

SCHEDULES

SCHEDULE 5

Section 9

POLICE, CUSTOMS AND IMMIGRATION POWERS

PART 1

DIRECTOR GENERAL: COMMISSIONERS' POWERS EXERCISABLE UNDER SECTION 9(1)

Powers only exercisable in relation to customs matters

- 1 If a power of the Commissioners is exercisable both—
- (a) in relation to a customs matter, and
 - (b) in relation to any other matter,
- the power is exercisable by the Director General under section 9(1) only in relation to the customs matter.

Powers exercisable under warrant

- 2 (1) This paragraph applies to an enactment if it provides for the issuing of warrants which authorise the Commissioners to exercise any power in relation to a customs matter.
- (2) For the purpose of enabling the Director General to exercise that power in relation to a customs matter, the enactment has effect as if the Director General were one of the Commissioners.

Certain powers of Commissioners not exercisable by Director General

- 3 The following powers of the Commissioners are not exercisable by the Director General under section 9(1)—
- (a) the powers under paragraph 2(1) of Schedule 7 to consent to a disclosure of HMRC information by an NCA officer;
 - (b) the power under paragraph 2(2) of Schedule 7 to consent to a further disclosure of HMRC information by any person.

PART 2

DIRECTOR GENERAL: DESIGNATION UNDER SECTION 9

Advisory panel

- 4 (1) The Secretary of State must appoint an advisory panel (to enable recommendations to be made as to the operational powers which the Director General should have)—
- (a) whenever there is an appointment of a Director General; and

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- (b) at any other time when the Secretary of State considers that it is appropriate to do so.
- (2) But that duty is subject to regulations under paragraph 5.
- (3) An advisory panel is to consist of—
- (a) a person to chair the panel, who must not be a civil servant; and
 - (b) an appropriate number of other members (the “expert members”) who, when taken together, have appropriate knowledge of the following matters—
 - (i) the training of constables in England and Wales police forces;
 - (ii) the training of officers of Revenue and Customs and general customs officials to exercise powers in relation to customs matters;
 - (iii) the training of immigration officers;
 - (iv) the training of NCA officers.
- (4) The expert members of the advisory panel must—
- (a) consider the question of the adequacy of the Director General’s training, and
 - (b) give the panel’s chair such information in respect of their consideration of that question as the chair may require.
- (5) The panel’s chair must then—
- (a) consider the information given by the expert members,
 - (b) decide the question of the adequacy of the Director General’s training, and
 - (c) produce a report containing recommendations as to the operational powers which the Director General should have.
- (6) The report must not recommend that the Director General should have a particular operational power unless the panel’s chair has decided that the Director General has received adequate training in respect of that power.
- (7) That process for producing a report is to be conducted in accordance with the terms of appointment of the advisory panel (which may include terms about the particular operational powers in respect of which the question of the adequacy of the Director General’s training is to be considered).
- (8) A reference in this paragraph to the question of the adequacy of the Director General’s training is a reference to—
- (a) which operational powers the Director General has received adequate training in respect of, and
 - (b) which operational powers the Director General has not received adequate training in respect of.
- (9) In this paragraph—
- “adequate training”, in relation to a particular operational power, means training that is adequate to enable that power to be properly exercised;
 - “appropriate” means appropriate in the Secretary of State’s view;
 - “report” means a report for the purposes of section 9 containing recommendations as to the operational powers which the Director General should have.

No advisory panel

- 5 (1) The Secretary of State may, by regulations, make provision about the circumstances in which the Director General may be designated as a person having operational powers otherwise than on recommendations made in accordance with paragraph 4.
- (2) Regulations under this paragraph may, in particular, provide that the Secretary of State must designate the Director General as a person having particular operational powers if specified conditions are met.
- (3) Those conditions may, in particular, relate to training received by a person before appointment as the Director General.
- (4) In this paragraph “specified” means specified in regulations under this paragraph.

PART 3

FURTHER PROVISION ABOUT DESIGNATIONS UNDER SECTION 9 OR 10

Limitations in designation

- 6 (1) A designation may be made subject to any limitations specified in the designation.
- (2) In particular, a designation may include—
- (a) limitations on which operational powers the designated officer has;
 - (b) limitations on the purposes for which the designated officer may exercise operational powers which the person has.

Duration of designation

- 7 (1) A designation has effect without limitation of time, unless the designation specifies a period for which it is to have effect.
- (2) But that is subject to any modification or withdrawal of the designation.

NCA officers having operational powers from another office

- 8 (1) The Director General or any other NCA officer may be designated as a person having operational powers whether or not that person already has, or previously had, any such powers.
- (2) But see paragraph 12 of Schedule 1 for provision about persons who already have operational powers upon becoming NCA officers.
- (3) If a person is both—
- (a) an NCA officer designated as a person having operational powers, and
 - (b) a special constable or a member of the Police Service of Northern Ireland Reserve,
- none of the operational powers which the person has as an NCA officer are exercisable at any time when the person is exercising any power or privilege which the person has as a special constable or as a member of the Police Service of Northern Ireland Reserve.

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Evidence of designation

- 9 (1) A designated officer must produce evidence of the designation if—
- (a) the officer exercises, or purports to exercise, any operational power in relation to another person in reliance on the designation, and
 - (b) the other person requests the officer to produce such evidence.
- (2) If the designated officer fails to produce such evidence, that failure does not make the exercise of the operational power invalid.

PART 4

DESIGNATIONS: POWERS AND PRIVILEGES OF CONSTABLES

The Director General

- 10 (1) If the Director General is designated as a person having the powers and privileges of a constable, the Director General has—
- (a) in England and Wales and the adjacent United Kingdom waters, all the powers and privileges of an English and Welsh constable; and
 - (b) outside the United Kingdom and the United Kingdom waters, all the powers and privileges of a constable that are exercisable overseas.
- (2) But that is subject to any limitations included in the designation.

Other NCA officers

- 11 (1) If an NCA officer (other than the Director General) is designated as a person having the powers and privileges of a constable, the NCA officer has—
- (a) in England and Wales and the adjacent United Kingdom waters, all the powers and privileges of an English and Welsh constable;
 - (b) in Scotland and the adjacent United Kingdom waters, all the powers and privileges of a Scottish constable;
 - (c) in Northern Ireland and the adjacent United Kingdom waters, all the powers and privileges of a Northern Ireland constable; and
 - (d) outside the United Kingdom and the United Kingdom waters, all the powers and privileges of a constable that are exercisable overseas.
- (2) But that is subject to—
- (a) any limitations included in the designation; and
 - (b) sub-paragraphs (3) and (6).
- (3) An NCA officer may only exercise the powers and privileges of a Scottish constable in one or other of the following cases.
- (4) The first case is where—
- (a) a Scottish general authorisation is in force, and
 - (b) the powers and privileges are exercised in accordance with that authorisation.
- (5) The second case is where—

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- (a) a Scottish operational authorisation is in force in relation to a particular operation, and
 - (b) the powers and privileges are exercised—
 - (i) in connection with that operation, and
 - (ii) in accordance with that authorisation.
- (6) An NCA officer may only exercise the powers and privileges of a Northern Ireland constable in one or other of the following cases.
- (7) The first case is where—
- (a) a Northern Ireland general authorisation is in force, and
 - (b) the powers and privileges are exercised in accordance with that authorisation.
- (8) The second case is where—
- (a) a Northern Ireland general authorisation is in force,
 - (b) a Northern Ireland operational authorisation is in force in relation to a particular operation, and
 - (c) the powers and privileges are exercised—
 - (i) in connection with that operation, and
 - (ii) in accordance with that operational authorisation.
- (9) In this paragraph—
- “Northern Ireland general authorisation” means an agreement between—
- (a) the Director General, and
 - (b) the Department of Justice in Northern Ireland,
- about the exercise of the powers and privileges of Northern Ireland constables by NCA officers;
- “Northern Ireland operational authorisation” means an agreement, which is in conformity with the Northern Ireland general authorisation that is in force, between—
- (a) the Director General, and
 - (b) an officer in the Police Service of Northern Ireland who is at or above the rank of Assistant Chief Constable,
- about the exercise of the powers and privileges of Northern Ireland constables by NCA officers in connection with a particular operation;
- “Scottish general authorisation” means an agreement between—
- (a) the Director General, and
 - (b) the Scottish Ministers,
- about the exercise of the powers and privileges of Scottish constables by NCA officers;
- “Scottish operational authorisation” means an agreement between—
- (a) the Director General, and
 - (b) an officer in the Police Service of Scotland who is at or above the rank of Assistant Chief Constable,
- about the exercise of the powers and privileges of Scottish constables by NCA officers in connection with a particular operation.

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Application of territorial restrictions

- 12 Any power or privilege of a constable is, when exercisable by the Director General or any other NCA officer, subject to any territorial restrictions on its exercise to which it is subject when exercisable by a constable.

Powers exercisable under warrant

- 13 (1) This paragraph applies to an enactment if it provides for the issuing of warrants which authorise a constable to exercise any power or privilege of a constable.
- (2) For the purpose of enabling a designated officer to exercise that power or privilege, the enactment has effect as if the designated officer were a constable.

Direction and control of NCA officers exercising powers in Scotland

- 14 When exercising the function of direction and control of the NCA in relation to the exercise by NCA officers of the powers and privileges of Scottish constables, the Director General must comply with any instruction given by the Lord Advocate or procurator fiscal in relation to the investigation of offences.

Employment law

- 15 (1) An NCA officer who is designated as having the powers and privileges of a constable is not to be regarded, by virtue of having those powers and privileges, as in police service for the purposes of any provision of the relevant employment legislation.
- (2) In this paragraph “relevant employment legislation” means—
- (a) the Trade Union and Labour Relations (Consolidation) Act 1992;
 - (b) the Employment Rights Act 1996;
 - (c) the Trade Union and Labour Relations (Northern Ireland) Order 1995;
 - (d) the Employment Rights (Northern Ireland) Order 1996.

PART 5

DESIGNATIONS: POWERS OF OFFICERS OF REVENUE AND CUSTOMS

NCA officers

- 16 (1) If an NCA officer is designated as a person having the powers of an officer of Revenue and Customs, the NCA officer has, in relation to any customs matter, the same powers as an officer of Revenue and Customs would have.
- (2) But that is subject to any limitations included in the designation.

Powers only exercisable in relation to customs matters

- 17 If a power of an officer of Revenue and Customs is exercisable both—
- (a) in relation to a customs matter, and
 - (b) in relation to any other matter,
- the power is exercisable by a designated officer only in relation to the customs matter.

Powers exercisable under warrant

- 18 (1) This paragraph applies to an enactment if it provides for the issuing of warrants which authorise an officer of Revenue and Customs to exercise any power in relation to a customs matter.
- (2) For the purpose of enabling a designated officer to exercise that power in relation to a customs matter, the enactment has effect as if the designated officer were an officer of Revenue and Customs.

PART 6

DESIGNATIONS: POWERS OF IMMIGRATION OFFICERS

NCA officers

- 19 (1) If an NCA officer is designated as a person having the powers of an immigration officer, the NCA officer has, in relation to any relevant matter, the same powers as an immigration officer would have.
- (2) But that is subject to any limitation included in the designation.
- (3) In this paragraph “relevant matter”, in relation to a particular power of an immigration officer, means a matter in relation to which that power may be exercised.

Powers exercisable under warrant

- 20 (1) This paragraph applies to an enactment if it provides for the issuing of warrants which authorise an immigration officer to exercise any power of an immigration officer.
- (2) For the purpose of enabling a designated officer to exercise that power or privilege, the enactment has effect as if the designated officer were an immigration officer.

PART 7

OFFENCES RELATING TO DESIGNATIONS

Resistance or wilful obstruction of designated officers etc

- 21 (1) A person commits an offence if the person resists or wilfully obstructs—
- (a) a designated officer acting in the exercise of an operational power, or
 - (b) a person who is assisting a designated officer in the exercise of such a power.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to either or both of the following—
- (a) imprisonment for a term not exceeding—
 - (i) 51 weeks on conviction in England and Wales;
 - (ii) 12 months on conviction in Scotland;
 - (iii) 1 month on conviction in Northern Ireland;
 - (b) a fine not exceeding level 3 on the standard scale.

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Assault on designated officers etc

- 22 (1) A person commits an offence if the person assaults—
- (a) a designated officer acting in the exercise of an operational power, or
 - (b) a person who is assisting a designated officer in the exercise of such a power.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to either or both of the following—
- (a) imprisonment for a term not exceeding—
 - (i) 51 weeks on conviction in England and Wales;
 - (ii) 12 months on conviction in Scotland;
 - (iii) 6 months on conviction in Northern Ireland;
 - (b) a fine not exceeding level 5 on the standard scale.

Impersonation of designated officer etc

- 23 (1) A person commits an offence if, with intent to deceive—
- (a) the person impersonates a designated officer,
 - (b) the person makes any statement or does any act calculated falsely to suggest that the person is a designated officer, or
 - (c) the person makes any statement or does any act calculated falsely to suggest that the person has powers as a designated officer that exceed the powers the person actually has.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to either or both of the following—
- (a) imprisonment for a term not exceeding—
 - (i) 51 weeks on conviction in England and Wales;
 - (ii) 12 months on conviction in Scotland;
 - (iii) 6 months on conviction in Northern Ireland;
 - (b) a fine not exceeding level 5 on the standard scale.

Transitional provision relating to offences

- 24 In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences)—
- (a) the reference in paragraph 21(2)(a)(i) to the period of 51 weeks is to be read as a reference to the period of 1 month;
 - (b) the references in paragraphs 22(2)(a)(i) and 23(2)(a)(i) to the period of 51 weeks are to be read as references to the period of 6 months.

PART 8

GENERAL

Payment of revenue to the Commissioners

- 25 (1) The Director General must pay to the Commissioners any money received by way of proceeds of forfeitures—

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- (a) by the Director General in the exercise of any power of the Commissioners, or
 - (b) by the Director General or any other NCA officer in the exercise of any power of an officer of Revenue and Customs.
- (2) In this section “proceeds of forfeitures” means—
- (a) the proceeds of forfeitures made under the customs and excise Acts (within the meaning of section 1 of the Customs and Excise Management Act 1979), and
 - (b) a sum paid, or the proceeds of sale, under paragraph 16 of Schedule 3 to that Act.

Modification of references

- 26 If, in accordance with section 9(1) or any provision of this Schedule—
- (a) a power of the Commissioners is exercisable by the Director General, a reference to the Commissioners in any enactment which relates to that power is to be taken to be, or to include, a reference to the Director General;
 - (b) a power or privilege of a constable is exercisable by any NCA officer, a reference to a constable in any enactment which relates to that power or privilege is to be taken to be, or to include, a reference to any NCA officer by whom that power or privilege is exercisable;
 - (c) a power of an officer of Revenue and Customs is exercisable by any NCA officer, a reference to an officer of Revenue and Customs in any enactment which relates to that power is to be taken to be, or to include, a reference to any NCA officer by whom that power is exercisable;
 - (d) a power of an immigration officer is exercisable by any NCA officer, a reference to an immigration officer in any enactment which relates to that power is to be taken to be, or to include, a reference to any NCA officer by whom that power is exercisable.

Power to make further provision

- 27 (1) The relevant national authority may, by order, make such provision as that authority considers appropriate in consequence of—
- (a) the Director General having the powers of the Commissioners under section 9(1), or
 - (b) designated officers having operational powers.
- (2) An order under this paragraph may, in particular—
- (a) provide for the Director General or designated officers to benefit from exemptions or other protection in respect of the exercise of operational powers;
 - (b) provide for the disclosure of information to, or the doing of other things in relation to, the Director General or designated officers;
 - (c) confer functions on the Director General or any other person;
 - (d) provide for a class of NCA officers (whether identified by reference to a grade or pay scale or otherwise) to be treated as the equivalent of—
 - (i) one or more ranks in a UK police force;
 - (ii) one or more grades of, or pay scales applicable to, officers of Revenue and Customs;

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(iii) one or more grades of, or pay scales applicable to, immigration officers.

(3) In this paragraph “designated officers” includes a description of such officers.

Functions of third parties relating to constables etc: extension to NCA

28 (1) The relevant national authority may, by order, provide for a relevant function of a person to be exercisable by that person in relation to—

- (a) the NCA,
- (b) the Director General, or
- (c) NCA officers (or any description of NCA officers).

(2) In this paragraph “relevant function” means a function exercisable by any person in relation to—

- (a) a constable,
- (b) a UK police force,
- (c) an officer of Revenue and Customs,
- (d) the Commissioners, or
- (e) an immigration officer.

General provision about orders

29 (1) The power to make an order under paragraph 27 or 28 may, in particular, be exercised by—

- (a) amending, repealing, revoking or otherwise modifying any provision made by or under an enactment, or
- (b) applying an enactment (with or without modifications).

(2) The Secretary of State must consult—

- (a) the Commissioners before exercising the power conferred by paragraph 27 or 28 in relation to an enactment which (expressly or otherwise) confers any function on the Commissioners or an officer of Revenue and Customs;
- (b) the Scottish Ministers before exercising the power conferred by paragraph 27 or 28 in relation to an enactment which extends to Scotland;
- (c) the Department of Justice in Northern Ireland before exercising the power conferred by paragraph 27 or 28 in relation to an enactment which extends to Northern Ireland.

(3) In this paragraph “enactment” includes a description of enactments.

Interpretation

30 In this Schedule—

“Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“designated officer” means the Director General or any other NCA officer if designated as having operational powers;

“designation” means—

- (a) a designation of the Director General under section 9, or
- (b) a designation of any other NCA officer under section 10;

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and “designated” and cognate expressions are to be construed accordingly;
“limitation” means a limitation included in a designation under paragraph 6;

“Northern Ireland devolved provision”, in relation to provision of an order under this Schedule, means provision which would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of the Northern Ireland Assembly;

“powers and privileges of a constable that are exercisable overseas” means the powers and privileges of a constable if, and to the extent that, they are exercisable outside the United Kingdom and the United Kingdom waters;

“powers and privileges of an English and Welsh constable” means the powers and privileges of a constable if, and to the extent that, they are exercisable in England and Wales or the adjacent United Kingdom waters;

“powers and privileges of a Northern Ireland constable” means the powers and privileges of a constable if, and to the extent that, they are exercisable in Northern Ireland or the adjacent United Kingdom waters;

“powers and privileges of a Scottish constable” means the powers and privileges of a constable if, and to the extent that, they are exercisable in Scotland or the adjacent United Kingdom waters;

“relevant national authority”, in relation to a power to make an order under this Schedule, means—

- (a) the Secretary of State, except in relation to Scottish devolved provision and Northern Ireland devolved provision;
- (b) the Scottish Ministers, in relation to Scottish devolved provision;
- (c) the Department of Justice in Northern Ireland, in relation to Northern Ireland devolved provision;

“Scottish devolved provision”, in relation to provision of an order under this Schedule, means provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament, except for any provision of the kind referred to in paragraph 27(2)(d);

“United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom’s territorial sea.