

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF FREEDOMS ACT 2012 (CONSEQUENTIAL
AMENDMENTS) No. 3 ORDER 2013

2013 No. 2343

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to amend the Police and Criminal Evidence Act 1984 (Application to immigration officers and customs officials in England and Wales) Order 2013 (“the PACE Order”) to take into account relevant amendments to the Police and Criminal Evidence Act 1984 (“PACE”) that have been made by the Protection of Freedoms Act 2012 (“PoFA”).

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The PACE Order applies relevant provisions of PACE to criminal investigations conducted by immigration officers and designated customs officials and to persons detained by designated customs officials.

4.2 PoFA repeals section 64 of PACE, which is concerned with the destruction of samples and fingerprints, and replaces that provision with sections 63D to 63U of PACE, which individually deal with the use, retention and destruction of fingerprints, DNA and other non-intimate samples. This Order will remove the reference to section 64 from the PACE Order and apply the new sections of PACE which are relevant to the work of designated customs officials.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 PoFA repeals section 64 of PACE, which is concerned with the destruction of samples and fingerprints and replaces that provision with sections 63D to 63U of PACE, which individually deal with the use, retention and destruction of fingerprints, DNA and other non-intimate samples.

7.2 As a consequence of these changes, this Order ensure that the necessary amendments to the PACE Order, which applies relevant provisions of PACE to criminal investigations conducted and persons detained by designated customs officials, are made.

7.3 Designated customs officials in Border Force have the power to arrest persons for general customs and customs revenue offences and to keep arrested persons in customs detention. In particular, and in relation to persons who have been arrested on suspicion of being in possession of controlled drugs and/or having committed an offence of drug trafficking, designated customs officials sometimes employ, on a consensual basis, voluntary enzyme multiplied immunoassay technique (EMIT) tests (urine samples) to determine whether or not that person has any controlled substances within their system. A positive result will likely provide a customs official with reasonable grounds to suspect that the person might have an internal drugs concealment, thereby providing reasonable grounds for believing that the person's continued detention is necessary in order to secure or preserve evidence relating to the offence for which they have been arrested.

7.4 Although any urine samples that are taken by designated customs officials are ordinarily destroyed immediately once the test results have been produced, it is nevertheless important to ensure that they are bound by the same limitations and subject to the same safeguards as police officers in relation to the use, retention and destruction of non-intimate samples. In general terms, this Order will ensure that designated customs officials are required to destroy any urine sample within six months from the date on which it was taken.

8. Consultation outcome

8.1 In common with previous statutory instruments relating to these provisions no public consultation was undertaken.

9. Guidance

9.1 The Home Office will provide instructions and guidance to Border Force officers to ensure that those responsible for customs investigations are suitably equipped to discharge their responsibilities as a consequence of this amendment to the Act.

10. Impact

10.1 No impact is foreseen on business, charities or voluntary bodies.

10.2 There is not expected to be any significant impact on the public sector. A limited amount of resource will be required to brief affected staff and this will be handled as “business as usual” and is not expected to have any detrimental impact.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will monitor the operation of the powers on an on-going basis to ensure that the provisions are implemented and adhered to and that safeguards are observed.

13. Contact

The following officials are able to answer queries regarding the instrument:

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