

**EXPLANATORY MEMORANDUM TO
THE CRIME AND COURTS ACT 2013 (APPLICATION AND MODIFICATION
OF CERTAIN ENACTMENTS) ORDER 2014**

2014 No. 1704

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 This Order applies, with modifications, certain enactments which confer powers on a constable or immigration officer 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 are the Police and Criminal Evidence Act 1984, the Anti-Social Behaviour Act 2003, the Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Savings Provisions) Order 2013, the Immigration Act 1971 and the Immigration and Asylum Act 1999. This Order also revokes the Serious Organised Crime and Police Act 2005 (Application and Modification of Certain Enactments to Designated Staff of SOCA) Order 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Crime and Courts Act 2013 established the National Crime Agency (“NCA”) and abolished the Serious Organised Crime Agency (“SOCA”). Sections 9(2) and 10(1) of the 2013 Act enables 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 The 2013 Act further provided the Serious Organised Crime and Police Act 2005 (Application and Modification of Certain Enactments to Designated Staff of SOCA) Order 2006 (“the 2006 Order”) would continue to have effect in relation to NCA officers subject to specified modifications. The 2006 Order as modified by the 2013 Act enabled equivalent ranked NCA officers acting by virtue of a designation to exercise the powers conferred in the enactment modified by the 2006 Order.

4.3 However, since the enactment of the 2013 Act, changes to police and immigration officers’ powers concerning the handling of biometric data have been made as a consequence of the commencement of various provisions of the Protection of Freedoms Act 2012 (“POFA”). The 2006 Order (as modified by the 2013 Act) does not reflect these changes. To enable designated NCA officers to exercise their powers in accordance with the POFA requirements, the 2006 Order needs to be replaced by a new Order which applies those POFA requirements in respect of designated NCA officers.

4.4 This Order is made under powers contained in paragraphs 27 and 29 of Schedule 5 to the 2013 Act, and in paragraph 7(1)(b) of Schedule 8 to that Act. These powers allow a relevant national authority to make an order in consequence of designated officers having operational powers (that is, for example, powers of the police and immigration officers).

5. Territorial Extent and Application

5.1 This instrument applies to all 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 immigration officer 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 a Chief Immigration Officer, 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 No consultation was conducted.

9. Guidance

9.1 No guidance is necessary in connection with this instrument.

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 small business.

12. Monitoring and review

12.1 The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly.

13. Contact

13.1 Any enquiries about the contents of this memorandum should be addressed to the National Crime Agency Oversight Unit, Home Office, 6th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, telephone: 02070356917.