

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 55: Powers of immigration officers

641. Immigration criminal investigators working in the Home Office (in what was the former UK Border Agency) have responsibility for investigating immigration crimes.
642. *Subsection (1)* amends section 93(5) of the Police Act 1997, to extend the list of “authorising officers” who can authorise applications to interfere lawfully with property and wireless telegraphy. Property interference within the Code of Practice¹ is taken to include entry on – or interference with – property or interference with wireless telegraphy. Therefore, whilst not defined in the Police Act 1997, property interference is any activity which, if not authorised, would be illegal or actionable in the civil courts such as a trespass to land or to goods such as bag searching or installing recording equipment on possessions, vehicles and premises. Wireless telegraphy includes radio, TV and mobile telephone communications and Global Positioning System (GPS) information.
643. *Section 93(5)* as amended provides for immigration criminal investigators to be able to apply to exercise property interference powers equivalent to those already used by customs officials pursuant to section 93(5)(h) of the Police Act 1997. Section 93(5) as amended also enables a senior official in the Home Office to be designated as the “authorising officer” to authorise property interference applications from immigration officers for the purpose of investigating organised immigration crime.
644. *Subsection (2)* similarly amends section 32(6) of the Regulation of Investigatory Powers Act 2000 (“RIPA”) to extend the list of “senior authorising officers” who can authorise applications for intrusive surveillance to include a senior official in the Home Office, designated for this purpose by the Secretary of State.
645. “Intrusive surveillance” is defined under RIPA as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. This kind of surveillance may take place by means either of a person or device located inside the residential premises or private vehicle of the person who is subject to the surveillance, or by means of a device placed outside which consistently provides a surveillance product of equivalent quality which would be obtained from a device located inside.
646. *Subsection (3)* introduces amendments to the Proceeds of Crime Act 2002 (“POCA”) made by subsections (4) and (5).
647. *Subsection (4)* provides for immigration officers to be “appropriate officers”, as defined in section 47A of the POCA, for the purposes of the search and seizure powers set out in sections 47B to 47S of that Act. This will enable immigration officers to seize property and search people, vehicles and premises (subject to certain conditions) with

¹ Covert Surveillance and Property Interference Revised Code of Practice <http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert?view=Binary>

a view in particular to preventing the dissipation of property that may be used to satisfy a confiscation order, actual or anticipated. These powers are currently restricted to customs officers, constables and accredited financial investigators.

648. *Subsection (5)* amends section 378 of the POCA (which lists the appropriate officers and senior appropriate officers who may apply for the orders and warrants set out in set out in Chapter 2 of Part 8 of that Act) by including immigration officers as “appropriate officers” for the purposes of confiscation, detained cash and money laundering investigations under the POCA. This will allow immigration officers to apply at any part of such investigations for production, disclosure and account monitoring orders (and customer information orders if they are sufficiently senior, or authorised to do so by a senior officer), as well as for search and seizure warrants. At present, only accredited financial investigators, constables or customs officers (and, in the case of confiscation investigations, employees of the Serious Organised Crime Agency) are “appropriate officers” for these purposes. This provision will also allow immigration officers, who are of an equivalent rank to a police superintendent, to act as a “senior appropriate officer” in a confiscation investigation, which will permit them to apply for, or to vary, a customer information order or to authorise another to do so. The provisions will, therefore, provide immigration officers with powers equivalent to those used already by other law enforcement officers when conducting investigations of the sort referred to above.
649. *Subsection (6)* amends section 24 of the UK Borders Act 2007. It provides a new definition of “unlawful conduct”, covering both immigration and nationality offences, for the purposes of the exercise by immigration officers of the power to search for cash under section 289 of the POCA. This will address the problem which immigration officers currently encounter whereby if, when on premises, they discover cash which is known to be the product of, for example, drug dealing, they are unable to seize it as it is not related to an immigration offence.
650. *Subsection (7)* applies sections 136 to 139 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) to immigration officers (subject to the restrictions contained in *subsection (8)* and paragraphs 41 to 43 of Schedule 21 to the Act). Sections 136 to 139 of the 1994 Act allow various law enforcement powers applicable in one country of the UK to be exercised in another country of the UK. The relevant powers are those concerning the execution of warrants, arrest or detention of suspects, and search powers available on arrest. At the moment these provisions apply to police constables, officers of Revenue and Customs and designated customs officials.
651. *Subsection (8)* provides that an immigration officer may only exercise powers under sections 136 to 139 of the 1994 Act when exercising a function: (i) relating to the entitlement of non-UK nationals to enter, transit across or be in the UK (including a function relating to conditions or other controls on any such entitlement); (ii) under or for the purposes of one or more of the nationality-related enactments mentioned in *subsection (8)(b)*; or (iii) in connection with the prevention, investigation or prosecution of an offence of refusal or failure to submit to examination or to furnish information, or obstruction of an immigration officer, or assaulting an immigration officer.
652. *Subsection (9)* introduces the amendments made to the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”) by subsections (10) to (12).
653. *Subsection (10)* amends section 24 of the 1995 Act so that it applies to immigration officers as it does Revenue and Customs officials. Section 24 relates to the detention and questioning of those suspected of committing a criminal offence. Section 24 of the 1995 Act as amended provides an immigration officer in Scotland with powers to detain and question when the officer suspects that a person has committed or is committing an immigration or nationality offence punishable by imprisonment.
654. *Subsection (11)* amends section 26A of the 1995 Act which provides a power of arrest in Scotland. Section 26A of the 1995 Act as amended enables an authorised immigration

*These notes refer to the Crime and Courts Act 2013
(c.22) which received Royal Assent on 25 April 2013*

officer to arrest without warrant someone whom the officer reasonably suspects to be guilty of an immigration or nationality offence or immigration enforcement offence which the officer has reasonable grounds to suspect has been, or is being, committed. This provision further provides that an ‘authorised immigration officer’ means an immigration officer acting with the authority (general or specific) of the Secretary of State.

655. *Subsection (12)* amends 26B of the 1995 Act. Section 26B is an interpretation section and inserts definitions of ‘immigration enforcement offence’, ‘immigration offence’ and ‘nationality offence’, thus limiting the range of matters in relation to which immigration officers may use the substantive provisions within the 1995 Act pursuant to the Act.
656. *Subsection (13)* amends the definition of ‘officer of law’ in section 307 of the Criminal Procedure (Scotland) Act 1995 to include immigration officers acting with the authority (general or specific) of the Secretary of State. It also provides that such immigration officers shall only be “officers of law” in relation to immigration offences and nationality offences, as defined in Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995. In particular, the ‘officer of the law’ status allows immigration officers to seek, obtain and execute common law search warrants in Scotland.
657. *Subsection (14)* gives effect to Schedule 21.