Draft Order laid before Parliament under section 37(3) of the Borders, Citizenship and Immigration Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

IMMIGRATION, ENGLAND AND WALES
IMMIGRATION, NORTHERN IRELAND
REVENUE AND CUSTOMS, ENGLAND AND WALES
REVENUE AND CUSTOMS, NORTHERN IRELAND

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

Made - - - -	***
Coming into force - -	***

The Secretary of State makes the following Order in exercise of the powers conferred by section 23(1), (3) and (5) and section 37(2)(b) and (c) of the Borders, Citizenship and Immigration Act 2009(**1**).

In accordance with section 37(3) of that Act, a draft of this Order was laid before and approved by resolution of each House of Parliament.

(**1**) 2009 c. 11.

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013 and shall come into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

"the Act" means the Police and Criminal Evidence Act 1984(**2**);

"the customs and excise Acts" has the meaning given to it by section 1 of the Customs and Excise Management Act 1979(**3**);

"customs office" means premises wholly or partly occupied by designated customs officials;

"function" means any power or duty (including a power or duty that is ancillary to another power or duty);

"immigration officer" means a person appointed as an immigration officer by the Secretary of State under paragraph 1 of Schedule 2 to the Immigration Act 1971(**4**);

"immigration or nationality matter" is a matter in relation to which an immigration officer exercises functions relating to immigration or nationality or in relation to which the Secretary of State has functions relating to immigration or nationality;

"office of Revenue and Customs" means premises wholly or partly occupied by Her Majesty's Revenue and Customs;

(2) A person is in customs detention for the purposes of this Order if—

(a) the person has been taken to a customs office after being arrested for an offence; or

(b) the person is arrested at a customs office,

and is detained there or detained elsewhere in the charge of a designated customs official.

(3) A person is in Revenue and Customs detention for the purposes of this Order if—

(a) the person has been taken to an office of Revenue and Customs after being arrested for an offence; or

(b) the person is arrested at an office of Revenue and Customs,

and is detained there or detained elsewhere in the charge of an officer of Revenue and Customs.

PART 2

INVESTIGATIONS CONDUCTED BY IMMIGRATION OFFICERS

Application of the Police and Criminal Evidence Act 1984

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

(**2**) 1984 c. 60.
(**3**) 1979 c. 2. Section 1 was amended by the Finance (No 2) Act 1992 (c.48), section 82, Schedule 18, Part 3. There are further amendments to section 1 of this Act, which are not relevant to this Order.
(**4**) 1971 c. 77 to which there are amendments not relevant to this Order.

(2) Subject to the modifications in paragraphs (3) and (4) and articles 4 to 11, the provisions of the Act specified in Part 1 of Schedule 1 to this Order shall apply in relation to investigations conducted by immigration officers.

(3) Those provisions shall apply in relation to investigations conducted by immigration officers as if the words and phrases in Column 1 of Part 2 of Schedule 1 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 1 to this Order, that thing shall be done by an immigration officer 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 an immigration officer, the Act applies as if the following references included references to an immigration officer—

(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 section118(2)(**5**), "constable".

(6) In the Act as it applies by virtue of this article, an expression defined in this Order has the same meaning as in this Order.

Exceptions

4.—(1) Nothing in the application of the Act by virtue of article 3 confers on an immigration officer 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 3—

(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.

(3) Nothing in the application of the Act by virtue of article 3 confers on an immigration officer any power to detain a person for an offence after the person has been charged with that offence.

Authorisation

5. Powers and functions in the provisions of the Act, as applied by article 3, may be exercised by an immigration officer only if the officer is acting with the authority (which may be general or specific) of the Secretary of State.

Use of reasonable force

6. Where any provision of the Act as applied by article 3—

(a) confers a power on an immigration officer, and

(b) does not provide that the power may only be exercised with the consent of some person other than the immigration officer upon whom the power is conferred,

the immigration officer may use reasonable force, if necessary, in the exercise of the power.

(**5**) Section 118(2) of the Act was amended by the Police Reform Act 2002 (c.30), section 107(1), Schedule 7, paragraph 9(9); and the Terrorism Act 2000 (c.11), section 125(1), Schedule 15, paragraph 5(1) and (12).

Arrest without warrant

7. Section 24(2) of the Act(**6**), as applied by article 3, does not limit any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon an immigration officer the power to arrest or detain a person.

Search of persons found on premises

8.—(1) This article applies where an immigration officer searches premises in reliance on a warrant under section 8 of, or paragraph 12 of Schedule 1 to, the Act(**7**), as applied by article 3.

(2) The immigration officer may search any person found on the premises where the immigration officer 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 an immigration officer 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

9.—(1) The power of an immigration officer to seize and retain evidence found upon a lawful search of a person or premise under section 19 of the Act(**8**), as applied by article 3, shall have effect notwithstanding that the offence to which the evidence relates does not relate to an immigration or nationality matter.

(2) Nothing in the application of the Act by virtue of article 3 prevents any thing lawfully seized by a person under any enactment from being accepted and retained by an immigration officer.

(3) Section 21 of the Act (access and copying)(**9**), as applied by article 3, shall not apply to any thing seized or retained by an immigration officer under the Immigration Acts.

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

10. Section 18 of the Act(**10**), as applied by article 3, 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 at the time the record is made, the officer shall ensure that the record is included as part of the person's custody record.".

(**6**) Section 24 of the Act was amended by the Serious Organised Crime and Police Act 2005 (c.15), section 110(1).
(**7**) Section 8 of the Act was amended by the Serious Organised Crime and Police Act (2005) (c.15), sections 113(3), (4), 114(2) and section 111, Schedule 7, Part 3, paragraph 43(1) and (3); the Immigration and Asylum Act 1999 (c.33), section 169(1), Schedule 14, paragraph 80(1) and (2); and the Finance Act 2007 (c.11), section 86. Paragraph 12 of Schedule 1 to the Act was amended by the Serious Organised Crime and Police Act 2005 (c.15), section 113(1), (10); and (13) and the Courts Act 2003 (c.39), section 65, Schedule 4, paragraph 6(1), but the latter amendment is not yet in force.
(**8**) Section 19 of the Act was amended by the Criminal Justice and Police Act 2001 (c.16), section 70, Schedule 2, Part 2, paragraphs 13(1) and 2(a).
(**9**) Section 21 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 3.
(**10**) Section 18 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 2; and the Serious Organised Crime and Police Act 2005 (c.15), section 111, Schedule 7, Part 3, paragraph 43(1) and (5).

Modification of section 22 of the Act (retention)

11. Section 22 of the Act(**11**), as applied by article 3, has effect as if for subsection (5) there were substituted—

"(5) Nothing in this section affects any power of a court to make an order under section 26 of the UK Borders Act 2007(**12**).".

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.

(**11**) Section 22 of the Act was amended by the Criminal Justice Act 2003 (c.44), section 12, Schedule 1, paragraphs 1 and 4.There was another amendment to this section by the Immigration and Asylum Act 1999 (c.33), which is not relevant to this Order.
(**12**) 2007 c. 30.