

SCHEDULES

SCHEDULE 21

Section 55

POWERS OF IMMIGRATION OFFICERS: FURTHER PROVISION

PART 1

GENERAL

Police Act 1997

- 1 The Police Act 1997 is amended as follows.
- 2 (1) Section 93 (authorisations to interfere with property etc) is amended in accordance with this paragraph.
 - (2) In subsection (1B), after “Customs” insert “, an immigration officer”.
 - (3) In subsection (3)—
 - (a) in paragraph (d), omit the final “or”;
 - (b) after paragraph (d) insert—
 - “(da) if the authorising officer is within subsection (5)(ha), by an immigration officer;”.
 - (4) In subsection (4)—
 - (a) in the words after paragraph (b), for “it” substitute “the conduct”;
 - (b) after “1979” insert “or, where the authorising officer is within subsection (5) (ha), any of the offences is an immigration or nationality offence”.
 - (5) In subsection (5)(h), omit “or”.
 - (6) After subsection (6B), insert—
 - “(6C) For the purposes of this section, an offence is an immigration or nationality offence if conduct constituting the offence—
 - (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
 - (b) is undertaken for the purposes of, or otherwise in relation to, any of these enactments—
 - (i) the British Nationality Act 1981;
 - (ii) the Hong Kong Act 1985;
 - (iii) the Hong Kong (War Wives and Widows) Act 1996;
 - (iv) the British Nationality (Hong Kong) Act 1997;
 - (v) the British Overseas Territories Act 2002;

Status: This is the original version (as it was originally enacted).

(vi) an instrument made under any of those Acts.”.

3 In section 94 (authorisations given in absence of authorising officer), in subsection (2), after paragraph (f) insert—

“(fa) where the authorising officer is within paragraph (ha) of that subsection, by a senior official (within the meaning of the Regulation of Investigatory Powers Act 2000) in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated by the Secretary of State for the purposes of this section;”.

4 In section 107 (supplementary provisions relating to Commissioners), in subsection (4), after paragraph (c) insert—

“(d) the functions of the Secretary of State relating to immigration.”.

Regulation of Investigatory Powers Act 2000

5 The Regulation of Investigatory Powers Act 2000 is amended as follows.

6 In section 32(6) (authorisation of intrusive surveillance: senior authorising officers), in paragraph (m), omit the final “and”.

7 (1) Section 33 (rules for grant of authorisations) is amended in accordance with this paragraph.

(2) After subsection (4) insert—

“(4ZA) A senior official who is a senior authorising officer by virtue of a designation by the Secretary of State under section 32(6)(ma) shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an immigration officer.”.

(3) In subsection (5)(a), after “Customs” insert “, an immigration officer”.

8 (1) Section 34 (grant of authorisations in the senior officer’s absence) is amended in accordance with this paragraph.

(2) In subsection (1)(a), after “Customs” insert “or an immigration officer”.

(3) In subsection (2)(a), after “Customs” insert “or the Secretary of State”.

(4) In subsection (4), after paragraph (l) insert—

“(la) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation under section 32(6)(ma), if the person is a senior official in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated for the purposes of this paragraph by the Secretary of State as a person entitled so to act in an urgent case;”.

9 (1) Section 35 (notification of authorisations for intrusive surveillance) is amended in accordance with this paragraph.

(2) In subsection (1), after “Customs” insert “, immigration”.

(3) In subsection (10)—

(a) in the words before paragraphs (a) to (c), after “Customs” insert “, immigration”;

Status: This is the original version (as it was originally enacted).

- (b) in paragraph (b), for “by the Commissioners for Her Majesty’s Revenue and Customs” substitute “under section 32(6)(m) or (ma)”.
- 10 (1) Section 36 (approval required for authorisations to take effect) is amended in accordance with this paragraph.
- (2) In subsection (1)—
- (a) in paragraph (d) omit “or”;
- (b) after paragraph (d) insert—
- “(da) an immigration officer; or”.
- (3) In subsection (6)—
- (a) in paragraph (g) omit the final “and”;
- (b) after paragraph (g) insert—
- “(ga) where the authorisation was granted by a senior official designated under section 32(6)(ma) or entitled to act for such an official under section 34(4)(la), the senior official designated under section 32(6)(ma); and”.
- 11 In section 37 (quashing of authorisations), in subsection (1)—
- (a) in paragraph (d) omit “or”;
- (b) after paragraph (d) insert—
- “(da) an immigration officer; or”.
- 12 In section 40 (information to be provided to Surveillance Commissioners), in subsection (1)—
- (a) in paragraph (d) omit the final “and”;
- (b) after paragraph (d) insert—
- “(da) every immigration officer and every other official in the department of the Secretary of State by whom functions relating to immigration are exercisable, and”.
- 13 In section 46 (restrictions on authorisations extending to Scotland), in subsection (3)—
- (a) in paragraph (e) omit the final “and”;
- (b) after paragraph (e) insert—
- “(ea) the department of the Secretary of State by whom functions relating to immigration are exercisable; and”.

Proceeds of Crime Act 2002

- 14 The Proceeds of Crime Act 2002 is amended as follows.
- 15 In section 41A (restraint orders: power to retain seized property etc), in subsection (3), after paragraph (c) insert—
- “(ca) an immigration officer;”.
- 16 (1) Section 47C (power to seize property) is amended in accordance with this paragraph.
- (2) Subsection (6) is amended as follows—
- (a) after paragraph (a) insert—
- “(aa) where applicable, in accordance with subsection (6A) or (6B).”;

Status: This is the original version (as it was originally enacted).

(b) for “(b) is exercisable” substitute—

“(6A) The power conferred by this section is exercisable”.

(3) After subsection (6A) insert—

“(6B) The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.”.

(4) After subsection (7) insert—

“(8) Relevant nationality enactment” means any enactment in—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.”.

17 In section 47G (“appropriate approval”), in subsection (3), after paragraph (a) insert—

“(aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

18 In section 47M (further detention in other cases), in subsection (3), after paragraph (a) insert—

“(aa) an immigration officer;”.

19 In section 72 (serious default), in subsection (9), after paragraph (e) insert—

“(ea) if the person in default was an immigration officer, the compensation is payable by the Secretary of State;”.

20 In section 120A (restraint orders: power to retain seized property etc), in subsection (3), after paragraph (b) insert—

“(ba) an immigration officer;”.

21 (1) Section 127C (power to seize property) is amended in accordance with this paragraph.

(2) Subsection (6) is amended as follows—

(a) after paragraph (a) insert—

“(aa) where applicable, in accordance with subsection (6A) or (6B).”;

(b) for “(b) is exercisable” substitute—

“(6A) The power conferred by this section is exercisable”.

Status: This is the original version (as it was originally enacted).

(3) After subsection (6A) insert—

“(6B) The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.”.

(4) After subsection (7) insert—

“(8) Relevant nationality enactment” means any enactment in—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.”.

22 In section 127G (“appropriate approval”), in subsection (3), after paragraph (a) insert—

“(aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

23 In section 127M (further detention in other cases: Scotland), in subsection (3), after paragraph (a) insert—

“(aa) an immigration officer;”.

24 In section 190A (restraint orders: power to retain seized property), in subsection (3), after paragraph (c) insert—

“(ca) an immigration officer;”.

25 (1) Section 195C (power to seize property) is amended in accordance with this paragraph.

(2) Subsection (6) is amended as follows—

(a) after paragraph (a) insert—

“(aa) where applicable, in accordance with subsection (6A) or (6B).”;

(b) for “(b) is exercisable” substitute—

“(6A) The power conferred by this section is exercisable”.

(3) After subsection (6A) insert—

“(6B) The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the

Status: This is the original version (as it was originally enacted).

United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.”.

(4) After subsection (7) insert—

“(8) Relevant nationality enactment” means any enactment in—

- (a) the British Nationality Act 1981,
 (b) the Hong Kong Act 1985,
 (c) the Hong Kong (War Wives and Widows) Act 1996,
 (d) the British Nationality (Hong Kong) Act 1997,
 (e) the British Overseas Territories Act 2002, or
 (f) an instrument made under any of those Acts.”.

26 In section 195G (“appropriate approval”), in subsection (3), after paragraph (a) insert—

- “(aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

27 In section 195M (further detention in other cases: Northern Ireland), in subsection (3), after paragraph (a) insert—

- “(aa) an immigration officer;”.

28 In section 297A (forfeiture notice), in subsection (6), after paragraph (a) insert—

- “(aa) an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

29 In section 297F (release of cash subject to forfeiture notice), in subsection (4), after “Customs,” insert “immigration officer;”.

30 In section 351 (supplementary provision about production orders), in subsection (5) —

- (a) after “customs officer” (in the first place) insert “or an immigration officer”;
 (b) after “customs officer” (in the second place) insert “or immigration officer”.

31 In section 352 (search and seizure warrants), in subsection (5)—

- (a) in paragraph (a), after “a customs officer” insert “or an immigration officer”;
 (b) in paragraph (c), after “Customs” insert “or an immigration officer”.

32 In section 353 (requirements where production order not available), in subsection (10)—

- (a) in paragraph (a)—
 (i) for “investigator or” substitute “investigator;”;
 (ii) after “customs officer” insert “or an immigration officer;”
 (b) in paragraph (c)—
 (i) for “investigator or” substitute “investigator;”;
 (ii) after “Customs” insert “or an immigration officer”.

Status: This is the original version (as it was originally enacted).

- 33 In section 356 (further provisions: civil recovery and detained cash), in subsection (11)(b), after “Customs” insert “or an immigration officer”.
- 34 In section 357 (disclosure orders), in subsection (8)—
- (a) in paragraph (c), omit the final “and”;
 - (b) at the end of paragraph (d), insert “; and—
 - (e) in relation to a confiscation investigation carried out by an immigration officer, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland or any specified person.”.
- 35 (1) Section 369 (supplementary provision about customer information orders) is amended in accordance with this paragraph.
- (2) In subsection (5)—
 - (a) after “customs officer” (in the first place) insert “or an immigration officer”;
 - (b) after “customs officer” (in the second place) insert “or immigration officer”.
 - (3) In subsection (7), after “customs officer” insert “or an immigration officer”.
- 36 In section 375 (supplementary provision about account monitoring orders), in subsection (4)—
- (a) after “customs officer” (in the first place) insert “or an immigration officer”;
 - (b) after “customs officer” (in the second place) insert “or immigration officer”.
- 37 (1) Section 377 (code of practice of Secretary of State etc) is amended in accordance with this paragraph.
- (2) In subsection (1), after paragraph (e) insert—
 - “(f) immigration officers.”.
 - (3) In subsection (5), for “(e)” substitute “(f)”.
- 38 In section 412 (interpretation of Chapter 3 of Part 8 — Scotland), in the provision which relates to references to a “constable”, after “customs and excise officer” insert “and to an immigration officer”.

UK Borders Act 2007

- 39 In section 24 of the UK Borders Act 2007 (seizure of cash by immigration officers under Proceeds of Crime Act 2002), in subsection (2)(c), for “of the rank of at least Assistant Director” substitute “at or above the grade which is designated by the Secretary of State as being equivalent to the rank of police inspector”.

Saving of provisions of Borders, Citizenship and Immigration Act 2009

- 40 The amendments made to any other Act by section 55 or this Schedule do not prevent sections 1(4), 3(5), 7(5) and 11(4) of the Borders, Citizenship and Immigration Act 2009 from applying to the amended Act (including those provisions of that Act as amended by section 55 or this Schedule).

Status: This is the original version (as it was originally enacted).

PART 2

MODIFICATION OF APPLIED ENACTMENTS

Criminal Justice and Public Order Act 1994

- 41 Paragraphs 42 and 43 have effect for the purposes of the application of sections 136 to 139 of the Criminal Justice and Public Order Act 1994 to immigration officers by virtue of section 55(7).
- 42 A reference to a constable (including a reference to a constable of a police force in England and Wales, a constable of a police force in Scotland or a constable of a police force in Northern Ireland) is to be treated as a reference to an immigration officer.
- 43 (1) This paragraph has effect in relation to the application of section 138 of the 1994 Act to immigration officers.
- (2) Subsection (1B) is to be treated as if it provided as follows—
- “(1B) Where a person is arrested under subsection (2) of the principal section but not charged in connection with an offence, subsections (2) to (9) of section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor) apply with the following modifications—
- (a) omit the references to “other premises or place” in subsections (2) and (6);
- (b) the right under subsection (2) arises when the person is arrested;
- (c) subsection (6) is to be read as requiring that the person be informed of the rights under section 25A(2) and (3) on being arrested.”.
- (3) In subsection (2), the references to the 1995 Act and to section 14(1) of that Act are to be treated as references to the Criminal Law (Consolidation) (Scotland) Act 1995 (the “consolidation Act”) and to section 24(1) of that Act.
- (4) Subsection (2A) is to be treated as if provided as follows—
- “(2A) Those provisions are—
- (a) section 24(2) to (8A) (detention and questioning at police station);
- (b) sections 24A and 24B (extension of period of detention under section 24B);
- (c) section 25 (right to have someone informed when detained);
- (d) section 25A(2) to (9) (right of access to solicitor).”.
- (5) In subsection (6) the reference to the 1995 Act is to be treated as a reference to the consolidation Act.
- (6) In subsection (7)—
- (a) the reference to section 14 is to be treated as a reference to section 24 of the consolidation Act;
- (b) the reference to subsections (6) and (9) of section 14 is to be treated as a reference to subsections (5) and (8) of section 24.
- (7) In subsection (8)—
- (a) the reference to section 15 is to be treated as a reference to section 25 of the consolidation Act;

Status: This is the original version (as it was originally enacted).

- (b) paragraph (a) is to be treated as if it provided as follows—
- “(a) in subsection (1)—
- (i) the words “other premises or place” (in both places) are to be treated as if they referred to a police station;
 - (ii) the reference in paragraph (a) to other premises is to be treated as a reference to a police station;
 - (iii) paragraph (b) does not apply;
 - (iv) the references in paragraph (c)(i) and (iii) to the right under subsection (1)(b) are to be treated as references to the right under section 25(1) to have someone informed when detained;
 - (v) the references in paragraph (c)(ii) to subsection (1)(b) is to be treated as a reference to section 25(1);
 - (vi) the reference in paragraph (c)(iii) to subsection (2) is to be treated as a reference to the words in section 25(1) beginning “and the person shall be informed”;
 - (vii) the reference to subsection (4) is to be treated as a reference to section 25(2).”

- (8) In subsection (9)—
- (a) the reference to section 15A is to be treated as a reference to section 25A;
 - (b) paragraph (a) is to be treated as if it provided as follows—
 - “(a) the words “other premises or place” in subsections (2) and (6) are to be treated as referring to a police station;”;
 - (c) in paragraph (b)(iii) the reference to section 15A(2) and (3) is to be treated as a reference to section 25A(2) and (3).

PART 3

SCOTLAND

Criminal Law (Consolidation) (Scotland) Act 1995

- 44 The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- 45 (1) Section 24 (detention and questioning at office of Revenue and Customs) is amended in accordance with this paragraph.
- (2) In the title of the section, for “**at office of Revenue and Customs**” substitute “: **Revenue and Customs, immigration and nationality offences**”.
- (3) In subsection (5)—
- (a) in paragraph (a)—
 - (i) after “Customs” insert “(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b))”;
 - (ii) after “premises” insert “(in either of those cases)”;
 - (b) in paragraph (d)—
 - (i) after “subsection (1)” insert “or (1A)”;

Status: This is the original version (as it was originally enacted).

- (ii) after “Customs” insert “(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b))”;
 - (iii) after “premises” insert “(in either of those cases)”.
- 46 In section 25 (right to have someone informed when detained), in subsection (1)—
- (a) in the words before paragraph (a)—
 - (i) after “Customs” (in the first place) insert “(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b))”;
 - (ii) after “place” (in the first place) insert “(in either of those cases)”;
 - (iii) after “Customs” (in the second place) insert “, police station”;
 - (b) in paragraph (a), after “Customs” insert “, police station”.
- 47 (1) Section 25A (right of suspects to have access to a solicitor) is amended in accordance with this paragraph.
- (2) In subsection (1)—
- (a) in paragraph (b)—
 - (i) for “an officer” substitute “an officer of Revenue and Customs”;
 - (ii) omit the final “or”;
 - (b) in paragraph (c), for “an officer” (in each place) substitute “an officer of Revenue and Customs”;
 - (c) after paragraph (c) insert—
 - “(d) attends voluntarily at a police station or any other premises or place for the purpose of being questioned by an immigration officer on suspicion of having committed an immigration offence or nationality offence; or
 - (e) is arrested (but not charged) by an immigration officer in connection with an immigration offence or nationality offence and is being detained at a police station or any other premises or place for the purpose of being questioned by an immigration officer in connection with the offence.”.
- (3) In subsection (2)(b), after “Customs” insert “, police station”.
- (4) In subsection (6)(a), after “Customs” insert “, police station”.
- 48 In section 26B (interpretation of Part 3 etc)—
- (a) in subsection (1), for the definition of “officer” substitute—
 - ““officer” means—
 - (a) for the purposes of sections 24 to 25A—
 - (i) an officer of Revenue and Customs (in relation to detention by, attendance for the purpose of being questioned by, or arrest by, such an officer), or
 - (ii) an immigration officer (in relation to detention by, attendance for the purpose of being questioned by, or arrest by, such an officer); and
 - (b) for the purposes of the other provisions of this Part of this Act, an officer of Revenue and Customs.”;
 - (b) in subsection (2), for the words from “this Act” to “had authority” substitute “this Act—

Status: This is the original version (as it was originally enacted).

- (a) a certificate of the Commissioners for Her Majesty's Revenue and Customs that an officer of Revenue of Customs, or
- (b) a certificate of the Secretary of State that an immigration officer,

had authority”.

- 49 (1) The amendments made by section 55(10), and paragraph 45 of this Schedule, do not affect section 24 of the 1995 Act as it applies by virtue of section 26(8) of that Act in respect of a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).
- (2) The amendments made by paragraph 46 of this Schedule do not affect section 25(1) of the 1995 Act as it applies by virtue of section 26(9) of that Act in respect of a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).

Consequential amendments relating to legal aid in Scotland

- 50 (1) In section 8A of the Legal Aid (Scotland) Act 1986 (power to provide for criminal advice and assistance to be available for certain clients without reference to the financial limits), in subsection (2)(b), after “offences” insert “or immigration or nationality offences”.
- (2) In regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (criminal advice and assistance: automatic availability in certain circumstances), in paragraph (b), after “offences” insert “or immigration or nationality offences”.
- (3) The amendment of regulation 8 by sub-paragraph (2) above does not prevent the provision made by that amendment from being amended or revoked by exercise of the power conferred by section 8A of the Legal Aid (Scotland) Act 1986 or any other power.
- (4) Regulation 3(1)(b) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (duty solicitors: advice for suspects) applies in relation to a person to whom section 25A of the 1995 Act applies by virtue of its amendment by paragraph 46 of this Schedule; and, accordingly, in regulation 3(1)(b), after “customs” insert “, immigration and nationality”.
- (5) But regulation 3(1)(b) does not have effect in relation to such a person in a case where—
- (a) the person is detained under section 24 of the 1995 Act, and the period of detention began before the time at which paragraph 46 of this Schedule comes into force;
 - (b) the person attends as mentioned in section 25A(1)(d) of the 1995 Act, and the period of attendance began before that time; or
 - (c) the person is arrested and detained as mentioned in section 25A(1)(e) of that Act, and the arrest occurred before that time.
- (6) Sub-paragraph (4) does not affect the application of regulation 3(1)(b) in relation to a person to whom section 25A of the 1995 Act applies otherwise than by virtue of its amendment by paragraph 47 of this Schedule.

Status: This is the original version (as it was originally enacted).

- (7) Sub-paragraphs (4) to (6) do not prevent regulation 3(1)(b) from being amended or revoked by exercise of any power conferred by the Legal Aid (Scotland) Act 1986 or any other power.
- (8) In this paragraph “1995 Act” means the Criminal Law (Consolidation) (Scotland) Act 1995.