

**EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (APPLICATION TO
REVENUE AND CUSTOMS) ORDER 2015**

SI 2015 No. 1783

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 The effect of this instrument is to apply certain police powers contained in provisions of the Police and Criminal Evidence Act 1984, c.60 (PACE) to HMRC, subject to modifications made in the articles to the order. This order consolidates existing legislation into one place by revoking previous orders.

2.2 The order revokes the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 2007, SI 2007/3175, and the orders that have amended that order.

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

None.

4. Legislative Context

4.1 The Order implements amendments (see section 7) and consolidates SI 2007/3175, SI 2010/360 and SI 2014/788

5. Territorial Extent and Application

5.1 SI 2015/1783 applies to England and Wales.

6. European Convention on Human Rights

The Order is subject to the negative resolution procedure and does not amend primary legislation; no statement is required.

7. Policy background

- *What is being done and why*

7.1 HMRC is responsible for investigating suspected crime involving any of its functions. To do this effectively it needs powers that are modern and efficient. The powers must also be proportionate with appropriate

safeguards for citizens. The generally used powers for investigating crime are those in PACE 1984 (as amended). These provide the powers and safeguards that Parliament considers generally appropriate for investigating crime.

- 7.2 HMRC has been using PACE powers since 2007. The powers HMRC has access to include the standard tools of criminal investigation such as search warrants, powers of arrest and orders requiring the production of information. Applying PACE 1984 so that they can be used for all its functions gives HMRC a single set of criminal investigation powers.
- 7.3 It gives HMRC the tools it needs to investigate criminal activity against all its functions, such as VAT and corporation tax, more efficiently. But the use of the powers will be subject to the safeguards that apply to criminal investigations generally.
- 7.4 Responses to a 17 January 2007 consultation paper, which extended the use of PACE powers to former Inland Revenue matters included comments about ensuring proper safeguards being put in place. Following subsequent amendments only a few relatively minor matters remain excluded from PACE protections and there now seems no good reason for this.
- 7.5 The safeguards in place are HMRC will only use PACE powers in criminal investigations and these powers will only be used by officers who are trained and authorised to use them.
- 7.6 HMRC has also set out how criminal investigations work is organised on its internet site, including which officers are entitled to use the powers and how use of the powers is authorised.
- 7.7 Other changes being introduced to the Order are
 - 7.7.1 clarifying the legal vires that allows HMRC officers to take arrested persons to border force or police custody by modifying, as appropriate, the definitions of police station and designated police station.
 - 7.7.2 providing HMRC officers with an additional power to arrest persons for failing to answer police bail.
 - 7.7.3 removing the exclusion of PACE powers and PACE safeguards from those few remaining HMRC functions listed in the Commissioners for Revenue and Customs Act 2005, schedule 1 (former Inland Revenue tax etc. functions).
 - 7.7.4 replacing references to 'Director Detection' (a post that no longer exists) with 'Commissioners'.

- **Consolidation**

7.8 SI 2015/1783 for England and Wales, repeals SI 2007/3175, 2010/360 and 2014/788.

8. Consultation outcome

8.1 As there is no impact on business interaction with HMRC, no consultation has been undertaken.

9. Guidance

9.1 The Order applies to officers of HM Revenue and Customs who are authorised to use criminal investigation powers. Internal guidance will be updated and relevant training will be given, where necessary, to the officers who will use the powers in this Order.

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 Order.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The powers and procedures provided by this Order will be monitored by HM Revenue and Customs to ensure they remain aligned to wider criminal justice procedure, especially in the light of any substantive changes to PACE 1984.

13. Contact

Email: criminaljustice.enquiries@hmrc.gsi.gov.uk with any queries regarding this instrument.