to the modification in article 7)

Section 28 (information to be given on arrest)

Section 29 (voluntary attendance at police station etc)

Section 30(1) to (4)(a) and (5) to (13) (arrest elsewhere than at police station)

Section 31 (arrest for further offence)

Section 32(1) to (9) (search upon arrest)(**34**)

Section 46A(1) and (1A) to (3) (power of arrest for failure to answer to police bail)(**35**)

Section 51(b) (savings)(**36**)

(28) There are amendments to section 9 of the Act not relevant to this Order.

(29) Schedule 1 to the Act was amended by the Criminal Justice and Police Act 2001 (c.16), section 70, Schedule 2, Part 2, paragraph 14; the Serious Organised Crime and Police Act 2005 (c.15), sections 111, Schedule 7, Part 3, paragraph 43(1), (13) and sections 113, 114(1) and (9) and 174(2), Schedule 17, Part 2; the Armed Forces Act 2011 (c.18), section 26, Schedule 2, Part 2, paragraph 11 and (13); and the Courts Act 2003 (c.39), section 65, Schedule 4, paragraph 6. Some of these amendments are not yet in force.

(30) Section 15 of the Act was amended by the Serious Organised Crime and Police Act 2005 (c.15), sections 113, 114 and 174(2), Schedule 17, Part 2; and the Serious Organised Crime and Police Act (Amendment) Order 2005 (S.I. 2005/3496), Article 7.

(31) Section 16 of the Act was amended by the Courts Act 2003 (c.39), section 109(1), Schedule 8, paragraph 281; the Criminal Justice Act 2003 (c.44), section 2; the Serious Organised Crime and Police Act 2005 (c.15), sections 113 and 114; and the Serious Organised Crime and Police Act 2005 (Amendment) Order 2005 (S.I.2005/3496), Article 8.

(32) Section 17 of the Act was amended by the Prisoners (Return to Custody) Act 1995 (c.16), section 2(1); and the Serious Organised Crime and Police Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43. There are other amendments not relevant to this Order.

(33) Section 20 of the Act was amended by the Criminal Justice and Police Act 2001 (c.16), section 70, Schedule 2, Part 2, paragraphs 13(1) and 2(a).

(34) Section 32 of the Act was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 59(2); and the Serious Organised Crime and Police Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43(6). There is another amendment not relevant to this Order.

(35) Section 46A of the Act was inserted by the Criminal Justice and Public Order Act 1994 (c.33), section 29(2); and amended by the Criminal Justice Act 2003 (c.44), section 28, Schedule 2, paragraphs 1 and 5; and the Police and Justice Act 2006(c.48), section 10, Schedule 6, Part 1, paragraph 1 and Part 3, paragraph 7. There are further amendments not relevant to this Order.

(36) Section 51(b) of the Act was amended by the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraph 5(1) and (4). There is another amendment to section 51 not relevant to this Order.

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Section 107(2) (police officers performing duties of higher rank)(37)

PART 2

Substitution of Equivalent Words and Phrases in the Act

<i>Column 1</i>	<i>Column 2</i>
constable (all references)	immigration officer
officer/police officer/officer of a force maintained by a local policing body (all references, except those in sections 16(10A) and (11), section 18(8), paragraphs 9 to 10 of Schedule 1 and except any references to custody officer or officer of Revenue and Customs)	immigration officer
Rank (all references)	Grade
the police (all references)	the Secretary of State or immigration officers

PART 3

Equivalent Titles of immigration officers

<i>Column 1</i>	<i>Column 2</i>
RANK OF CONSTABLE	GRADE OF IMMIGRATION OFFICER
Sergeant	Immigration officer
Inspector	Chief immigration officer
Chief Inspector	Chief immigration officer
Superintendent	Immigration inspector

(37) Section 107 of the Act was amended by the Police and Magistrates' Courts Act 1994 (c.29), section 44, Schedule 5, Part 2, paragraph 35.

SCHEDULE 2

Article 12

PART 1

Provisions of the Act applied to investigations conducted, and to persons detained, by designated customs officials

Section 8 (power of justice of the peace to authorise entry and search of premises) (subject to the modifications in articles 17 and 19)

Section 9(1) (special provisions as to access) and Schedule 1 (special procedure)

Section 15 (search warrants-safeguards)

Section 16 (execution of warrants)

Section 17(1)(a)(i), (1)(b), (1)(cb)(i), (1)(d), (2) and (4) (entry for purpose of arrest etc)

Section 18 (entry and search after arrest) (subject to the modification in article 20)

Section 19 (general power of seizure etc)(subject to the modification in article 18(1))

Section 20 (extension of powers of seizure to computerised information)

Section 21 (access and copying) (subject to the modification in article 18(3))

Section 22(1) to (4) and (7) (retention)

Section 24(1) to (5)(c)(iii) and (5)(d) to (5)(f) (arrest without warrant: constables) (subject to the modification in article 16)

Section 28 (information to be given on arrest)

Section 29 (voluntary attendance at police station etc)

Section 30(1) to (4)(a) and (5) to (13) (arrest elsewhere than at police station)(subject to the modification in article 21)

Section 31 (arrest for further offence)

Section 32(1) to (9) (search upon arrest)

Section 34(1) to (5) (limitations on police detention)(**38**)

Section 35 (designated police stations) (subject to the modification in article 22)

Section 36(1), (2), (3) to (6)(c), (7) and (8) to (10) (custody officers at police stations) (subject to the modification in article 23)

Section 37(1) to (8) and (9) to (10) (duties of custody officer before charge)(**39**)

Section 37A (guidance)(**40**)

Section 37B (consultation with the Director of Public Prosecutions)(**41**)

(38) Section 34 of the Act was amended by the Criminal Justice and Courts Service Act 2000 (c.43), section 56(2) and the Legal Aid, Punishment and Sentencing of Offenders Act 2012 (c.10), section 135(3), Schedule 24, paragraphs 4 and 5. There are other amendments not relevant to this Order.

(39) Section 37 of the Act was amended by the Criminal Justice Act 1991 (c.53), sections 72 and 101(2), Schedule 13; the Criminal Justice and Public Order Act 1994 (c.33), sections 29(4)(a) and 168(3), Schedule 11; the Criminal Justice Act 2003 (c.44), section 28, Schedule 2, paragraphs 1 and 2; and the Police and Justice Act 2006 (c.48), sections 11 and 52, Schedule 14, paragraph 9. There are other amendments not relevant to this Order.

(40) Section 37A of the Act was inserted by the Criminal Justice Act 2003 (c.44), section 28, Schedule 2, paragraphs 1 and 3 and amended by the Police and Justice Act 2006 (c.48), section 10, Schedule 6, Part 1, paragraph 1 and Part 3, paragraph 8(2).

(41) Section 37B of the Act was inserted by the Criminal Justice Act 2003 (c.44), section 28, Schedule 2, paragraphs 1 and 3 and amended by the Police and Justice Act 2006 (c.48), section 52, Schedule 14, paragraph 10; the Criminal Justice and Immigration Act 2008 (c.4), section 148, Schedule 26, Part 2, paragraph 20(1); the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10), section 135(3), Schedule 24, paragraphs 4 and 6 and section 148, Schedule 26, Part 2, paragraph 20(1)(b). Some of these amendments are not yet in force.

- Section 39 (responsibilities in relation to persons detained)(42)
- Section 40(1) to (9) and (11) to (14) (review of police detention)(43)
- Section 40A(1), (3) and (4) (use of telephone for review under section 40)(44)
- Section 41(1), (2)(b), (2)(c), (2)(d) and (4) to (9) (limits on period of detention without charge) (subject to the modifications in article 24)
- Section 42 (authorisation of continued detention) (subject to the modification in article 25)
- Section 43 (warrants of further detention) (subject to the modification in article 26)
- Section 44 (extension of warrants of further detention)
- Section 46 (detention after charge) (subject to the modification in article 27)
- Section 46A(1) and (1A) to (3) (power of arrest for failure to answer police bail)
- Section 50 (records of detention) (subject to the modification in article 28)
- Section 51(b) and (d) (savings)
- Section 54 (searches of detained persons)(subject to the modification in article 29)
- Section 54A (searches and examination to establish identity)(45)
- Section 55(1)(a), (2), (3), (5) to (8), (10) and (11) to (13), (14), (15) and (17) (intimate searches) (subject to the modification in article 30)
- Section 56 (right to have someone informed when arrested)(46)
- Section 57 (additional rights of children and young persons)(47)
- Section 58 (access to legal advice)(48)
- Section 62(1) to (2) and (3) to (12) (intimate samples)(49)
- Section 64 (1A), (1B), (3), (3AA), (3AB), (3AC), (3AD) and (7) (destruction of fingerprints and samples) (subject to the modification in article 31)

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- (42) Section 39 of the Act was amended by the Children Act 1989 (c.41), section 108(5), Schedule 13, paragraph 54 and section 108(7), Schedule 15; the Policing and Crime Act 2009 (c.26), section 112, Schedule 7, Part 13, paragraphs 123(1) and Schedule 8, Part 13. There are further amendments to section 39 by section 121(7) of the Serious Organised Crime and Police Act 2005 (c.15), which are not yet in force.
- (43) Section 40 of the Act was amended by the Police Reform Act 2002 (c.30), section 52; and the Criminal Justice Act 2003 (c.44), section 28, Schedule 2, paragraphs 1 and 4.
- (44) Section 40A of the Act was inserted by the Criminal Justice and Police Act 2001 (c.16), section 73(1) and (2) and amended by the Criminal Justice Act 2003 (c.44), section 6.
- (45) Section 54A of the Act was inserted by the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 90(1) and amended by the Police Reform Act 2002 (c.30), section 107(1), Schedule 7, paragraph 9(2); and the Extradition Act 2003 (c.41), section 169(1) and (2).
- (46) Section 56 of the Act was amended by the Drug Trafficking Offences Act 1986 (c.32), section 32(1); the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraphs 5(1) and (5); the Criminal Justice and Police Act 2001 (c.16), section 74; the Proceeds of Crime Act 2002 (c.29), section 456, Schedule 11, paragraphs 1, 14(1) and (2); and the Serious Organised Crime and Police Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraphs 43(1) and (9).
- (47) Section 57 of the Act amends the Children and Young Persons Act 1933 (c.12), section 34, which has subsequently been amended by the Criminal Justice and Immigration Act 2008 (c.4), sections 6(2), 148, Schedule 4, Part 1, paragraphs 1, 2(1) to (3) and Schedule 28, part 1; and the Children Act 1989 (c.41), section 108(5), Schedule 13, paragraph 6 and section 108(7), Schedule 15.
- (48) Section 58 of the Act was amended by the Drug Trafficking Offences Act 1986 (c.32), section 32(2); the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraphs 5(1) and (6); the Proceeds of Crime Act 2002 (c.29), section 456, Schedule 11, paragraphs 1, 14(1) and (3); and the Serious Organised Crime and Police Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraphs 43(1) and (10).
- (49) Section 62 of the Act was amended by the Road Traffic (Consequential Provisions) Act 1988 (c.54), section 4, Schedule 3, paragraph 27; the Criminal Justice and Public Order Act 1994 (c.33), sections 54(2) to (4), 168(1) to (3), Schedule 9, paragraph 24, and Schedule 10, paragraphs 57(a) and 62(4)(a) and Schedule 11; the Criminal Justice and Courts Service Act 2000 (c.43), section 74, Schedule 7, Part 2, paragraphs 76 and 78; the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraphs 5(1) and (8); the Criminal Justice and Police Act 2001 (c.16), section 80(1); the Police Reform Act 2002 (c.30), sections 53(2) and 54(1); the Criminal Justice Act 2003 (c.44), sections 41, 332, Schedule 3, Part 2, paragraph 56(1) and (2) and Schedule 37, Part 4; and the Crime and Security Act 2010 (c.17), section 4(4) and (5). Some of the amendments made by the Criminal Justice Act 2003 (c.44) are not yet in force and there are further amendments to section 62 not relevant to this Order.

Section 65 (Part V – supplementary)(50)

Section 107 (police officers performing duties of higher rank)

PART 2

Substitution of Equivalent Words and Phrases in the Act

<i>Column 1</i>	<i>Column 2</i>
constable (all references)	designated customs official
designated police station (all references, except in section 30)	designated customs office
designated police station (reference at section 30)	designated police station or designated customs office
officer/police officer/officer of a force maintained by a local policing body/officer of a force maintained by a police authority (except in section 16(10A) to 16(11), section 46(5), (6) and (8), section 55(17), paragraphs 9 to 10 of Schedule 1 and all references to custody officer, detention officer, review officer, immigration officer or officer of Revenue and Customs)	designated customs official
police custody (all references)	customs custody
police detention (all references in sections 22 & 30)	police detention or customs detention
police detention (all other references, except for section 37B(8)(a) and the second reference at section 39(1)(a))	customs detention
police station/station (all references in sections 18, 29, 30, 31, 32 & 46(5))	police station or customs office

(50) There are amendments to section 65 of the Act not relevant to the Order.

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<i>Column 1</i>	<i>Column 2</i>
police station/station (all other references, except for those at section 37B, 46(2), 46(4), 46(7) and 46A)	customs office
Rank (all references)	Grade
the police (all references)	the Secretary of State, the Director of Border Revenue or designated customs officials

PART 3

Equivalent Titles of designated customs officials

<i>Column 1</i>	<i>Column 2</i>
RANK OF CONSTABLE	GRADE OF DESIGNATED CUSTOMS OFFICIAL
Sergeant	Officer
Inspector	Higher officer
Chief Inspector	Higher officer
Superintendent	Senior officer

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to England and Wales and Northern Ireland applies certain provisions of the Police and Criminal Evidence Act 1984 (“the Act”), subject to specified modifications, to investigations undertaken by immigration officers and designated customs officials and to persons detained by designated customs officials in England and Wales.

Part 2 of the Order (Articles 3 to 11) concerns the application of provisions of the Act to immigration officers undertaking investigations.

Article 3 applies the provisions of the Act contained in Schedule 1 to investigations conducted by immigration officers, subject to specified modifications. It also specifies the provisions of the Act in relation to which, when a person is detained by the police in connection with an investigation conducted by an immigration officer, references to police officer, constable or officer should include references to an immigration officer.

Article 4 provides that immigration officers do not have powers to charge a person, to release a person on bail or to detain them following charge.

Article 5 provides that powers and functions applied to immigration officers by the Order may only be exercised by immigration officers who are authorised to do so by the Secretary of State.

Article 6 sets out the circumstances in which an immigration officer may use reasonable force in the exercise of a power under the Act.

Article 7 provides that the application of the section 24(2) power of arrest under the Act does not affect the powers of immigration officers in other legislation to arrest or detain people.

Article 8 sets out the circumstances in which an immigration officer searching premises under the authority of a warrant under section 8 of, or paragraph 12 of Schedule 1 to, the Act, may search persons found on the premises.

Article 9 sets out the circumstances in which immigration officers may seize and retain things found during a lawful search carried out under a provision of the Act, as applied by the Order.

Article 10 modifies the Act to ensure that a record is made in a person's custody record of the grounds for, and the nature of the evidence sought during, a search of a detained person's premises under section 18(1) of the Act.

Article 11 modifies the Act to provide that the powers of retention, as applied by the Order, do not affect immigration officers' power to dispose of property under section 26 of the UK Borders Act 2007.

Part 3 of the Order (Articles 12 to 31) concerns the application of provisions of the Act to investigations conducted by designated customs officials.

Article 12 of the Order applies the provisions of the Act contained in Schedule 2 to investigations conducted, and to persons detained, by designated customs officials, subject to specified modifications. It specifies the provisions of the Act in relation to which, when a person is detained by the police in connection with an investigation conducted by designated customs officials, references to police officer, constable or officer should include references to a designated customs official and also specifies those provisions where references to transferring someone in police detention to another police area should be treated as including references to a transfer to a customs office.

Article 13 provides that designated customs officials do not have powers to charge a person or to release a person on bail.

Article 14 provides for the transfer of detained persons between different types of detention (customs, police and Revenue and Customs) as well as provision as to how time spent in different types of detention should be aggregated. In addition, it provides that a designated customs official will only have the power to detain a person after charge in circumstances where the offence for which that person has been charged is a drugs offence and where that person is due to be brought before a magistrates' court for a remand into customs detention under section 152(1) of the Criminal Justice Act 1988.

Article 15 sets out the circumstances in which a designated customs official may use reasonable force in the exercise of a power under the Act.

Article 16 provides that the application of the section 24(2) power of arrest under the Act does not affect the powers of designated customs officials in other legislation to arrest or detain persons.

Article 17 sets out the circumstances in which a designated customs official searching premises under the authority of a warrant under section 8 of, or paragraph 12 of Schedule 1 to, the Act, may search persons found on the premises.

Article 18 sets out the circumstances in which designated customs officials may accept, seize and retain things found during a lawful search under a provision of the Act, as applied by the Order, and provides for modifications to take account of immigration officers' powers and functions under the customs and excise Acts.

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Article 19 provides that section 4 of the Summary Jurisdiction (Process) Act 1881 applies to a warrant issued on the application of a designated customs official under section 8 of the Act.

Article 20 modifies the Act to ensure that a record is made in a person's custody record of the grounds for, and the nature of the evidence sought during, a search of a detained person's premises under section 18(1) of the Act.

Article 21 modifies section 30 of the Act to take into account the fact that designated customs officials do not have powers to release a person on bail.

Article 22 modifies section 35 of the Act to enable the Secretary of State to designate the customs offices which are to be used to detain arrested persons.

Article 23 modifies section 36 of the Act to specify who may appoint a custody officer for a designated customs office.

Article 24 modifies section 41 of the Act to specify the time from which the period of detention of a person is to be calculated where that person is arrested outside England and Wales in relation to an investigation conducted by designated customs officials or where that person is transferred to a customs office for the purpose of investigating the offence for which they were arrested, in circumstances where that person has not yet been questioned in order to obtain evidence in relation to it.

Article 25 modifies section 42 of the Act, providing that when a person is held in customs detention and it is proposed to transfer that person, the designated customs official determining whether or not to authorise keeping him in detention shall have regard to the distance and the time the journey would take.

Article 26 modifies section 43 of the Act, providing that when a person is held in customs detention and an application for a warrant of further detention includes the proposal to move someone, the Court should have regard to the distance and the time the journey would take.

Article 27 modifies section 46 of the Act, specifying who should inform the designated officer for the local justice area that there is a person in the area who needs to be brought before a magistrates' court in accordance with subsection 46(2) of the Act.

Article 28 modifies section 50 of the Act, making provision for the keeping of records of detention and the publication of an annual report about customs detention. Transitional provision is made for the keeping and publication of such records in relation to persons kept in customs detention from the day on which this Order comes into force until 31 December 2013.

Article 29 modifies section 54 of the Act to provide designated customs officials with the power to carry out a protective search of persons in customs detention.

Article 30 modifies section 55 of the Act to require that information about section 55 searches is published annually by the Secretary of State. Transitional provision is made for the keeping and publication of such information in relation to persons searched by designated customs officials under section 55 from the day on which this Order comes into force until 31 December 2013.

Article 31 provides that section 64 of the Act, as applied by the Order, applies only in relation to intimate samples taken from a person under section 62.

Part 4 concerns the amendments to section 22 of the Borders, Citizenship and Immigration Act 2009 ("the BCIA").

Article 32 amends section 22 of the BCIA insofar as it applies to England & Wales to ensure that the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007 is no longer a PACE Order for the purposes of that section. It also disapplies the provisions, which relate to transfers of people between UK Border Agency detention and Revenue and Customs detention and between UK Border Agency and police detention in relation to England and Wales, so they have effect only in relation to Northern Ireland.

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