

EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (APPLICATION TO
REVENUE AND CUSTOMS) (AMENDMENT) ORDER 2017

2017 No. 736

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty’s Revenue and Customs (“HMRC”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument updates the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2015 (“the 2015 Order”) which applies provisions of the Police and Criminal Evidence Act 1984 (“PACE”), as modified, to criminal investigations conducted by officers of Revenue and Customs.

2.2 More specifically, this instrument provides officers of Revenue and Customs with the power to make applications to a magistrates’ court for authorisation of extensions to a suspect’s pre-charge bail period and the power to enter and search any premises for the purpose of arresting a person who has failed to surrender to bail.

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 Section 114(2)(a) of PACE allows any of the provisions of that Act which relate to investigations of offences conducted by police officers to be applied by order to investigations conducted by officers of Revenue and Customs.

4.2 The provisions of PACE that apply to investigations conducted by officers of Revenue and Customs are listed in Schedule 1 to the 2015 Order. Read with the general modifications made by Part 1 of Schedule 2 to the 2015 Order, the amendments made by this instrument give officers of Revenue and Customs equivalent standing to a police constable for the following purposes.

4.3 Part 4 of the Policing and Crime Act 2017 inserts new sections into PACE which impose limits on the period a suspect in a criminal investigation may be on pre-charge bail. This instrument adds references to sections 47ZF, 47ZG and 47ZH of PACE to Schedule 1 to the 2015 Order, permitting an officer of Revenue and Customs to make applications to a magistrates’ court as a “qualifying applicant” to extend the period a person may be on bail without charge.

4.4 This instrument also adds a reference to section 17(1)(cab)(ii) of PACE to Schedule 1 to the 2015 Order. Officers of HMRC already have the power to arrest a person who fails to answer bail or breaches their bail conditions under section 46A(1) and 46A(1A) of PACE respectively. Section 17(1)(cab)(ii) of PACE will allow officers of Revenue and Customs to enter any premises in order to make an arrest for these purposes.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is 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 HMRC has been using certain PACE powers, as modified, since 2007 to investigate suspected crime involving most of its functions in England and Wales. The powers are listed in Schedule 1 to the 2015 Order and include the standard tools of criminal investigation such as the power of arrest and the power to apply for search warrants and orders requiring the production of information.

7.2 HMRC only uses PACE powers in criminal investigations and these powers are only used by officers who are appropriately trained and authorised to use them (otherwise known as “authorised officers”).

7.3 HMRC publishes comprehensive guidance via its Criminal Justice Procedures manual on its intranet site. This sets out how criminal investigations work including which officers are entitled to use the powers and how use of the powers is authorised.

7.4 Pre-charge bail is authorised and granted by the police under PACE. The Policing and Crime Act 2017 amends PACE by introducing limits on the length of time a person can be placed on pre-charge bail. An initial bail limit of 28 days can be authorised by a police officer of the rank of inspector or above. An extension to the initial bail limit can be authorised by a police officer of the rank of superintendent or above. All further extensions to pre-charge bail must be authorised by a magistrates’ court.

7.5 Applications to a magistrates’ court to authorise extensions to a suspect’s pre-charge bail period must be made by a constable or a Crown Prosecutor as a “qualifying applicant”. This instrument adds references to sections 47ZF, 47ZG and 47ZH of PACE into Schedule 1 to the 2015 Order permitting an authorised officer of HMRC to make applications to a magistrates’ court as a “qualifying applicant” to extend a suspect’s pre-charge bail period. When an application is made to the court under sections 47ZF or 47ZG, section 47ZH permits a qualifying applicant to apply to the court for authorisation to withhold sensitive information from the person who is on bail and their legal representative.

7.6 An authorised officer of HMRC already has the power to arrest a person who fails to answer bail or breaches their bail conditions under section 46A(1) and 46A(1A) of PACE respectively. This instrument add references to section 17(1)(cab)(ii) of PACE to Schedule 1 to the 2015 Order permitting authorised officers of HMRC to enter any premises in order to make an arrest for these purposes.

8. Consultation outcome

8.1 As this legislation does not impact upon others no consultation has taken place.

9. Guidance

9.1 Internal guidance and relevant training has been given to the officers of HMRC who will use the powers provided by this instrument. The training has been devised in collaboration with the College of Policing and the National Police Chiefs Council. Updates to the HMRC Criminal Justice Procedures Manual have been made. Applications for extensions to pre-charge bail at a magistrates' court are subject to the Criminal Procedures Rules.

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 A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

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

12. Monitoring & review

12.1 The powers and procedures provided by this Amendment Order will be monitored by HMRC to ensure they remain aligned to wider criminal justice procedure.

13. Contact

13.1 Judith Rockett at HMRC Telephone: 03000 581626 or email: Judith.rockett@hmrc.gsi.gov.uk can answer any queries regarding the instrument.