



# Borders, Citizenship and Immigration Act 2009

## 2009 CHAPTER 11

### PART 1

#### BORDER FUNCTIONS

##### *Investigations and detention*

#### **22 Application of the PACE orders**

- (1) Subject as follows, the PACE orders—
  - (a) apply to criminal investigations conducted by designated customs officials and relating to a general customs matter or customs revenue matter as they apply to relevant investigations conducted by officers of Revenue and Customs, and
  - (b) apply to persons detained by designated customs officials as they apply to persons detained by officers of Revenue and Customs.
- (2) Each of the following is a PACE order for the purposes of this section—
  - (a) the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007 ([S.I. 2007/3175](#));
  - (b) the Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007 ([S.R. 2007/464](#)).
- (3) In the application of the PACE orders by virtue of this section—
  - (a) subject to the following provisions of this subsection, references in those orders to an officer of Revenue and Customs are to be read as references to a designated customs official;
  - (b) references in those orders to the Commissioners are to be read as references to—
    - (i) the Secretary of State in relation to general customs matters, or

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*Status: This is the original version (as it was originally enacted).*

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- (ii) the Director of Border Revenue in relation to customs revenue matters;
  - (c) references in those orders to Her Majesty’s Revenue and Customs or to Revenue and Customs are to be read as references to—
    - (i) the Secretary of State in so far as the Secretary of State has general customs functions,
    - (ii) the Director of Border Revenue, and
    - (iii) designated customs officials;
  - (d) references in those orders to an office of Revenue and Customs are to be read as references to an office of the UK Border Agency;
  - (e) references in those orders to a designated office of Revenue and Customs are to be read as references to a designated office of the UK Border Agency;
  - (f) references in those orders to a relevant indictable offence are to be read as references to an indictable offence that relates to a general customs matter or a customs revenue matter;
  - (g) references in those orders to a relevant investigation are to be read as references to a criminal investigation conducted by a designated customs official that relates to a general customs matter or a customs revenue matter;
  - (h) references in those orders to a person being in Revenue and Customs detention are to be read as references to a person being in UK Border Agency detention;
  - (i) references in those orders to an officer of Revenue and Customs of at least the grade of officer are to be read as references to a designated customs official of at least the grade of immigration officer or executive officer;
  - (j) references in those orders to an officer of Revenue and Customs of at least the grade of higher officer are to be read as references to a designated customs official of at least the grade of chief immigration officer or higher executive officer;
  - (k) references in those orders to an officer of Revenue and Customs of at least the grade of senior officer are to be read as references to a designated customs official of at least the grade of immigration inspector or senior executive officer;
  - (l) any other references in those orders to an officer of Revenue and Customs occupying a specified post or grade are to be read as references to the Secretary of State.
- (4) For the purposes of this section—
- (a) a person is in UK Border Agency detention if—
    - (i) the person has been taken to an office of the UK Border Agency after being arrested for an offence, or
    - (ii) the person is arrested at an office of the UK Border Agency after attending voluntarily at the office or accompanying a designated customs official to it,
 and is detained there or is detained elsewhere in the charge of a designated customs official, and
  - (b) “office of the UK Border Agency” means premises wholly or partly occupied by designated customs officials.
- (5) This section does not apply to the following provisions of the PACE orders—
- (a) in article 2(1) of the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007 ([S.I. 2007/3175](#)), the definitions of

- “the Commissioners”, “office of Revenue and Customs”, “relevant indictable offence” and “relevant investigation”;
- (b) article 2(2) of that order (Revenue and Customs detention);
  - (c) article 7 of that order (restriction on other powers to apply for production of documents);
  - (d) article 19 of that order (authorisation);
  - (e) in article 2(1) of the Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007 ([S.R. 2007/464](#)), the definitions of “the Commissioners”, “office of Revenue and Customs”, “relevant indictable offence” and “relevant investigation”;
  - (f) article 2(2) of that order (Revenue and Customs detention);
  - (g) article 7 of that order (restriction on other powers to apply for production of documents);
  - (h) article 15 of that order (authorisation).
- (6) A person may be transferred—
- (a) between UK Border Agency detention and Revenue and Customs detention;
  - (b) between Revenue and Customs detention and UK Border Agency detention;
  - (c) between UK Border Agency detention and police detention;
  - (d) between police detention and UK Border Agency detention.
- (7) The references to police detention in subsection (6)—
- (a) in relation to England and Wales, are to be construed in accordance with the Police and Criminal Evidence Act 1984 ([c. 60](#));
  - (b) in relation to Northern Ireland, are to be construed in accordance with the Police and Criminal Evidence (Northern Ireland) Order 1989 ([S.I. 1989/1341 \(N.I. 12\)](#)).
- (8) Expressions used in this section that are defined in a PACE order have the same meaning as in that PACE order.
- (9) This section does not affect the generality of sections 1(4), 3(5), 7(5) and 11(4) (construction of statutory etc. references to the Commissioners for Her Majesty’s Revenue and Customs, officers of Revenue and Customs and Her Majesty’s Revenue and Customs).

## **23 Investigations and detention: England and Wales and Northern Ireland**

- (1) The Secretary of State may by order provide for any provision of an enactment listed in subsection (2) that relates to investigations of offences conducted by police officers or to persons detained by the police to apply, subject to such modifications as the order may specify, in relation to—
- (a) investigations conducted by designated customs officials,
  - (b) persons detained by designated customs officials,
  - (c) investigations conducted by immigration officers, or
  - (d) persons detained by immigration officers.
- (2) Those enactments are—
- (a) the Police and Criminal Evidence Act 1984 ([c. 60](#)), and
  - (b) the Police and Criminal Evidence (Northern Ireland) Order 1989 ([S.I. 1989/1341 \(N.I. 12\)](#)).

- (3) An order under this section may make, in relation to designated customs officials, immigration officers, the Secretary of State or the Director of Border Revenue, provision similar to that which may be made in relation to officers of Revenue and Customs or the Commissioners for Her Majesty’s Revenue and Customs under—
  - (a) section 114 of the Police and Criminal Evidence Act 1984, or
  - (b) article 85 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (4) If an order under this section provides that a function may be exercised only by a person acting with the authority of the Secretary of State or the Director of Border Revenue, a certificate of the Secretary of State or (as the case may be) the Director that the person had authority to exercise the function is conclusive evidence of that fact.
- (5) An order under this section may amend or repeal section 22 (application of the PACE orders).

## 24 Investigations and detention: Scotland

- (1) After section 26B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) insert—

### “26C Investigations by designated customs officials

- (1) In the application of this Part of this Act to investigations conducted by designated customs officials—
  - (a) references to an officer are to a designated customs official;
  - (b) references to an authorised officer are to a designated customs official acting with the authority (which may be general or specific) of—
    - (i) the Secretary of State in relation to investigations relating to general customs matters, or
    - (ii) the Director of Border Revenue in relation to investigations relating to customs revenue matters;
  - (c) references to the Commissioners for Her Majesty’s Revenue and Customs are to—
    - (i) the Secretary of State in relation to investigations relating to general customs matters, or
    - (ii) the Director of Border Revenue in relation to investigations relating to customs revenue matters;
  - (d) references to an office of Revenue and Customs are to premises wholly or partly occupied by designated customs officials;
  - (e) references to a superior officer are to—
    - (i) an immigration officer not below the grade of Inspector,
    - (ii) a person of the grade of Senior Executive Officer, or
    - (iii) a person of a grade equivalent to that within sub-paragraph (i) or (ii).
- (2) In this section “customs revenue matter”, “designated customs official” and “general customs matter” have the meanings given by Part 1 of the Borders, Citizenship and Immigration Act 2009.”
- (2) The amendment made by this section does not affect the generality of sections 1(4), 3(5), 7(5) and 11(4) (construction of statutory etc. references to the Commissioners

for Her Majesty’s Revenue and Customs, officers of Revenue and Customs and Her Majesty’s Revenue and Customs).

## **25 Short-term holding facilities**

In section 147 of the Immigration and Asylum Act 1999 (c. 33) (removal centres and detained persons: interpretation), in the definition of “short-term holding facility”—

- (a) after “used” insert “—(a)”, and
- (b) at the end insert “, or
  - (b) for the detention of—
    - (i) detained persons for a period of not more than seven days or for such other period as may be prescribed, and
    - (ii) persons other than detained persons for any period.”