

1989 No. 465

CUSTOMS AND EXCISE

The Police and Criminal Evidence (Application to Customs and Excise) Order (Northern Ireland) 1989

Made 29th November 1989

Coming into operation 1st January 1990

Laid before Parliament 6th December 1989

The Treasury, in exercise of the powers conferred on them by Article 85(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989(a) hereby makes the following Order:

1. This Order may be cited as the Police and Criminal Evidence (Application to Customs and Excise) Order (Northern Ireland) 1989 and shall come into operation on 1st January 1990.

2.—(1) In this Order, unless the context otherwise requires—

“the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989;

“assigned matter” has the meaning given to it by section 1 of the Customs and Excise Management Act 1979(b);

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

“customs office” means a place for the time being occupied by Her Majesty’s Customs and Excise;

“officer” means a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.

(2) For the purpose of this Order, a person is in customs detention if—

(a) he has been taken to a customs office after being arrested for an offence; or

(b) he is arrested at a customs office after attending voluntarily at the office or accompanying an officer to it,

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

(3) Nothing in this Order shall prevent a detained person from being transferred between customs detention and police detention.

(a) S.I. 1989/1341 (N.I. 12)

(b) 1979 c. 2

3.—(1) Subject to the modifications in paragraphs (2) and (3), in Articles 4 to 9 and in Schedule 2, the provisions of the 1989 Order contained in Schedule 1 which relate to investigations of offences conducted by police officers or to persons detained by the police shall apply to investigations conducted by officers of Customs and Excise of offences which relate to assigned matters, and to persons detained by such officers.

(2) The 1989 Order shall have effect as if the words and phrases in column 1 of Part I of Schedule 2 were replaced by the substituted words and phrases in column 2 of that Part.

(3) Where in the 1989 Order any act or thing is to be done by a constable or police officer of a rank specified in column 1 of Part II of Schedule 2, that act or thing shall be done by an officer of at least the grade specified in column 2 of Part II of Schedule 2 and the 1989 Order shall be applied as if that grade were specified in that Order.

4. Nothing in the application of the 1989 Order shall be construed as conferring any power upon an officer to—

- (a) charge a person with any offences;
- (b) release a person on bail;
- (c) detain a person for an offence after he has been charged with that offence.

5.—(1) Where in the 1989 Order a constable is given power to seize and retain any thing found upon a lawful search of any person or premises an officer shall have the same power notwithstanding that the thing found is not evidence of an offence in relation to an assigned matter.

(2) Nothing in the application of the 1989 Order shall be construed so as to prevent any thing lawfully seized by a person under any statutory provision from being accepted and retained by an officer.

(3) Article 23 of the 1989 Order (access and copying) shall not apply to any thing seized as liable to forfeiture under the Customs and Excise Acts.

6. In its application by virtue of Article 3, the 1989 Order shall have effect as if the following Article were inserted after Article 16—

“**16A.** Material in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office and which relates to an assigned matter, as defined in section 1 of the Customs and Excise Management Act 1979, is neither excluded material nor special procedure material for the purposes of any statutory provision such as is mentioned in Article 11(2).”

7. Paragraph (1) of Article 20 of the 1989 Order shall be modified in its application by insertion of the words “which relates to an assigned matter as defined in section 1 of the Customs and Excise Management Act 1979”, following the words “an arrestable offence,” where they appear in that paragraph.

8. Article 56 of the 1989 Order shall have effect as if it related only to things as are mentioned in sub-paragraph (1)(a) of that Article.

9. Where any provision of the 1989 Order as applied to Customs and Excise—

(a) confers a power on an officer, and

(b) does not provide that the power may only be exercised with the consent of some person other than an officer,

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

John Taylor
Tom Sackville

29th November 1989

Two of the Lords Commissioners
of Her Majesty's Treasury

Provisions of the 1989 Order Applied to Customs and Excise

Article 10

Article 11(1) and (2) and Schedule 1

Article 17

Article 18

Article 19(1)(b), (2), (3)

Article 20(1) to (8), paragraph (1) being subject to the modification in Article 7 of this Order

Article 21

Article 22

Article 23, subject to the modifications in Article 5 of this Order.

Article 24(1) to (4)

Article 30

Article 31

Article 32(1) to (4)(a) and (5) to (14)

Article 33

Article 34(1) to (9), subject to the modifications in Article 5 of this Order.

Article 35(1) to (6)

Article 36

Article 37 except paragraph (6)(d)

Article 38(1) to (10), and the definition of "endorsed for bail" in paragraph (14) of that Article.

Article 40

Article 41

Article 42

Article 43

Article 44

Article 45

Article 50

Article 51(d)

Article 52

Article 55

Article 56, subject to the modifications in Articles 5 and 8 of this Order.

Article 57(1) to (9)

Article 58, except the substituted subsections (10) and (11)

Article 59(1) to (11)

Article 62(1) to (9)

Article 63

Article 64(1) to (7)

Article 84

SCHEDULE 2

PART I

SUBSTITUTION OF EQUIVALENT WORDS AND PHRASES IN THE 1989 ORDER

Where in the 1989 Order a word or phrase specified in Column 1 below is used, in the application of the 1989 Order to Customs and Excise, there shall be substituted the equivalent word or phrase in column 2 below—

Column 1 <i>Words and phrases used in the 1989 Order</i>	Column 2 <i>Substituted words and phrases</i>
Chief Constable (except where the term appears in Articles 64(5) and (7))	Collector (save in Article 50 where there shall be substituted the Commissioners of Her Majesty's Customs and Excise)
constable	officer
designated police station	designated customs office
police detention (except in Article 2 and Article 40(1)(a) the second time the words occur)	customs detention
police officer	officer
police station	customs office
rank	grade
station	customs office
the police	HM Customs and Excise
“under section 15(1) of the Police Act (Northern Ireland) 1970”	of the Commissioners of Her Majesty's Customs and Excise

PART II

EQUIVALENT GRADES OF OFFICERS

Where in the 1989 Order, an act or thing is to be done by a constable or police officer of the rank specified in column 1 below, that same act or thing shall, in the application of the 1989 Order to Customs and Excise, be done by an officer of at least the grade specified in column 2 below—

Column 1 <i>Rank of constable or police officer</i>	Column 2 <i>Grade of officer</i>
Chief superintendent	Grade 7
superintendent	senior executive officer
chief inspector	higher executive officer
inspector	
sergeant	executive officer

EXPLANATORY NOTE

(This note is not part of the Order.)

Article 3 of the Order applies to officers of Customs and Excise, subject to specified modifications, provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989, contained in Schedule 1 to the Order, relating to investigation of offences and detention of persons by the police. Schedule 2 to the Order substitutes for words and phrases in the Police and Criminal Evidence (Northern Ireland) Order 1989, equivalent terms applicable to Customs and Excise, and for police ranks, the equivalent Customs and Excise grades.

Article 4 ensures that officers of Customs and Excise do not have powers to charge a person with any offence, to release a person on bail, or to detain a person for an offence after he has been charged with that offence. Article 5 allows officers of Customs and Excise to retain articles found during a lawful search which are evidence of any offence and to retain articles seized by others. Article 5 also distinguishes articles seized under the Police and Criminal Evidence (Northern Ireland) Order 1989, as applied, from goods seized as liable to forfeiture under the Customs and Excise Acts, and provides that the provisions on access and copying do not apply to goods seized as liable to forfeiture.

Article 6 applies the existing power of Customs and Excise officers to obtain search warrants where the material sought is acquired or created in the course of a trade, business or profession. Article 7 limits the right of an officer of Customs and Excise to enter and search premises under Article 20(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 to premises occupied or controlled by a person who is under arrest for an arrestable offence which relates to an assigned matter as defined in section 1 of the Customs and Excise Management Act 1979.

Article 8 extends existing powers of intimate search to include searches by officers of Customs and Excise for items with which the detainee might cause physical injury to himself or others. Article 9 provides that officers of Customs and Excise may use reasonable force in exercising powers conferred by the Police and Criminal Evidence (Northern Ireland) Order 1989, as applied.