
STATUTORY INSTRUMENTS

2013 No. 1542

**The Police and Criminal Evidence Act 1984
(Application to immigration officers and designated
customs officials in England and Wales) Order 2013**

PART 3

**INVESTIGATIONS CONDUCTED, AND PERSONS
DETAINED, BY DESIGNATED CUSTOMS OFFICIALS**

Application of the Police and Criminal Evidence Act 1984

12.—(1) This article applies in relation to England and Wales.

(2) Subject to the modifications in paragraphs (3) and (4) and articles 13 to 31, the provisions of the Act specified in Part 1 of Schedule 2 to this Order shall apply in relation to investigations conducted by designated customs officials and in relation to persons detained by designated customs officials.

(3) Those provisions shall apply in relation to investigations conducted by designated customs officials and to persons detained by designated customs officials as if the words and phrases that are contained in the provisions specified in Column 1 of Part 2 of Schedule 2 to this Order were replaced by the substitute words and phrases in Column 2 of that Part.

(4) Where in those provisions any thing is to be done by a constable of a rank specified in Column 1 of Part 3 of Schedule 2 to this Order, that thing shall be done by a designated customs official of at least the grade specified in the corresponding entry of Column 2 of that Part, and the Act shall be construed accordingly.

(5) Where a person is detained by the police under Part IV of the Act, in connection with an investigation conducted by designated customs officials, the provisions of the Act apply subject to paragraphs (6) to (8).

(6) The following references are to be treated as including references to a designated customs official—

- (a) in section 39(2) and (3), “a police officer”, “an officer” and “the officer”;
- (b) in sections 41(2)(c), 43(1), 44(1) and the first reference in section 118(2), “constable”.

(7) In the following provisions, the references to transferring a person to another police area are to be treated as including references to transferring the person to a customs office—

- (a) section 42(3);
- (b) section 43(13).

(8) The reference to “police detention” in section 38(2) and (3) is to be treated as including a reference to customs detention.

(9) In the Act as it applies by virtue of this article—

- (a) “designated customs official” has the same meaning as in section 38 of the Borders, Citizenship and Immigration Act 2009, and
- (b) an expression which is defined in this Order has the same meaning as in this Order.

Exceptions

13.—(1) Nothing in the application of the Act by virtue of article 12 confers on a designated customs official any power—

- (a) to charge a person with any offence; or
 - (b) to release a person on bail.
- (2) Accordingly, in the Act as it applies by virtue of article 12—
- (a) references to a person being charged with an offence are to a person being charged with an offence by a constable, and
 - (b) references to a person being released on bail are to a person being released on bail by a constable.

Detention

14.—(1) Nothing in the application of the Act by virtue of article 12 shall prevent a detained person from being transferred between—

- (a) Revenue and Customs detention and customs detention;
- (b) police detention and customs detention;
- (c) customs detention and police detention.

(2) Subject to the modification in article 24(2), where a person is transferred from Revenue and Customs detention to customs detention, any period required to be calculated for the purposes of Part IV of the Act, as applied by article 12(2), is to be calculated as if the period for which the person was in Revenue and Customs detention was a period of customs detention.

(3) Subject to the modification in article 24(2), where a person is transferred from police detention to customs detention, any period required to be calculated for the purposes of Part IV of the Act as applied by article 12(2) is to be calculated as if the period for which the person was in police detention was a period of customs detention.

(4) Where a person is transferred from customs detention to police detention, any period required to be calculated for the purposes of Part IV of the Act is to be calculated as if the period for which the person was in customs detention was a period of police detention.

(5) In paragraph (4), the reference to a period of customs detention includes any period treated as a period of customs detention by virtue of paragraph (2) or by virtue of paragraph (3).

(6) The power of a custody officer to authorise a person to be kept in customs detention after they have been charged with an offence under section 38(2) of the Act applies only where that person has been charged with an offence against section 5(2) of the Misuse of Drugs Act 1971 (restriction of possession of controlled drugs)(1) or a drug trafficking offence and where that person is to be detained for the purpose of bringing him before a magistrates’ court to request his remand to customs detention under section 152(1) of the Criminal Justice Act 1988 (remand of suspected drug offenders to detention)(2).

(1) 1971 c. 38.

(2) 1988 c. 33; Section 152 has been amended by section 8 of the Drugs Act 2005 (c.17).

(7) In this article, “drug trafficking offence” has the meaning given to it by section 151(5) of the Criminal Justice Act 1988 (customs and excise power of arrest)(3).

(8) In this article, “police detention” has the meaning given to it by section 118(2) of the Act, as modified by Article 12(6)(b).

Use of reasonable force

15. Where any provision of the Act as applied by article 12—

- (a) confers a power on a designated customs official, and
- (b) does not provide that the power may only be exercised with the consent of some person other than the designated customs official upon whom the power is conferred,

the designated customs official may use reasonable force, if necessary, in the exercise of the power.

Arrest without warrant

16. Section 24(2) of the Act, as applied by article 12, does not limit any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon a designated customs official the power to arrest or detain a person.

Search of persons found on premises

17.—(1) This article applies where a designated customs official searches premises in reliance on a warrant under section 8 of, or paragraph 12 of Schedule 1 to, the Act, as applied by article 12.

(2) The designated customs official may search any person found on the premises where the designated customs official has reasonable cause to believe that person to be in possession of material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence for which the warrant was issued.

(3) The power to search conferred by paragraph (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering any such material.

(4) The power to search conferred by paragraph (2) is not to be construed as authorising a designated customs official to require a person to remove any of his clothing, other than an outer coat, jacket or gloves but they do authorise a search of a person’s mouth.

(5) No person may be searched except by a person of the same sex.

Seizure and retention of things found upon search

18.—(1) The power of a designated customs official to seize and retain evidence found upon a lawful search of a person or premise under section 19 of the Act, as applied by article 12, shall have effect notwithstanding that the offence to which the evidence relates does not relate to a general customs or customs revenue matter.

(2) Nothing in the application of the Act by virtue of article 12 prevents any thing lawfully seized by a person under any enactment from being accepted and retained by a designated customs official.

(3) Section 21 of the Act (access and copying), as applied by article 12, shall not apply to any thing seized as liable to forfeiture under the customs and excise Acts.

(3) 1988 c. 33; Section 151 has been amended by sections 456, 457 and paragraphs 1, 17(1) and 17(3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

Modification of section 8 of the Act (power of justice of the peace to authorise entry and search of premises)

19. Section 8 of the Act, as applied by article 12, has effect as if for subsection (7) there were substituted—

“(7) Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English Courts in Scotland) shall apply to a warrant issued on the application of a designated customs official under this section by virtue of section 23 of the Borders, Citizenship and Immigration Act 2009(4).”.

Modification of section 18 of the Act (entry and search after arrest)

20. Section 18 of the Act, as applied by article 12, has effect as if for subsection (8) there were substituted—

“(8) If the person who was in occupation or control of the premises at the time of the search is in police detention or customs detention at the time the record is made, the officer shall ensure that the record is included as part of the person’s custody record.”.

Modification of section 30 of the Act (arrest elsewhere than at a police station)

21. Section 30 of the Act(5), as applied by article 12, has effect as if the references to release on bail under section 30A in subsections (1B), (7A), (10) and (12) were omitted.

Modification of section 35 of the Act (designated police stations)

22. Section 35 of the Act(6), as applied by article 12, has effect as if for that section there were substituted—

“35 Designated Police Stations

(1) The Secretary of State shall designate the customs offices which, subject to section 30(3) and (5), are to be the offices to be used for the purposes of detaining arrested persons.

(2) The Secretary of State’s duty under subsection (1) above is to designate customs offices appearing to the Secretary of State to provide enough accommodation for that purpose.

(3) Without prejudice to section 12 of the Interpretation Act 1978 (continuity of duties) the Secretary of State—

- (a) may designate a customs office which was not previously designated; and
- (b) may direct that a designation of an office previously made shall cease to operate.

(4) In this Act, as it has effect by virtue of the Police and Criminal Evidence Act 1984 (Application to the UK Border Agency and Border Force in England and Wales) Order 2013, “designated customs office” means a customs office designated under this section (as modified by that Order).”.

(4) 2009 c. 11.

(5) Section 30 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 4(1) to (6); and the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraph 5(1) and (2). There is another amendment not relevant to this Order.

(6) Section 35 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 6; and the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 101, Schedule 7, paragraphs 11 and 12.

Modification of section 36 of the Act (custody officers at police stations)

23. Section 36 of the Act(7), as applied by article 12, has effect as if for subsection (2) there were substituted—

- “(2) A custody officer for a designated customs office shall be appointed—
- (a) by the Secretary of State; or
 - (b) by such designated customs official as the Secretary of State may direct.”.

Modification of section 41 of the Act (limits on period of detention without charge)

24.—(1) Section 41 of the Act(8), as applied by article 12, has effect as if for subsection (2)(b) there were substituted—

- “(b) in the case of a person arrested outside England and Wales, shall be—
- (i) the time at which that person arrives at the customs office in England and Wales at which the offence for which the person was arrested is being investigated; or
 - (ii) the time 24 hours after the time of that person’s entry into England and Wales, whichever is the earlier.”.

(2) Section 41 of the Act, as applied by article 12, has effect as if for subsection (5) there were substituted—

- “(4A) Subsection (5) applies where,
- (a) a person is in customs detention at one customs office and the offence for which the person has been arrested is being investigated at another customs office; or
 - (b) a person is in police detention at a police station and the offence for which the person has been arrested is being investigated at a customs office; or
 - (c) a person is in Revenue and Customs detention and the offence for which the person has been arrested is being investigated at a customs office,

and the person is taken to the customs office where the offence is being investigated for the purpose of investigating that offence, without being questioned at the first customs office, police station or office of Revenue and Customs in order to obtain evidence in relation to it.

- (5) Where this subsection applies, the relevant time shall be—
- (a) the time 24 hours after he leaves the first customs office, the police station or the office of Revenue and Customs where he was detained; or,
 - (b) the time at which he arrives at the customs office where the offence is being investigated,

whichever is the earlier.”.

Modification of section 42 of the Act (authorisation of continued detention)

25. Section 42 of the Act(9), as applied by article 12, has effect as if for subsection (3) there were substituted—

(7) Section 36 of the Act was amended by the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 101, Schedule 7, paragraphs 11, 13(1) and (2); the Serious Organised Crime and Police Act 2005 (c.15), section 121(1), (4) and (5)(a); the Policing and Crime Act 2009 (c.26), section 112(1), Schedule 7, Part 13, paragraphs 123(1) and (3) and Schedule 8, Part 13; and the Police Reform and Social Responsibility Act 2011 (c.13), section 99, Schedule 16, Part 3, paragraphs 160 and 162.

(8) Section 41 of the Act was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 29(4)(b). There is another amendment not relevant to this Order.

(9) Section 42 of the Act was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 29(4)(b); the Criminal Justice Act 2003 (c.44), section 7; and the Serious Organised Crime Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43(1) and (7).

“(3) If it is proposed to transfer a person in customs detention to a police station or a customs office other than that in which the person is detained, the designated customs official determining whether or not to authorise keeping the person in detention under subsection (1) above shall have regard to the distance and time the journey would take.”.

Modification of section 43 of the Act (warrants of further detention)

26. Section 43 of the Act(**10**), as applied by article 12, has effect as if for subsection (13) there were substituted—

“(13) If it is proposed to transfer a person in customs detention to a police station or a customs office other than that in which the person is detained when the application for a warrant of further detention is made, the court hearing the application shall have regard to the distance and the time that the journey will take.”.

Modification of section 46 of the Act (detention after charge)

27. Section 46 of the Act(**11**), as applied by article 12, has effect as if for subsection (3) there were substituted—

“(3) If no magistrates’ court in that area is due to sit either on the date on which he is charged or on the next day, the custody officer at the customs office where he is kept in customs detention shall inform the designated officer for the area that there is a person in the area to whom subsection (2) applies.”.

Modification of section 50 of the Act (records of detention)

28.—(1) Section 50 of the Act(**12**), as applied by article 12, has effect as if for that section there were substituted—

“50 Records of detention

(1) The Secretary of State shall keep written records showing on an annual basis—

- (a) the number of persons kept in customs detention for more than 24 hours and subsequently released without charge;
- (b) the number of applications for warrants of further detention and the results of the applications; and
- (c) in relation to each warrant of further detention—
 - (i) the period of further detention authorised by it;
 - (ii) the period which the person named in it spent in customs detention on its authority; and
 - (iii) whether the person was charged or released without charge.

(2) The Secretary of State must publish information about the matters mentioned in subsection (1) above once in each calendar year and the published information must relate to the records of persons kept in customs detention in the preceding calendar year.”.

(2) The modification to section 50 of the Act, as applied by paragraph (1) above, shall have effect in relation to the period beginning with the day on which this Order comes into force and ending

(10) Section 43 of the Act was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 29(4)(b); the Criminal Justice Act 2003 (c.44), section 7; and the Serious Organised Crime Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43(1) and (8).

(11) Section 46 of the Act was amended by the Courts Act 2003(c.39), section 109(1), Schedule 8, paragraph 282.

(12) Section 50 of the Act was amended by the Police Act 1996 (c.16), section 103, Schedule 7, paragraph 35.

with 31 December 2013 as if it required records to be kept showing the information about the matters mentioned in subsection (1) for that period and, in relation to the duty to publish information in 2014, as if it required information to be published about persons kept in customs detention for that period.

Modification of section 54 of the Act (searches of detained persons)

29. Section 54 of the Act(**13**), as applied by article 12, has effect as if for subsection (6A) there was substituted—

“(6A) A person who is in custody at a customs office or is otherwise in customs detention may at any time be searched in order to ascertain whether he has anything with him which he could use for any of the purposes specified in subsection (4)(a) above.”.

Modification of section 55 of the Act (intimate searches)

30.—(1) Section 55 of the Act(**14**), as applied by article 12, has effect as if for subsection (14) there were substituted—

“(14) The Secretary of State must keep written records showing on an annual basis the information about searches carried out under this section by designated customs officials that is mentioned in subsection (15) below.

(14A) The Secretary of State must publish information about the records referred to in subsection (14) above once in each calendar year and the published information must relate to the records of searches carried out by designated customs officials under this section in the preceding calendar year.”.

(2) The modification to section 55 of the Act, as applied by paragraph (1) above, shall have effect in relation to the period beginning with the day on which this Order comes into force and ending with 31 December 2013 as if it required records to be kept showing the information about searches carried out by designated customs officials mentioned in subsection (15) for that period and, in relation to the duty to publish information in 2014, as if it required information to be published about searches carried out in that period.

Modification of section 64 of the Act (destruction of fingerprints and samples)

31. Section 64 of the Act(**15**), as applied by article 12, shall have effect as if it related only to samples taken from a person under section 62 (Intimate samples) of the Act as applied by virtue of that article.

(13) Section 54 of the Act was amended by the Criminal Justice Act 1988 (c.33), section 147; the Criminal Justice and Public Order Act 1994 (c.33), section 168(2), Schedule 10, paragraph 55; the Criminal Justice Act 2003 (c.44), section 147; and the Police and Justice Act 2006 (c.48), section 46(1), (6).

(14) Section 55 of the Act was amended by the Criminal Justice Act 1988 (c.33), section 170(1), Schedule 15, paragraphs 97 and 99; the Police Act 1996 (c.16), section 103, Schedule 7, paragraph 36; the Criminal Justice and Police Act 2001 (c.16), section 79; the Drugs Act 2005 (c.17), section 3; and the Policing and Crime Act 2009 (c.26), section 112(1) and (2), Schedule 7, Part 13, paragraph 123(1), (5) and Schedule 8, Part 13. There are other amendments not relevant to this Order.

(15) Section 64 of the Act was amended by the Criminal Justice Act 1988 (c.33), section 148; the Criminal Justice and Public Order Act 1994 (c.33), section 57(2); the Police Act 1996 (c.16), section 103, Schedule 7, Part 2, paragraph 37, and Schedule 9, Part 1; the Criminal Justice and Police Act 2001 (c.16), sections 82 and 137, Schedule 7, Part 2(1); and the Serious Organised Crime and Police Act 2005 (c.15), section 117 and 118. Section 64 will, on a date to be appointed, be repealed by the Protection of Freedoms Act 2012 (c.9), Schedule 10, Part 1.