

2013 No. 2733

REVENUE AND CUSTOMS, ENGLAND AND WALES

REVENUE AND CUSTOMS, NORTHERN IRELAND

The Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2013

<i>Made</i> - - - -	<i>29th October 2013</i>
<i>Laid before Parliament</i>	<i>30th October 2013</i>
<i>Coming into force</i> - -	<i>21st November 2013</i>

The Treasury, in exercise of the powers conferred by section 27(1) of the Crime (International Co-operation) Act 2003(a), make the following Order:

PART 1
GENERAL

Citation, commencement and extent

1.—(1) This Order may be cited as the Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2013 and comes into force on 21st November 2013.

(2) This Order extends to England and Wales and Northern Ireland.

Interpretation

2.—(1) In this Order—

“the Act” means the Crime (International Co-operation) Act 2003;

“HMRC matter” means any matter in relation to which the Commissioners have functions;

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

“officer of Revenue and Customs” includes a person acting under the direction of such an officer;

“relevant offence” means conduct consisting of an offence under the law of a country outside the United Kingdom which, if it occurred in England and Wales and Northern Ireland, would be an offence in relation to an HMRC matter;

“request for assistance” means a request for assistance in obtaining evidence in England and Wales and Northern Ireland.

(a) 2003 c.32; section 27(1) was amended by section 97 of the Criminal Justice and Immigration Act 2008 (c. 4).

(2) A reference to a section or schedule without more is a reference to the section or schedule bearing that number in the Act.

PART 2

FUNCTIONS OF THE COMMISSIONERS

Functions exercisable by the Commissioners

3. Any of the functions conferred on the Secretary of State (including functions conferred on the Secretary of State as the territorial authority in relation to evidence in England and Wales and Northern Ireland) under—

- (a) section 13 (requests for assistance from overseas authorities);
- (b) section 14 (powers to arrange for evidence to be obtained);
- (c) section 15 (nominating a court etc. to receive evidence);
- (d) section 19 (seized evidence);
- (e) paragraph 6 of Schedule 1 (forwarding evidence),

may be exercised by the Commissioners instead of the Secretary of State where the circumstances mentioned in articles 4 to 8 below occur and for the purposes of this Order a reference to the Secretary of State in those sections or that paragraph shall be taken to include the Commissioners.

Requests for assistance from overseas authorities

4.—(1) The Commissioners may exercise the function under section 13 of arranging for evidence in England and Wales or Northern Ireland to be obtained under section 15 where—

- (a) a request for assistance has been made in connection with criminal proceedings or a criminal investigation mentioned in section 14(1)(a); and
- (b) those proceedings or that investigation relate wholly or mainly to a relevant offence.

(2) For the purpose of making a decision about a request for assistance the Commissioners must exercise the functions in section 14.

Directing that a search warrant can be applied for

5. The Commissioners may exercise the function under section 13 of directing that a search warrant be applied for under or by virtue of sections 16(a) (extension of statutory search powers in England and Wales and Northern Ireland) or 17(b) (warrants in England and Wales and Northern Ireland) where a request for assistance has been made wholly or mainly in connection with a relevant offence.

Nominating a court etc. to receive evidence

6. The Commissioners may exercise the function under section 15 of nominating a court to receive any evidence to which a request for assistance relates, where the request for assistance has been made wholly or mainly in connection with a relevant offence.

(a) Section 16 was amended by paragraph 51 of Schedule 7 to the Serious Organised Crime and Police Act 2005 (c.15) and by S.I. 2007/288.

(b) Section 17 was amended by paragraph 51 of Schedule 7 to the Serious Organised Crime and Police Act 2005 and by S.I. 2007/288.

Seized evidence

7. The Commissioners may exercise the function under section 19 of forwarding evidence to the court or authority which made the request where the evidence has been obtained by an officer of Revenue and Customs under or by virtue of this Order.

Forwarding evidence

8. The Commissioners may exercise the function under paragraph 6 of Schedule 1 of forwarding evidence to a court or authority which made a request for assistance where the evidence has been received by the court nominated by the Commissioners under section 15.

PART 3

FUNCTIONS OF AN OFFICER OF REVENUE AND CUSTOMS

Extension of statutory search powers

9.—(1) Any function conferred by virtue of section 16 in relation to a warrant or an order under section 8 (power of justice of the peace to authorise entry and search of premises) or Schedule 1 (special procedure) to the Police and Criminal Evidence Act 1984(a) may be exercised by an officer of Revenue and Customs where—

- (a) the Commissioners have given a direction under section 13; or
- (b) any such function is to be exercised for the purposes of an investigation relating wholly or mainly to a relevant offence by an international joint investigation team of which the officer of Revenue and Customs is a member.

(2) For the purposes of this article and articles 10 and 11 any reference to a constable in sections 16, 17 and 19 shall be taken to include an officer of Revenue and Customs.

Applying for and executing a search warrant

10. Any function conferred by virtue of section 17 may be exercised by an officer of Revenue and Customs where the Commissioners have given a direction under section 13 that an application be made for a search warrant.

Sending seized evidence

11. Any function conferred under section 19 must be exercised by an officer of Revenue and Customs where the evidence has been seized by an Officer of Revenue and Customs under—

- (a) a search warrant or production order issued by virtue of section 16; or
- (b) a search warrant issued under section 17.

(a) 1984 c. 60. Section 8 was amended by section 113 and section 114 of the Serious Organised Crime and Police Act 2005 and by paragraph 43 of Schedule 7 to that Act. Section 8(6) was inserted by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33). Section 8(7) was inserted by section 86 of the Finance Act 2007 (c. 11). Schedule 1 was amended by paragraph 14 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), by paragraph 6 of Schedule 4 to the Courts Act 2003 (c. 39), by section 113 of the Serious Organised Crime and Police Act 2005 and by paragraph 43 of Schedule 7, and Schedule 17 to that Act.

Revocation

12. The Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2005^(a) is revoked.

Stephen Crabb
David Evennett

29th October 2013

Two of the Lords Commissioners of Her Majesty's Treasury

^(a) S.I. 2005/425.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to England and Wales and Northern Ireland, enables the Commissioners for Her Majesty's Revenue and Customs ("HMRC") and officers of HMRC to exercise certain functions under the Crime (International Co-operation) Act 2003. That Act made provision for co-operation with other countries in respect of criminal investigations and proceedings ("mutual legal assistance").

The Criminal Justice and Immigration Act 2008 amended the powers contained in the Commissioners for Revenue and Customs Act 2005, and removed a restriction to HMRC's powers with respect to mutual legal assistance. The historic restriction limited HMRC's ability to send and receive requests for mutual legal assistance in its own right (acting as a "Central Authority") to Customs matters only.

This Order will enable HMRC to act as a Central Authority in relation to any relevant offence and allow officers of HMRC to exercise certain functions under the 2003 Act. A relevant offence is defined in article 2 of the Order.

This Order revokes the Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2005.

A full impact assessment has not been produced for this instrument, as no, or no significant impact on the private, public or voluntary services is foreseen.

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£4.00

UK201310293 11/2013 19585

<http://www.legislation.gov.uk/id/uksi/2013/2733>

ISBN 978-0-11-110539-9



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