

EXPLANATORY MEMORANDUM TO
THE CRIME AND COURTS ACT 2013 (APPLICATION AND MODIFICATION OF
ENACTMENTS) ORDER 2016

2016 No. 1143

1. Introduction

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

2. Purpose of the instrument

- 2.1 This Order applies, with modifications, certain enactments which confer powers on a constable or an officer of Revenue and Customs of a specified rank, to enable these powers to be exercised by the equivalent ranked National Crime Agency officer (“NCA officer”) acting by virtue of a designation under section 9 or 10 of the Crime and Courts Act 2013 (“the 2013 Act”). The enactments whose application is modified by this Order are the Immigration, Nationality and Asylum Act 2006 and the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2015.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2013 Act established the National Crime Agency (“NCA”) and abolished the Serious Organised Crime Agency (“SOCA”). Sections 9(2) and 10(1) of the 2013 Act enable, respectively, the Director General of the NCA and other NCA officers to be designated with the powers and privileges of a constable; the powers of an officer of Revenue and Customs; and the powers of an immigration officer.
- 4.2 Section 32(2) of the Immigration, Nationality and Asylum Act 2006 (“the 2006 Act”) imposes an obligation on the owner or agent of a ship or aircraft to comply with any requirement imposed by a constable of the rank of superintendent or above to provide passenger or service information. Section 33(2) imposes a similar obligation in connection with the provision of freight information. Although NCA officers can be designated with the powers and privileges of a constable, the NCA has a different grading system to the police, so where a power in an enactment is specified to be exercisable by a certain rank of constable, such powers do not automatically read across to the NCA. Article 3 of this Order ensures that NCA officers designated with the powers and privileges of a constable, who are of the rank of Grade 2 and above, can impose the information requirements which superintendents are empowered to impose under sections 32(2) and (33)(2) of the 2006 Act.

- 4.3 The Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2015 applies certain provisions of the Police and Criminal Evidence Act 1984 to relevant investigations conducted by officers of Revenue and Customs and to persons detained by such officers. The 2015 Order ensures that provisions in the Police and Criminal Evidence Act 1984 (“PACE”) which allow a constable of a certain rank to do a particular act or thing can be done by an officer of Revenue and Customs of at least an equivalent grade. Although NCA officers can be designated as officers of Revenue and Customs, and can thus do those acts or things that Revenue and Customs officers can do as a consequence of the 2015 Order, the NCA has a different grading system to Her Majesty’s Revenue and Customs, so such powers do not automatically read across to the NCA. This Order ensures that it is clear what grade of NCA officer can exercise the PACE powers that are exercisable by officers of Revenue and Customs by virtue of the 2015 Order.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the whole of the United Kingdom
- 5.2 The territorial application of this instrument is the whole of the United Kingdom.

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

What is being done and why

- 7.1 As part of its crime reduction function, the NCA is leading the UK’s fight to cut serious and organised crime. The highest priority for the NCA is to identify and disrupt serious and organised crime, including by investigating and enabling the prosecution of those responsible. To enable the NCA to perform its functions, officers of the NCA may be designated with the powers and privileges of a constable; the powers of an officer of Revenue and Customs; and the powers of an immigration officer.
- 7.2 This Order applies, with modifications, certain enactments containing police and officer of Revenue and Customs powers so that designated NCA officers are able to exercise such powers. Where the powers in the enactments provide for a duty to be exercised by a specific rank, for instance a Superintendent in the police or an Officer, Higher Officer, or Senior Officer in HMRC, the Order applies the enactment with a modification specifying the equivalent NCA officer grade.

Consolidation

- 7.3 The Department does not assess that there is any need for consolidation measures.

8. Consultation outcome

- 8.1 The Secretary of State has consulted the Commissioners for Her Majesty’s Revenue and Customs as required by paragraph 29(2)(a) of Schedule 5 to the 2013 Act.

9. Guidance

- 9.1 It is considered that guidance is not necessary.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 There will be periodic reviews of NCA officers' use of these powers.

13. Contact

- 13.1 Clare Wilson at the Home Office, Telephone: 020 7035 6917 or email: clare.wilson9@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.