STATUTORY RULES OF NORTHERN IRELAND

2007 No. 464

REVENUE AND CUSTOMS

The Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007

Made - - - -	*8th November 2007*
Laid before Parliament	*9th November 2007*
Coming into force - -	*1st December 2007*

The Treasury make the following Order in exercise of the powers conferred by Article 85 (1) and (2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (**1**):

Citation and commencement

1. This Order may be cited as the Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007 and shall come into force on 1st December 2007.

Interpretation

2.—(1) In this Order—

"the 1989 Order" means the Police and Criminal Evidence (Northern Ireland) Order 1989;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"the customs and excise Acts" has the meaning given to it by section 1 of the Customs and Excise Management Act 1979(**2**);

"former Inland Revenue matter" means a matter specified in section 54(4) (b) or (f) of, or in paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005(**3**).

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

(**1**) S.I. 1989/1341 (N.I. 12). Article 85(3) of the 1989 Order was repealed by section 50(6) of, and paragraph 40 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c.11). Article 85 was amended by section 83 of the Finance Act 2007 (c.11).

(**2**) 1979 c.2.

(**3**) 2005 c.11. Former Inland Revenue matters are listed in Schedule 1 to the 2005 Act. Paragraph 26 of Schedule 1 was amended by section 11 of, and paragraph 61 of Schedule 1 to, the Work and Families Act 2006(c.18).

"relevant indictable offence" means an indictable offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions apart from a former Inland Revenue matter.

"relevant investigation" means a criminal investigation conducted by officers of Revenue and Customs which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions apart from a former Inland Revenue matter.

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

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

(b) he is arrested at an office of Revenue and Customs after attending voluntarily at the office or accompanying an officer of Revenue and Customs to it,

and is detained there or detained elsewhere in the charge of an officer of Revenue and Customs, and nothing shall prevent a detained person from being transferred between Revenue and Customs detention and police detention.

Application

3.—(1) The provisions of the 1989 Order contained in Schedule 1 to this Order which relate to investigations of offences conducted by police officers or to persons detained by the police shall apply to relevant investigations conducted by officers of Revenue and Customs and to persons detained by such officers.

This is subject to the modifications in paragraphs (2) and (3) and Articles 4 to 15 and Schedule 2,

(2) The 1989 Order shall have effect as if the words and phrases in Column 1 of Part 1 of Schedule 2 to this Order were replaced by the substituted words and phrases in Column 2 of that Part.

(3) Where in the 1989 Order any act or thing is to be done by a constable or police officer of a specified rank, that act or thing shall be done by an officer of Revenue and Customs of at least the grade specified in Column 2 of Part 2 of Schedule 2 to this Order, and the 1989 Order shall be construed accordingly.

Exceptions

4. Nothing in the application of the 1989 Order to Revenue and Customs shall confer on an officer of Revenue and Customs any power—

(a) to charge a person with any offence;

(b) to release a person on bail; or

(c) to detain a person for an offence after he has been charged with that offence.

Seizure and retention of things found upon search

5.—(1) Where in the 1989 Order a constable is given power to seize and retain any thing found upon a lawful search of person or premises, an officer of Revenue and Customs shall have the same power notwithstanding that the thing found is not evidence of an offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions.

(2) Nothing in the application of the 1989 Order to Revenue and Customs prevents any thing lawfully seized by a person under any statutory provision from being accepted and retained by an officer of Revenue and Customs.

(3) Article 23 of the 1989 Order (access and copying)(**4**) shall not apply to any thing seized as liable to forfeiture under the customs and excise Acts.

Excluded and special procedure material

6. In its application by virtue of Article 3 above the 1989 Order shall have effect as if after Article 16 there were inserted—

"**Exception for Revenue and Customs**

16A. Material in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office and which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions, is neither excluded material nor special procedure material for the purposes of any statutory provision such as is mentioned in Article 11(2).".

Restriction on other powers to apply for production of documents

7. In its application by virtue of Article 3 above the 1989 Order shall have effect as if the following Article were inserted after Article 16A—

"**Revenue and Customs: restriction on other powers to apply for production of documents**

16B.—(1) An officer of Revenue and Customs may make an application for the delivery of, or access to, documents under a provision specified in paragraph (3) only if the condition in paragraph (2) is satisfied.

(2) The condition is that the officer thinks that an application under Schedule 1 would not succeed because the material required does not consist of or include special procedure material.

(3) The provisions are—

(a) section 20BA and Schedule 1AA of the Taxes Management Act 1970 (serious tax fraud)(**5**);

(b) paragraph 11 of Schedule 11 to the Value Added Tax Act 1994 (VAT)(**6**);

(c) paragraph 4A of Schedule 7 to the Finance Act 1994 (insurance premium tax)(**7**);

(d) paragraph 7 of Schedule 5 to the Finance Act 1996 (landfill tax)(**8**);

(e) paragraph 131 of Schedule 6 to the Finance Act 2000 (climate change levy)(**9**);

(f) paragraph 8 of Schedule 7 to the Finance Act 2001 (aggregates levy)(**10**);

(g) Part 6 of Schedule 13 to the Finance Act 2003 (stamp duty land tax)(**11**).".

(**4**) S.I. 1989/1341 (N.I. 12). Article 23(9) was inserted by Article 13(2) of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)).
(**5**) 1970 c.9. Section 20BA and Schedule 1AA were inserted by section 149 of the Finance Act 2000 (c.17).
(**6**) 1994 c.23. Paragraph 11 is derived from Schedule 7 to the Value Added Tax Act 1983 (c.55).
(**7**) 1994 c.9. Paragraph 4A was inserted by section 34 of, and paragraph 8(1) of Schedule 5 to, the Finance Act 1995 (c.4). Paragraph 4A was amended by section 70 of, and paragraphs 13(1)(a), (1)(b) and (2)(g) of Part 2 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c.16).
(**8**) 1996 c.8. Paragraph 7 was amended by section 70 of, and paragraphs 13(1)(a), (1)(b) and (2)(h) of Part 2 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c.16).
(**9**) 2000 c.17. Paragraph 131 was amended by section 70 of, and paragraphs 13(1)(a), (1)(b) and (2)(i) of Part 2 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c. 16).
(**10**) 2001 c.9.
(**11**) 2003 c.14.

Modification of Article 20 of the 1989 Order (entry and search after arrest)

8.—(1) Article 20 of the 1989 Order (entry and search after arrest)(**12**) is modified as follows.

(2) For paragraph (1) substitute—

"(1) Subject to the following provisions of this Article, an officer of Revenue and Customs may enter and search any premises occupied or controlled by a person who is under arrest for any relevant indictable offence if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates—

(a) to that offence; or

(b) to some other indictable offence which is connected with or similar to that offence .".

Modification of Article 50 of the 1989 Order (Records of detention)

9.—(1) Article 50 of the 1989 Order (records of detention)(**13**) is modified as follows—

(2) For paragraph (1) substitute—

"(1) The Commissioners shall keep written records showing on an annual basis—

(a) the numbers of persons kept in Revenue and 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 Revenue and Customs detention on its authority; and

(iii) whether he was charged or released without charge.".

(3) For paragraph (2) substitute—

"(2) The annual report of the Commissioners shall contain information about the matters mentioned in paragraph (1) in respect of the period to which the report relates.".

Modification of Article 56 of the 1989 Order (Intimate searches)

10.—(1) Article 56 of the 1989 Order (intimate searches)(**14**) shall have effect as if it related only to things as are mentioned in paragraph (1)(a) of that Article.

(2) The annual report of the Commissioners shall contain information about searches under Article 56 which have been carried out during the period to which the report relates.

Modification of Article 75 of the 1989 Order (confessions by mentally handicapped persons)

11. Article 75(3) of the 1989 Order (confessions by mentally handicapped persons)(**15**) shall be modified to the extent that the definition of "independent person" shall, in addition to the persons

(**12**) Article 20 of the1989 Order was amended by Article 9 of, and paragraph 1 of Schedule 1 to, the Criminal Justice (Northern Ireland) Order 2004 (S.I 2004/1500 (N.I. 9)).

(**13**) S.I. 1989/1341 (N.I. 12). Article 50 of the 1989 Order was amended by section 78 of, and paragraph 10 of Schedule 6 to, the Police (Northern Ireland) Act 2000 (c.32).

(**14**) Article 56 of the 1989 Order was amended by Article 26(2) of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)). There are other amendments which are not relevant to this Order.

(**15**) Article 75(3) of the 1989 Order was amended by section 78 of, and paragraph 9 of Schedule 6 to, the Police (Northern Ireland) Act 2000 (c.32).

mentioned therein, also include an officer of Revenue and Customs or any other person acting under the authority of the Commissioners.

Use of reasonable force

12. Where any provision of the 1989 Order as applied to Revenue and Customs—

(a) confers a power on an officer of Revenue and Customs, and

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

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

Arrest without warrant

13. Article 26 (2) of the 1989 Order (arrest without warrant: constables)(**16**) does not limit—

(a) section 138(1) of the Customs and Excise Management Act 1979 (arrest of persons);

(b) section 20 and paragraph 4 of Schedule 3 to the Criminal Justice (International Co-operation) Act 1990; or

(c) any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon officers of Revenue and Customs the power to arrest or detain persons.

Search of persons when warrant executed

14. Where an officer of Revenue and Customs searches premises under the authority of a warrant under Article 10 of, or paragraph 9 of Schedule 1 to, the 1989 Order(**17**), he may search any person found on the premises—

(a) where he 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;

(b) but no person should be searched except by a person of the same sex.

Authorisation

15. Powers and functions in the provisions of the 1989 Order contained in Schedule 1 to this Order may be exercised only by officers of Revenue and Customs acting with the authority (which may be general or specific) of the Commissioners.

Revocation

16. The following instruments are revoked—

(a) the Police and Criminal Evidence (Application to Customs and Excise) Order (Northern Ireland) 1989(**18**);

(b) the Police and Criminal Evidence (Application to Customs and Excise) (Amendment) Order (Northern Ireland) 1995(**19**); and

(**16**) S.I. 1989/1341 (N.I. 12). Article 26 was amended by Article 15 of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)).

(**17**) Article 10 of the 1989 Order was amended by Article 7 of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)). There are other amendments to Article 10 which are not relevant to this Order. Paragraph 1 of Schedule 9 to the 1989 Order was amended by Article 8 of the 2007 Order (S.I. 2007/288 (N.I. 2)).

(**18**) S.R. 1989/465

(**19**) S.R. 1995/456