

## **SERIOUS CRIME ACT 2007**

---

### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

#### **Part 3: Other Measures to Prevent or Disrupt Serious and Other Crime**

##### ***Chapter 3: Other measures***

##### ***Section 87: Incidents involving serious violence: powers to stop and search***

281. At present, an officer at least of the rank of inspector can give an authorisation in the circumstances set out in section 60 of the Criminal Justice and Public Order Act 1994, following which people and vehicles within the specified locality can be stopped and searched. These circumstances are where serious violent incidents are anticipated and it is expedient to give an authorisation to prevent their occurrence, or where the police suspect that persons are carrying dangerous instruments or offensive weapons in the locality without good reason.
282. The power to stop and search can be used whether or not the police have a reasonable suspicion that a person is carrying dangerous instruments or offensive weapons. This section extends the powers in section 60 of that Act to add a further circumstance in which they can be used; where a serious violent incident has occurred, and the police believe that the weapon used in the incident is being carried in the locality and it is expedient to give an authorisation to find the weapon. The purpose of this is to assist the police in locating the weapon used in the incident, and in apprehending the offender.
283. In this particular circumstance, the police would be able to make an authorisation orally in the first instance, to be followed in writing as soon as is practicable. In the existing two circumstances they will continue to need to make any authorisation in writing.

##### ***Section 88: Extension of investigatory powers of Revenue and Customs***

284. This section gives effect to Schedule 12 which will make various criminal investigation powers apply consistently to all functions of Her Majesty's Revenue and Customs (HMRC).
285. When the Commissioners for Revenue and Customs Act 2005 created the new department of HMRC it carried forward the statutory powers of the former Inland Revenue and former HM Customs and Excise (HMCE). But it ring-fenced them to constrain the use of the powers to their original purposes. The powers covered by this Schedule could be used only when dealing with former HMCE matters. The changes made by this Schedule make the powers available whether a former HMCE or former Inland Revenue matter is involved.
286. [Paragraph 1](#) of Schedule 12 amends section 93 of the Police Act 1997 so that references to an officer of HMCE are changed to an officer of HMRC. Section 93 allows an 'authorising officer' to authorise action to interfere with property (for example, entering a property to place a listening device) or take action in respect of wireless telegraphy where he or she believes it to be necessary to tackle serious crime and to

*These notes refer to the Serious Crime Act 2007 (c.27)  
which received Royal Assent on 30th October 2007*

be proportionate to the intended results. Section 93(5)(h) provides that the authorising officers have to be designated for this purpose by the Commissioners for HMRC. Paragraph 1(c) requires that only senior officials within the meaning of the Regulation of Investigatory Powers Act 2000 can be so designated. Section 81(1) of that Act provides that “senior official” means “member of the Senior Civil Service”.

287. The effect of the changes made by paragraph 1 is to allow action to be authorised under section 93 when it relates to an ex-Revenue matter, at the moment the section only applies to ex-HMCE matters. There is no change to the tests that have to be passed before the authority can be given or to the role of the independent Office of Surveillance Commissioners who oversee the use of these powers and must approve certain authorisations.
288. Section 93(4) of the Police Act 1997 defines what is meant by ‘serious crime’. The subsection also restricts the authorisations which can be made by an officer of Revenue and Customs to those relating to ‘an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979’. The reference to ‘an assigned matter’ is not amended by this Schedule as, following the amendments made to the definition by the Commissioners for Revenue and Customs Act 2005, it applies to all HMRC’s responsibilities, not just ex-HMCE ones.
289. [Paragraph 2](#) of this Schedule makes a consequential amendment to section 94 of the Police Act 1997 which concerns authorisations in the absence of an authorising officer.
290. [Paragraph 3](#) of this Schedule makes a consequential amendment to section 107 of the Police Act 1997 concerning matters that the Prime Minister may, after consultation with the Chief Commissioner and Scottish Ministers, exclude from the copy of the Chief Surveillance Commissioner’s annual report laid before each House of Parliament. The amendment provides that matters prejudicial to the discharge of the duties of the Commissioners for HMRC may be so excluded (section 107 currently refers to Commissioners of HMCE).
291. [Paragraph 4](#) of this Schedule amends section 108 of the Police Act 1997 to remove the definition of ‘customs officer’ which is no longer necessary. The new phrase ‘officer of Revenue and Customs’ is defined by section 5 of and Schedule 1 to the Interpretation Act 1978 and does not need a separate definition in the Police Act 1997.
292. [Paragraph 5](#) of this Schedule provides for the Regulation of Investigatory Powers Act 2000 (RIPA) to be amended. Any reference in this part of the notes to a numbered section is to that section of RIPA.
293. [Paragraph 6](#) of this Schedule amends the list of persons who can apply for an interception warrant in section 6(2) to substitute a reference to the Commissioners for HMRC for a reference to the Commissioners of HMCE. An interception warrant can authorise certain conduct, including the interception of communications in the course of their transmission by means of a postal service or telecommunications system (section 5(1)). A warrant may be issued by the Home Secretary, or the First Minister in Scotland, or Secretary of State for Northern Ireland where he or she believes that the conduct authorised by the warrant is proportionate to the results intended and is necessary:
- in the interests of national security,
  - for tackling serious crime,
  - for safeguarding the economic well-being of the UK, or
  - for the purpose of giving effect to any international mutual assistance agreement and tackling serious crime.
294. The effect of the amendment made by paragraph 6 is to allow the Commissioners for HMRC to apply for an interception warrant in connection with any of HMRC’s

responsibilities. At the moment an application could only be made in respect of an ex-HMCE matter. There is no change to the conditions that have to be met before a warrant can be issued or the safeguards provided by RIPA in respect of the intercepted material.

295. Part I Chapter II of RIPA concerns the acquisition and disclosure of ‘communications data’ which is defined at section 21(4). The acquisition of this data is lawful where conducted by a person authorised or required to engage in that activity by an authorisation or notice granted or given under Chapter II of Part I and provided the conduct is in accordance with, or in pursuance of, the authorisation or requirement (section 21(2)). Where a ‘designated person’ believes it is necessary to obtain communications data and the relevant tests are passed he or she can:
- grant an authorisation for persons in the same public authority to engage in the relevant conduct (section 22(3)), and
  - by notice require a postal or telecommunications operator to obtain the data and disclose it to the designated person (section 22(4)).
296. The ‘designated persons’ are individuals holding certain positions with ‘relevant public authorities’. The detail of who is a designated person, and the grounds on which they can obtain communications data, is set out in The [Regulation of Investigatory Powers \(Communications Data\) Order 2003 \(SI 2003/3172\)](#). The Commissioners of HMCE and the Commissioners of Inland Revenue were both ‘relevant public authorities’. For both ex-HMCE and ex-Revenue matters communications data can be obtained by HMRC where it is believed necessary for either tackling crime or preventing disorder, or assessing or collecting tax (section 22(2) and article 6 of [SI 2003/3172](#)). In addition communications data can only be sought where that is believed to be proportionate to the result sought (section 25(5)) and where the grounds are to assess or collect tax the only data that can be obtained is ‘subscriber data’ as defined at section 21(4)(c) (article 7 of [SI 2003/3172](#)).
297. The only difference at the moment between HMRC’s powers under Part I Chapter II of RIPA for ex-HMCE and ex-Inland Revenue matters concerns the data that can be obtained when action is believed necessary to tackle crime or prevent disorder. Where ‘traffic data’ (as defined at section 21(4)(a)) is sought on these grounds in relation to an ex-Inland Revenue matter only data relating to a postal service can be obtained, data relating to a telecommunications system cannot be sought. For ex-HMCE matters data relating to either a postal service or a telecommunications system can be sought. This restriction for ex-Inland Revenue matters is imposed by article 10 of [SI 2003/3172](#), there is no difference in the treatment of ex-HMCE and ex-Revenue matters in RIPA itself. Because of this the changes being made by the Schedule do not of themselves change HMRC’s powers, they simply update references to the old departments. However, when [SI 2003/3172](#) (The Regulation of Investigatory Powers (Communications Data) Order 2003) is amended the intention is to remove this restriction in article 10 relating to ex-Inland Revenue matters. Once that is done HMRC will be able to obtain traffic data relating to both postal services and telecommunications systems where that is believed necessary, and proportionate, for tackling crime or preventing disorder.
298. [Paragraph 7](#) of this Schedule makes a consequential amendment to section 21(5) of RIPA to substitute a reference to ‘officers of Revenue and Customs’ for a reference to ‘customs officers’ when referring to Part III of the Police Act 1997. This is to reflect the changes being made to the Police Act 1997, as detailed above.
299. [Paragraph 8](#) of this Schedule amends section 25(1) of RIPA to substitute a reference to HMRC for references to HMCE and the Inland Revenue in the definition of ‘relevant public authority’.
300. Part II of RIPA deals with directed surveillance, intrusive surveillance and the conduct and use of covert human intelligence sources. These three types of activity are defined at section 26(2) to (11). The Schedule makes no change to the RIPA procedures for

*These notes refer to the Serious Crime Act 2007 (c.27)  
which received Royal Assent on 30th October 2007*

authorising directed surveillance and the use of covert human intelligence sources. The changes being made in respect of intrusive surveillance are detailed below.

301. [Paragraph 9](#) of this Schedule makes a consequential amendment to section 27(4) to substitute a reference to ‘officers of Revenue and Customs’ for a reference to ‘customs officers’ when referring to Part III of the Police Act 1997. This is to reflect the changes being made to the Police Act 1997, as detailed above.
302. Section 32 of RIPA deals with the authorisation of intrusive surveillance (such as using listening devices in residential premises). Intrusive surveillance can be authorised where it is believed to be proportionate to the intended results and is necessary:
  - in the interests of national security,
  - for tackling serious crime, or
  - in the interests of the economic well-being of the UK.
303. Usually authorisations for intrusive surveillance do not take effect until they have been approved by an independent Surveillance Commissioner (section 36). At the moment HMRC can use intrusive surveillance for ex-HMCE matters but not for ex-Revenue matters. The Schedule changes this, as detailed below, so that it can be used for ex-Revenue matters as well. The conditions that have to be met and authorisations granted are not altered.
304. [Paragraph 10](#) of this Schedule amends the definition of ‘senior authorising officer’ at section 32(6). The reference to a customs officer is changed to an officer of Revenue and Customs designated for that purpose by the Commissioners for HMRC. The amendment provides that only senior officials can be so designated. Section 81(1) defines “senior official” as “a member of the Senior Civil Service”. The “senior authorising officer” is the officer who can authorise intrusive surveillance and this change will allow authorisations to be made in respect of all HMRC’s responsibilities, including ex-Inland Revenue ones not just ex-HMCE matters.
305. [Paragraph 11](#) of this Schedule makes consequential amendments to section 33 (police and customs authorisations) to change references to HMCE and its officers to HMRC and its officers. The rule which prevents an officer granting an authorisation except on an application by another officer of the department is retained in an updated form.
306. [Paragraphs 12 to 18](#) make consequential amendments to change references to HMCE and its officers to HMRC and its officers in the remainder of Part II of RIPA.
307. Part III deals with electronic data protected by encryption. Section 49 provides a power to enable persons with the ‘appropriate permission’ to serve notices on individuals or bodies requiring the disclosure of protected (for example encrypted) information which they lawfully hold, or are likely to, in an intelligible form. The power under section 49 can be used where the conditions set out at subsection (2) are met. The Schedule makes various amendments to Part III so it applies consistently to HMRC.
308. Section 49 of RIPA limits the information to which the power to serve notices applies by defining the various means by which the protected information in question has been, or is likely to be, obtained at subsection (1)(a) to (e). HMRC could already issue notices in respect of the information specified in subsections (1)(a) to (d) whether they related to ex-HMCE or ex-Inland Revenue matters. However, HMRC could issue a notice in respect of information it holds which falls within section 49(1)(e) only where it relates to an ex-HMCE matter and not where it relates to an ex-Inland Revenue matter. Subsection (1)(e) covers information that has come into (or is likely to come into) the possession of the customs and excise by any lawful means not involving the exercise of statutory powers and not covered by subsections (1)(a) to (d).
309. [Paragraph 19](#) of this Schedule amends section 49(1)(e) so it applies to information which has come into the possession of HMRC, rather than HMCE. This allows HMRC

*These notes refer to the Serious Crime Act 2007 (c.27)  
which received Royal Assent on 30th October 2007*

to issue a notice under section 49 in respect of this information whether it relates to an ex-Inland Revenue or an ex-HMCE matter.

310. [Paragraph 20](#) of this Schedule makes consequential amendments to section 51 to substitute references to HMRC for references to HMCE. This section sets out the extra tests to be fulfilled if a key (such as a password or decryption key – see definition at section 56(1)) is required to be disclosed rather than the disclosure of protected information in an intelligible form.
311. [Paragraph 21](#) of this Schedule amends section 54 to substitute a reference to HMRC for a reference to HMCE. This section allows a section 49 notice to contain a provision requiring the recipient, or anybody else who becomes aware of it, to keep it secret. This can be done only where the protected information it relates to has been obtained by means which it is reasonable to keep secret from a particular person to maintain the effectiveness of any investigation or investigatory technique, or in the interests of any person's safety or well-being. At the moment HMRC can only impose a requirement under section 54 in connection with ex-HMCE matters. Changing the reference to HMCE to HMRC will allow a requirement to be imposed whenever the conditions are met, whether an ex-HMCE or ex-Inland Revenue matter is involved.
312. [Paragraph 22](#) of this Schedule amends section 55 to substitute a reference to HMRC for a reference to HMCE. This section places a duty on various people to safeguard the use of disclosed keys and describes the safeguards that must be in place. The change made by paragraph 22 ensures that these safeguards apply to all keys HMRC may obtain, not just to keys relating to ex-HMCE matters.
313. [Paragraph 23](#) of this Schedule makes a consequential amendment to section 56 by removing the definition of 'the customs and excise'.
314. [Paragraphs 24 and 25](#) of this Schedule make consequential amendments to sections 65 and 71 (the Tribunal and Codes of Practice respectively) to substitute references to HMRC for references to HMCE.
315. [Paragraphs 26 and 27](#) of this Schedule make consequential amendments to sections 76A and 81 (Foreign Surveillance Operations and General Interpretation respectively) to update a reference to a 'customs officer' and remove the definition of that term which is no longer necessary.
316. [Paragraph 28](#) of this Schedule makes a consequential amendment to Part I of Schedule 1 to substitute a reference to HMRC for references to HMCE and the Inland Revenue. Part 1 defines relevant authorities for the purposes of sections 28 and 29 - authorisation of directed surveillance and covert human intelligence sources.
317. Only a person with the 'appropriate permission' under Schedule 2 may issue a notice under section 49 (section 49(2)) requiring the disclosure of protected (for example encrypted) information. At the moment where an ex-Inland Revenue matter is involved a judge's permission (sheriff in Scotland) under paragraph 1 of Schedule 2 is always required before an officer can have the appropriate permission. In certain circumstances an officer of HMRC can have the appropriate permission in respect of an ex-HMCE matter without obtaining a judge's permission. A judge's permission is not required in relation to ex-HMCE matters in two circumstances, as detailed below:
  - Under paragraph 2 of Schedule 2 where certain protected information was obtained under a warrant issued by the Secretary of State, or a person holding judicial office, or an authorisation under Part III of the Police Act 1997 and the warrant or authorisation gave permission for the section 49 notice to be given. Alternatively, written permission could be obtained from the 'relevant authority' (as defined at paragraph 2(6) of Schedule 2) for the issue of the notice after the issue of the warrant or authorisation.

*These notes refer to the Serious Crime Act 2007 (c.27)  
which received Royal Assent on 30th October 2007*

- Under paragraph 4 of Schedule 2 where unintelligible information is, or is likely to be, obtained under statutory powers but without a warrant issued by the Secretary of State or a person holding judicial office, or an authorisation under Part III of the Police Act 1997.
318. For an officer of HMRC to have the appropriate permission in respect of an ex-HMCE matter the Commissioners for HMRC, or an officer of or above such level as they may designate for the purpose, must give permission for the section 49 notice to be issued in relation to that protected information (paragraph 6(4) of Schedule 2). This is not a requirement in respect of ex-Inland Revenue matters at the moment.
319. [Paragraph 29](#) of this Schedule amends Schedule 2 to substitute references to HMRC for references to HMCE. The effect of this is to make Schedule 2 apply to HMRC as a whole in the same way it currently applies to ex-HMCE matters as explained above. The rules on who has the “appropriate permission” to issue a section 49 notice will apply in future to all information HMRC obtains in the way they currently apply to information relating to ex-HMCE matters.
320. [Paragraph 30](#) amends Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (CRCA) to provide that paragraphs 1 (in respect of the Wireless and Telegraphy Act 2006 (WTA)) and 11 (in respect of RIPA) shall cease to have effect. Those paragraphs prevent HMRC using the following powers in respect of ex-Revenue matters:
- Paragraph 1 section 48 of WTA, and
  - Powers conferred by RIPA relating to interception, intrusive surveillance and certain of those for the investigation of electronic data protected by encryption.
321. The substantive changes being made to those powers are described above. Paragraph 30 removes the rule currently preventing the powers being used by HMRC for ex-Inland Revenue matters.
322. [Paragraph 31](#) of this Schedule confirms that sections 6 and 7 CRCA do not restrict the functions in connection with which officers can exercise a power amended by this Schedule. Normally sections 6 and 7 CRCA would prevent a power or duty conferred on an officer of HMCE being exercised in connection with an ex-Inland Revenue matter and require a power conferred in connection with an ex-Inland Revenue matter to be used only for an ex-Inland Revenue matter.