

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 8 – Miscellaneous

Chapter 2 – Other

Border controls

Section 98 General information powers in relation to persons entering or leaving the UK

549. This section amends the Customs and Excise Management Act 1979 (CEMA) by inserting new section 157A to enable an officer of Revenue and Customs to require a person entering or leaving the UK to produce their passport or travel documents and answer questions about their journey. Referring to the subsections of the new section 157A:
- Subsection (1) empowers officers to require the production of a person's passport and travel documents and to ask questions about a person's journey.
 - Subsection (2) defines "passport".
 - Subsection (3) applies these powers at the final airport of destination in the UK for air transit passengers who first entered the UK at another airport.
 - Subsection (4) defines a "transit air passenger".
550. Subsection (2) of section 98 of the Act adds the new power to the list of powers contained in section 4(3) of the Finance (No. 2) Act 1992. This restricts the application of certain CEMA powers in relation to the movement of people or things between EU Member States.

Section 99 Powers in relation to cash.

551. **Section 99** deals with powers available to detect cash at the border. The aim of this section is the prevention of money laundering by means of movement of cash into and out of the UK.
552. Subsection (1) inserts new section 164A into CEMA. The new section clarifies those CEMA powers available to officers at the border to ask questions about, and to search for, cash that is recoverable property or is intended by any person for use in unlawful conduct (as defined in subsections 289(6) and (7) of the Proceeds of Crime Act 2002). The new section also ensures compliance with the Cash Control Regulation on controls of cash entering or leaving the Community (Regulation (EC) No. 1889/2005 of the European Parliament and of the Council).
553. Subsections (2) and (3) amends section 4(2) of the Finance (No. 2) Act 1992 to make clear that the powers listed in section 4(3) of that Act apply to cash which is recoverable property or intended for use in unlawful conduct as well as to goods.

Section 100 Lawful interception of postal items by Revenue and Customs

554. **Section 100** clarifies the Regulation of Investigatory Powers Act 2000 (RIPA). The section puts beyond doubt that the protection from interception afforded to postal communications in RIPA does not restrict Revenue and Customs powers to check international postal traffic for customs or excise purposes.
555. The section inserts a new subsection (3A) into section 3 of RIPA. This makes it clear that checks on international postal traffic carried out under section 159 CEMA (as applied to postal traffic by the Postal Services Act 2000) are lawful interceptions for the purpose of RIPA.
556. It also adds persons engaged by the Commissioners of Her Majesty's Revenue and Customs to the list of persons in s17(3) of RIPA who may lawfully intercept communications and disclose the contents for the purpose of legal proceedings.

Section 101 Prohibition on importation or exportation of false identity documents etc

557. **Section 101** prohibits the importation and exportation of false identity documents.
558. Subsection (1) creates a prohibition on the importation and exportation of false identity documents. A prohibition on importation or exportation engages the existing powers in CEMA. This means that where the prohibited items are discovered they are liable to forfeiture under section 49 CEMA and can be seized under section 139 of that Act. Improper importation of a prohibited item is an offence under section 50 of CEMA and evading the prohibition is an offence under section 170 of that Act.
559. Subsection (2) sets out which documents are caught by the prohibition.
560. Subsection (3) defines "document", "false" and "identity document". It relies on definitions in the Identity Cards Act 2006 and the Forgery and Counterfeiting Act 1981.

Section 102 Prohibition on importation of offensive weapons

561. Section 141(2) of the Criminal Justice Act 1988 (CJA) contains a power for the Secretary of State to specify offensive weapons. Where a weapon is specified, it is an offence to sell, hire or manufacture that weapon under section 141(1) CJA. The importation of a specified weapon was previously also prohibited under section 141(4) CJA. Section 141(4) CJA is repealed by paragraph 119(2) in Part 11 of Schedule 7 to this Act (minor and consequential amendments).
562. **Section 102** inserts new sections 141ZB, 141ZC and 141ZD into the CJA. New section 141ZB CJA creates a new prohibition on the importation of a weapon, replacing that in section 141(4) CJA. Section 141ZB CJA also creates a separate power for the Secretary of State to specify weapons for the purposes of the prohibition on importation only. New section 141ZC CJA sets out the exceptions to the prohibition on importation, which mirror the defences to an offence under section 141(1) CJA. New section 141ZD CJA makes provision about the burden of proof applying in respect of the exceptions.
563. The purpose of section 102 is to clarify the position of Scottish Ministers in relation to the power to make orders specifying weapons for prohibition, by drawing a distinction between the prohibition on manufacture, sale or hire, and the prohibition on importation (restrictions on importation being a reserved matter). The effect of section 102 is that importation restrictions are created by the Secretary of State on a UK wide basis. Scottish Ministers are still be able to make an order under section 141 CJA specifying weapons for the purposes of the prohibition on their manufacture, sale or hire in Scotland, but no importation consequences flow from the order.
564. Subsections (2) to (4) contain transitional provisions. These provisions apply where a weapon has been imported in breach of a prohibition but it cannot be proven whether

the prohibition is that imposed by section 141(4) CJA (before it was repealed) or by section 141ZB CJA. In such a case, then for the purposes of any criminal proceedings under the Customs and Excise Management Act 1979, it shall be conclusively presumed that the conduct took place after the commencement of section 102 and therefore that the relevant prohibition is that in section 141ZB CJA. The purpose of this transitional provision is to ensure that a defendant is not able to escape liability solely on the basis that it cannot be proven which importation prohibition has been breached.

Football spectators

Section 103 Prohibiting attendance at matches in Scotland and Northern Ireland etc

565. Subsection (1) extends the definitions of “banning order”, “external tournament” and “control period” in the Football Spectators Act 1989 (“the 1989 Act”), so that those subject to English and Welsh orders will be banned from attending regulated football matches in Scotland and Northern Ireland. Reporting requirements and related provisions will only apply to “regulated football matches” involving Scottish and Northern Irish teams when they are played outside the UK.
566. A “regulated match” means any association football match prescribed by an order made by the Secretary of State in exercise of the powers conferred upon him by section 14(2) of the 1989 Act. When a court in England or Wales imposes a football banning order the subject is prevented from attending any regulated match in England and Wales, and from attending any regulated match outside England and Wales when given notice in writing by the English and Welsh enforcing authority under section 19(2B) of the 1989 Act. Prior to commencement the order prescribing regulated matches would be amended to reflect the effect of section 103.

Section 104 Requirements to report at police stations

567. **Section 104** provides that when an individual is directed to report to police by the court or by the enforcing authority, the specified police station may be anywhere in the UK and thus local to the individual’s place of residence.
568. Subsection (1) provides that the police stations specified under any of the provisions listed in subsection (2) may be anywhere in the United Kingdom. The provisions are:
- Initial reporting at a police station as specified in an order imposed in England, Wales or Scotland.
 - Reporting at a police station as required by a notice from the English and Welsh enforcing authority or the Scottish Football Banning Orders Authority in relation to regulated football matches outside the UK.

Section 105 Enforcement of 1989 Act in Scotland and Northern Ireland

569. Subsection (1) provides that the following offences under the 1989 Act extend to Scotland and to Northern Ireland:
- failure to comply with a requirement imposed by a banning order or the requirements of a notice issued by the English and Welsh enforcing authority;
 - failing, without reasonable excuse, to comply with a requirement imposed by police on a person reporting initially at a police station specified by the banning order;
 - providing the English and Welsh enforcing authority or police with what is known to be false information in connection with an application to the authority for an exemption from their reporting instructions.

570. Subsection (2) provides a defence in Scotland of reasonable excuse for failing to comply with a requirement of a banning order or notice issued by the English and Welsh enforcing authority. The 1989 Act does not provide a statutory defence in England and Wales for failing to comply with a requirement of a banning order or notice issued by the English and Welsh enforcing authority. However section 68(2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 provides a defence in Scotland of reasonable excuse for failing to comply with a requirement of a banning order or notice issued by the Scottish enforcing authority. For consistency in the treatment of breaches of banning order requirements within Scotland, a statutory defence is provided.
571. Subsections (3), (4) and (5) set out the maximum penalties for the offences described in subsection (1). A person guilty of an offence by virtue of subsection (1)(a) is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale (currently £5,000) (or both). A person guilty of an offence by virtue of subsection (1)(b) is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500). A person guilty of an offence by virtue of subsection (1)(c) is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Section 106 Enforcement of 2006 Act in England and Wales and Northern Ireland

572. **Section 106** extends to England, Wales and Northern Ireland, with appropriate sentencing provisions, the offences of failing to comply with the requirements of a Scottish banning order or a notice issued by the Scottish Football Banning Orders Authority and the offence of giving false information in connection with an application for an exemption.
573. Subsection (2) increases the maximum custodial penalty available for failing to comply in England, Wales and Northern Ireland with a requirement imposed by a Scottish banning order, or a notice pursuant to one issued by the Scottish Football Banning Orders Authority. That penalty, which is currently imposed under the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, is increased from three months to six months (the maximum available in Scotland).
574. Subsections (3) and (4) set out the sentencing provisions for other offences under the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”) as they apply in England, Wales and Northern Ireland. A person guilty of an offence under section 68(1)(b) of the 2006 Act (failure to comply with requirement imposed by constable) is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500). A person guilty of an offence by virtue of section 68(5) of the 2006 Act (knowingly or recklessly providing a false statement) is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).
575. Subsection (5) revokes Articles 1(5) and 5 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 which created offences in England and Wales and Northern Ireland of breaching Scottish banning orders.

Section 107 Relevant offences for the purposes of Part 2 of 1989 Act

576. **Section 107** adds to the list of relevant offences for England and Wales failing to comply with a requirement made on initially reporting to the police in respect of an English and Welsh imposed order and knowingly making false statements in relation to an application for an exemption to the English and Welsh enforcing authority. The section also includes those offences extended to England and Wales in respect of the Police, Public Order and Criminal Justice (Scotland) Act 2006 by virtue of section 106.

577. The offences listed in Schedule 1 to the 1989 Act are offences in relation to which English and Welsh courts may seek football banning orders (or the extension of existing banning orders) on conviction.

Other

Section 108 Strategies for crime reduction etc probation authorities

578. **Section 108** provides for every provider of probation services in a particular area, whose arrangements under section 3 of the Offender Management Act 2007 provide for it to be a responsible authority, to be added to the list of “responsible authorities” which comprise the CDRP (Crime and Disorder Reduction Partnerships in England) or CSP (Community Safety Partnership in Wales) in that area. It also extends the remit of CDRPs/CSPs to explicitly include the reduction of re-offending.
579. Subsection (2) adds every provider of probation services in a local government area, whose arrangements under section 3 of the Offender Management Act 2007 provide for it to be a responsible authority, to the list of responsible authorities for that area. The responsible authorities must work together and with other local agencies and organisations to formulate and implement crime and disorder strategies and strategies for combating the misuse of drugs, alcohol and other substances in the area. Prior to this, local probation boards were not responsible authorities but were required to co-operate with those persons and bodies who were. The Offender Management Act 2007 gives the Secretary of State power to make arrangements with providers of probation services from the public (probation trusts), private or third sector or to provide the services himself. Those arrangements will state whether the provider will be a responsible authority or whether they will remain a co-operating body.
580. Subsection (3) amends section 5(1B)(b) of the Crime and Disorder Act 1998 which limits the Secretary of State’s power to merge by order two or more partnership areas in England to cases where he considers it would be in the interests of reducing crime and disorder or substance misuse. This subsection extends these criteria to include reducing re-offending.
581. Subsection (4) extends the existing duties of responsible authorities to include a requirement to formulate and implement a strategy to reduce re-offending in the area.
582. Subsection (5) provides that the appropriate national authority for making regulations relating to strategies for reducing re-offending is the Secretary of State and the Welsh Ministers acting jointly.
583. Subsection (6) amends section 17 of the Crime and Disorder Act 1998. Section 17 places a duty on certain defined authorities, such as local authorities, to exercise their functions with due regard to the likely effect on, and the need to do all that it reasonably can to prevent, crime and disorder and substance misuse. This subsection expands this duty to include reducing re-offending.

Section 109 Application of aspects of UK law to SOCA employees working abroad

584. **Section 109(a)** inserts into paragraph 20 of Schedule 1 to the Serious Organised Crime and Police Act 2005 new exceptions to the Serious Organised Crime Agency’s status as a non-Crown body so that SOCA employees, in certain circumstances, will be deemed to be carrying out the work of the Crown.
585. **Section 109(b)** sets out the three exceptions to the general rule that SOCA employees are not servants of the Crown by inserting three new sub-paragraphs into paragraph 20 of Schedule 1 to the Serious Organised Crime and Police Act 2005. These are:
- Sub-paragraph (2) SOCA employees who are working outside the United Kingdom will be treated as Crown servants for the purposes of section 31(1) of the Criminal

*These notes refer to the Policing and Crime Act 2009
(c.26) which received Royal Assent on 12 November 2009*

Justice Act 1948 and will therefore be subject to prosecution and punishment for any indictable offence carried out whilst on duty abroad.

- Sub-paragraph (3) SOCA employees who are working outside the United Kingdom will be treated as Crown servants for the purposes of sections 26 to 28 of the Income Tax (Earnings and Pensions) Act 2003 and will consequently be liable to pay UK tax on their earnings.
- Sub-paragraph (4) SOCA employees who are working outside the United Kingdom will be deemed servants of the Crown for the purposes of section 299 of the Income Tax (Earnings and Pensions) Act 2003 and will therefore be entitled to the tax free allowances of a Crown servant intended to facilitate their operating in a foreign jurisdiction.

Section 110 Partial exemption for SCDEA from Firearms Act 1968

586. **Section 110** amends section 54 of the Firearms Act 1968 to bring members of the Scottish Crime and Drug Enforcement Agency (SCDEA) within the meaning of “persons in the service of Her Majesty” in that section. Certain provisions of the Firearms Act therefore apply to a member of the SCDEA (subject to modifications) in the same way as they apply to a member of a police force and a member of staff of the Serious Organised Crime Agency.

Section 111 Removal of limitation of warrants under Misuse of Drugs Act 1971

587. **Section 111** removes the requirement for a constable, who wishes to obtain a warrant under section 23(3) of the Misuse of Drugs Act 1971 to enter and search premises, to be acting for the police area within which the premises are situated. This confirms that those police officers working for the Scottish Crime and Drugs Enforcement Agency and the Serious Organised Crime Agency can rely on these powers.