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STATUTORY INSTRUMENTS

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**2007 No. 3175**

**The Police and Criminal Evidence Act 1984  
(Application to Revenue and Customs) Order 2007**

**Citation and commencement**

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007 and shall come into force on 1st December 2007.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Police and Criminal Evidence Act 1984;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

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

“former Inland Revenue matter” means a matter specified in section 54(4) (b) or (f) of, or in paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005<sup>(2)</sup>;

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

“relevant indictable offence” means an indictable offence which relates to a matter in relation to which Her Majesty’s Revenue and Customs have functions apart from a former Inland Revenue matter;

“relevant investigation” means a criminal investigation conducted by officers of Revenue and Customs which relates to a matter in relation to which Her Majesty’s Revenue and Customs have functions apart from a former Inland Revenue matter.

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

(a) he has been taken to an office of Revenue and Customs after being arrested for an offence;  
or

(b) he is arrested at an office of Revenue and Customs after attending voluntarily at the office or accompanying an officer of Revenue and Customs to it,

and is detained there or detained elsewhere in the charge of an officer of Revenue and Customs, and nothing shall prevent a detained person from being transferred between Revenue and Customs detention and police detention.

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<sup>(1)</sup> 1979 c.2

<sup>(2)</sup> 2005 c.11. Former Inland Revenue matters are listed in Schedule 1 to the 2005 Act. Paragraph 26 of Schedule 1 was amended by section 11 of, and paragraph 61 of Schedule 1 to, the Work and Families Act 2006 (c.18).

## Application

3.—(1) The provisions of the Act contained in Schedule 1 to this Order which relate to investigations of offences conducted by police officers or to persons detained by the police shall apply to relevant investigations conducted by officers of Revenue and Customs and to persons detained by such officers.

This is subject to the modifications in paragraphs (2) and (3) and articles 4 to 19 and Schedule 2.

(2) The Act shall have effect as if the words and phrases in Column 1 of Part 1 of Schedule 2 to this Order were replaced by the substitute words and phrases in Column 2 of that Part.

(3) Where in the Act any act or thing is to be done by a constable of a specified rank, that act or thing shall be done by an officer of Revenue and Customs of at least the grade specified in Column 2 of Part 2 of Schedule 2 to this Order, and the Act shall be construed accordingly.

## Exceptions

4. Nothing in the application of the Act to Revenue and Customs confers on an officer of Revenue and Customs any power—

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

## Seizure and retention of things found upon search

5.—(1) Where in the Act a constable is given power to seize and retain any thing found upon a lawful search of person or premises, an officer of Revenue and Customs shall have the same power notwithstanding that the thing found is not evidence of an offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions.

(2) Nothing in the application of the Act to Revenue and Customs prevents any thing lawfully seized by a person under any enactment from being accepted and retained by an officer of Revenue and Customs.

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

## Excluded and special procedure material

6. In its application by virtue of article 3 above the Act shall have effect as if the following section were inserted after section 14—

### “14A Exception for Revenue and Customs

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 a matter in relation to which Her Majesty's Revenue and Customs have functions, is neither excluded material nor special procedure material for the purposes of any enactment such as is mentioned in section 9(2) above.”

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(3) 1984 c.60. Section 21(9) of the Act was inserted by section 12 of, and paragraphs 1 and 3 of Schedule 1 to, the Criminal Justice Act 2003 (c.44).

## Restriction on other powers to apply for production of documents

7. In its application by virtue of article 3 above the Act shall have effect as if the following section were inserted after section 14A—

### “14B Revenue and Customs: restriction on other powers to apply for production of documents

(1) An officer of Revenue and Customs may make an application for the delivery of, or access to, documents under a provision specified in subsection (3) only if the condition in subsection (2) is satisfied.

(2) The condition is that the officer thinks that an application under Schedule 1 would not succeed because the material required does not consist of or include special procedure material.

(3) The provisions are—

- (a) section 20BA and Schedule 1AA of the Taxes Management Act 1970 (serious tax fraud)(4);
- (b) paragraph 11 of Schedule 11 to the Value Added Tax Act 1994 (VAT)(5);
- (c) paragraph 4A of Schedule 7 to the Finance Act 1994 (insurance premium tax)(6);
- (d) paragraph 7 of Schedule 5 to the Finance Act 1996 (landfill tax)(7);
- (e) paragraph 131 of Schedule 6 to the Finance Act 2000 (climate change levy)(8);
- (f) paragraph 8 of Schedule 7 to the Finance Act 2001 (aggregates levy)(9);
- (g) Part 6 of Schedule 13 to the Finance Act 2003 (stamp duty land tax)(10).”.

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

8.—(1) Section 18 of the Act (entry and search after arrest)(11) is modified as follows.

(2) For subsection 18 (1) substitute—

“(1) Subject to the following provisions of this section, an officer of Revenue and Customs may enter and search any premises occupied or controlled by a person who is under arrest for any relevant indictable offence if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates—

- (a) to that offence; or
- (b) to some other indictable offence which is connected with or similar to that offence.”.

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(4) 1970 c.9. Section 20BA and Schedule 1AA were inserted by section 149 of the Finance Act 2000 c.17.

(5) 1994 c.23. Paragraph 11 of Schedule 11 is derived from Schedule 7 to the Value Added Tax Act 1983 (c.55).

(6) 1994 c.9. Paragraph 4A of Schedule 7 was inserted by section 34 of, and paragraph 8(1) of Schedule 5 to, the Finance Act 1995 (c.4). Paragraph 4A was amended by section 70 of, and paragraphs 13(1)(a), (1)(b) and (2)(g) of Part 2 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c.16).

(7) 1996 c.8. Paragraph 7 of Schedule 5 was amended by section 70 of, and paragraphs 13(1)(a), (1)(b) and (2)(h) of Part 2 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c.16).

(8) 2000 c.17. Paragraph 131 of Schedule 6 was amended by section 70 of, and paragraphs 13(1)(a), (1)(b) and (2)(i) of Part 2 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c.16).

(9) 2001 c.9.

(10) 2003 c.14.

(11) 1984 c.60. Section 18 of the Act was amended by section 111 of, and paragraph 43(1) and (5) of Part 3 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c.15) and section 12 of, and paragraphs 1 and 2 of Schedule 1 to, the Criminal Justice Act 2003 (c.44).

### **Modification of section 35 of the Act (Designated police stations)**

- 9.**—(1) Section 35 of the Act (designated police stations)(**12**) is modified as follows.
- (2) For subsection 35(1) substitute—
- “(1) The Director of Detection shall designate offices of Revenue and Customs which, subject to sections 30(3) and (5), are to be the offices to be used for the purposes of detaining arrested persons.”
- (3) For subsection 35(2) substitute—
- “(2) The Director of Detection’s duty under subsection (1) above is to designate offices of Revenue and Customs appearing to him to provide enough accommodation for that purpose.”.
- (4) For subsection 35(3) substitute—
- “(3) Without prejudice to section 12 of the Interpretation Act 1978 (continuity of duties) the Director of Detection—
- (a) may designate an office which was not previously designated; and
- (b) may direct that a designation of an office previously made shall cease to operate.”.

### **Modification of section 36 of the Act (Custody officers at police stations)**

- 10.**—(1) Section 36 of the Act (custody officers at police stations)(**13**) is modified as follows.
- (2) For subsection (2) substitute—
- “(2) A custody officer for an office of Revenue and Customs designated under section 35(1) above shall be appointed—
- (a) by the Director of Detection; or
- (b) by such other officer of Revenue and Customs as the Director of Detection may direct.”.

### **Modification of section 41 of the Act (Limits on period of detention without charge)**

- 11.**—(1) Section 41 of the Act (limits on period of detention without charge)(**14**) is modified as follows.
- (2) For subsection (2)(b) substitute—
- “(b) in the case of a person arrested outside England and Wales, shall be—
- (i) the time at which that person arrives at the office of Revenue and Customs in England and Wales in which the offence for which he was arrested is being investigated; or
- (ii) the time 24 hours after the time of that person’s entry into England and Wales .”.

### **Modification of section 50 of the Act (Records of detention)**

- 12.**—(1) Section 50 of the Act (records of detention)(**15**) is modified as follows.
- (2) For subsection (1) substitute—

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(12) Section 35 of the Act was amended by section 12 of, and paragraphs 1 and 6 of Schedule 7 to, the Criminal Justice Act 2003 (c.44). There are other amendments not relevant to this Order.

(13) Section 36 of the Act was amended by section 101 of, and paragraphs 11, 13(1) and (2) of Schedule 7 to, the Anti-Terrorism, Crime and Security Act 2001 (c.24). There are other amendments not relevant to this Order.

(14) 1984 c.60. Section 41 of the Act was amended by section 12 of, and paragraphs 1 and 8 of Schedule 1 to, the Criminal Justice Act 2003 (c.44) and section 29(4)(b) of the Criminal Justice and Public Order Act 1994 (c.33).

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

- “(1) The Commissioners shall keep written records showing on an annual basis—
- (a) the number of persons kept in Revenue and 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 Revenue and Customs detention on its authority; and
    - (iii) whether he was charged or released without charge.”
- (3) For subsection (2) substitute—
- “(2) Every annual report made by the Commissioners shall contain information about the matters mentioned in subsection (1) above in respect of the period to which the report relates.”.

#### **Modification of section 55 of the Act (Intimate searches)**

**13.**—(1) Section 55 of the Act (intimate searches)(**16**) shall have effect as if it related only to things such as are mentioned in subsection (1)(a) of that section.

(2) The annual report of the Commissioners shall contain information about searches under section 55 which have been carried out during the period to which the report relates.

#### **Modification of section 64 of the Act (Destruction of fingerprints and samples)**

**14.**—(1) Section 64 of the Act (destruction of fingerprints and samples)(**17**) is modified as follows.

(2) For subsection (5)(b) substitute—

“(b) the Director of Risk and Intelligence shall make access to the data impossible, as soon as it is practicable to do so.”.

(3) For subsection (6A) substitute—

“(6A) If—

(a) subsection (5)(b) above falls to be complied with; and

(b) the person to whose fingerprints or impressions of footwear the data relates asks for a certificate that it has been complied with,

such a certificate shall be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by the Director of Risk and Intelligence or a person authorised by him or on his behalf for the purposes of this section.”

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(16) Section 55 of the Act was amended by section 170(1) of, and paragraphs 97 and 99 of Schedule 15 to, the Criminal Justice Act 1988 (c.33); section 103 of, and paragraph 36 of Schedule 7 to, the Police Act 1996 (c.16); section 79 of the Criminal Justice and Police Act 2001 (c.16) and section 3 of the Drugs Act 2005 (c.17).

(17) 1984 c.60. Section 64 of the Act was amended by section 148 of the Criminal Justice Act 1988 (c.33); section 57(2) of the Criminal Justice and Public Order Act 1994 (c.33); section 103 of, and paragraph 37 of Part II of Schedule 7 to, the Police Act 1996 (c.16); section 82 of the Criminal Justice and Police Act 2001 (c.16); section 117(7) and section 118(4) of the Serious Organised Crime and Police Act 2005 (c.15). There are further amendments to section 64 in section 117(8) to (10) of the 2005 Act (c.15) which are not yet in force. Section 64(4) was repealed by section 137 of, and Part 2(1) of Schedule 7 to, the Criminal Justice and Police Act 2001 (c.16).

### **Modification of section 77 of the Act (Definition of independent person)**

15. Section 77(3) of the Act (definition of independent person)(18) shall be modified to the extent that the definition of “independent person” shall, in addition to the persons mentioned therein, also include an officer of Revenue and Customs or any other person acting under the authority of the Commissioners.

### **Use of reasonable force**

16. Where any provision of the Act as applied to Revenue and Customs—

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

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

### **Arrest without warrant**

17. Section 24(2) of the Act (arrest without warrant)(19) does not limit—

- (a) section 138(1) of the Customs and Excise Management Act 1979;
- (b) section 20 and paragraph 4 of Schedule 3 to the Criminal Justice (International Co-operation) Act 1990;
- (c) any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon officers of Revenue and Customs the power to arrest or detain persons.

### **Search of persons**

18. Where an officer of Revenue and Customs searches premises in reliance on a warrant under section 8 of, or paragraph 12 of Schedule 1 to, the Act (power of justice of the peace to authorise entry and search of premises)(20), he may search any person found on the premises—

- (a) where he 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;
- (b) but no person should be searched except by a person of the same sex.

### **Authorisation**

19. Powers and functions in the provisions of the Act contained in Schedule 1 to this Order may be exercised only by officers of Revenue and Customs acting with the authority (which may be general or specific) of the Commissioners.

### **Revocation**

20. The following instruments are revoked—

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(18) Section 77 of the Act was amended by section 103 of, and paragraph 38 of Schedule 7 to, the Police Act 1996 (c.16) and section 331 of, and paragraph 48 of Part 4 of Schedule 36 to, the Criminal Justice Act 2003 (c.44).

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

(20) 1984 c.60. Section 8 of the Act was amended by sections 113(3),(4), 114(2) and section 111 of, and paragraph 43(3) of Part 3 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c.15); section 169(1) of, and paragraph 80(2) of Schedule 14 to, the Immigration and Asylum Act 1999 (c.33) and section 86 of the Finance Act 2007 (c.11). Paragraph 12 of Schedule 1 to the Act was amended by section 113(1) and (13) of the Serious Organised Crime and Police Act 2005 (c.15) and section 65 of, and paragraph 6(1) of Schedule 4 to, the Courts Act 2003 (c.39) but the latter amendment is not yet in force.

- (a) the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985<sup>(21)</sup>;
- (b) the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1987<sup>(22)</sup>;
- (c) the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) (Amendment) Order 1995<sup>(23)</sup>; and
- (d) the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) (Amendment) Order 1996<sup>(24)</sup>.

8th November 2007

*Dave Watts*  
*Steve McCabe*  
Two of the Lord's Commissioners of Her  
Majesty's Treasury

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<sup>(21)</sup> S.I. 1985/1800.  
<sup>(22)</sup> S.I. 1987/439.  
<sup>(23)</sup> S.I. 1995/3217.  
<sup>(24)</sup> S.I. 1996/1860.