

# **SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### *Chapter 2: SOCA: Special powers of designated staff*

#### *Section 43: Designation of SOCA staff as persons having powers of constable etc.*

137. When a person becomes a member of staff of SOCA, any powers that they held in their previous capacity as a constable, officer of Revenue and Customs or immigration officer will no longer be exercisable (see paragraph 138). Instead, the Director General of SOCA may confer some or all of these powers on a member of staff of SOCA according to the business needs of the organisation (*subsection (1)*). A designation under this section may be subject to limitations (*subsection (2)*). These may relate to the powers exercisable (for example, only some of the powers of a constable may be conferred on a particular member of staff) or to the duration of the designation (it may be time limited or last for as long as the person concerned remains a member of staff of SOCA). Powers may be conferred on a member of staff of SOCA irrespective of whether he has previously held such powers (*subsection (4)(b)*). It is open to the Director General to augment the powers previously held by a member of staff, for example a police officer joining SOCA on secondment may have the customs powers of a Revenue and Customs Officer conferred on him in addition to the powers of a constable (*subsection (4)(a)*). However, the Director General must ensure that a person has the capability, aptitude and adequate training appropriate to those powers before a designation is made (*subsection (5)*).
138. *Subsection (6)* provides that where a constable, Revenue and Customs officer or immigration officer becomes an employee of SOCA their previous office is to be treated as suspended. That suspension would end if, say, a member of staff of SOCA who had been a constable returned to work in a police force.

#### *Section 44: Delegation of power to designate*

139. This section enables the Director General to delegate his functions (as outlined in section 43) to any employee of SOCA who is employed in a grade or on a pay scale not lower than a grade or pay scale specified by the Secretary of State by order (subject to the negative resolution procedure).

#### *Section 45: Modification or withdrawal of designations*

140. This section provides for the modification or withdrawal of a designation given under section 43. The Director General may use this power at any time by notifying the designated person. An employee who has been delegated the power to designate under section 44 may only use this power to modify or withdraw the type of designation

they have been authorised to give. For example, a person to whom the power to confer customs officer powers was delegated may not withdraw a designation relating to the powers of a constable. Provided he has the power to act in respect of a particular type of designation, however, a member of staff of SOCA may modify or withdraw a designation even if he did not issue it.

#### ***Section 46: Person having powers of a constable***

141. This section details the powers that can be exercised by a member of SOCA's staff who has been designated as having the powers of a constable. Subject to any limitations stipulated in accordance with section 43(2), the designated person will have all the powers and privileges of a constable. By virtue of *subsection (3)* those powers and privileges will in the first instance only be exercisable throughout England and Wales, although they may be extended to Scotland or Northern Ireland by virtue of the provisions in section 47.

#### ***Section 47: Person having powers of constable: Scotland and Northern Ireland***

142. This section explains the conditions under which a member of staff of SOCA may exercise designated powers of a constable in Scotland and Northern Ireland. The agreement of the Scottish Ministers and the Secretary of State (for these purposes it would be the Secretary of State for Northern Ireland) must be obtained before the powers and privileges of a constable may be exercised in the respective parts of the UK (*subsections (2) and (5)*). The Director of SDEA or an officer nominated by him or, in Northern Ireland, an officer of the PSNI of the rank of assistant chief constable or above may agree to a designated member of staff of SOCA exercising the above powers in relation to a particular operation in the relevant territory (*subsections (3) and (6)*).

#### ***Section 48: Person having customs powers***

143. This section enables a member of staff of SOCA who has been designated with the customs powers of a Revenue and Customs officer to exercise relevant customs powers subject to any limitations imposed in accordance with section 43(2). SOCA staff will only need the powers of an officer of Revenue and Customs in respect of non-revenue matters, for example, the illegal importation of drugs or firearms; as a result the power to confer the powers of a Revenue and Customs officer on a member of SOCA's staff is limited to power in respect of "customs matters". The definition of a "customs matter", in *subsection (7)*, is such as to exclude matters which were previously the responsibility of the Inland Revenue (these are set out in Schedule 1 to the Commissioners for Revenue and Customs Act 2005) and the fiscal matters which were previously the responsibility of HMCE (for example VAT and fuel duties). A number of powers of a customs officer (for example the seizure powers in section 179 of the Customs and Excise Management Act 1979) may be used both for revenue purposes and for the purposes of enforcing various prohibitions on importation (for example, of illegal drugs). *Subsection (5)* provides that in such cases the powers may only be exercisable in respect of non-revenue matters, thereby preserving the primacy of HMRC for all revenue matters.

#### ***Section 49: Person having powers of an immigration officer***

144. This section enables a member of staff of SOCA who has been designated with the powers of an immigration officer to exercise all of the powers of an immigration officer (as defined by the Immigration Act 1971) subject to any limitations imposed in accordance with section 43(2).

#### ***Section 50: Designations: supplementary***

145. This section places a duty on any member of staff of SOCA designated with the powers of a constable, customs officer and/or an immigration officer under section 43 to produce evidence of his designation when asked to do so by someone in relation

to whom he intends to exercise these powers (*subsection (1)*). A failure to produce evidence of designation does not invalidate the exercise of any powers (*subsection (2)*). *Subsection (3)* ensures that SOCA is liable for any unlawful conduct of any member of SOCA's staff arising from the misuse of the powers conferred by a designation.

### ***Section 51: Assaults, obstruction or deception in connection with designations***

146. This section sets out various offences relating to assaulting, obstructing or impersonating designated members of SOCA's staff. They parallel similar offences in relation to police officers and police staff designated under the provisions of Chapter 1 of Part 4 of the Police Reform Act 2002.
147. *Subsection (1)* makes it an offence to assault a designated person acting in the exercise of his powers or to assault a person assisting a designated person who is so acting. *Subsection (2)* makes it an offence to resist or wilfully obstruct a designated person in the exercise of his powers or to resist or wilfully obstruct a person assisting a designated person. *Subsection (3)* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated person. It is also an offence for a designated person to make any statement or act in a way that falsely suggests that he has powers above and beyond those he in fact has.
148. *Subsections (4)* and *(5)* provides for the penalties for the three offences in England and Wales. In the case of the offences in *subsections (1)* and *(3)* the maximum penalty is a term of imprisonment of 51 weeks or a fine at level 5 on the standard scale (currently £5000) or both, while in the case of a *subsection (2)* offence the maximum penalty is a term of imprisonment of for 51 weeks or a fine at level 3 on the standard scale (currently £1000) or both. *Subsections (7)* and *(8)* set out the maximum penalties in Scotland and Northern Ireland respectively.

### ***Section 52: Modification of enactments***

149. This section confers on the Secretary of State a power by order (subject to the affirmative resolution procedure) to provide for statutory provisions to apply with modifications in relation to designated members of staff of SOCA or the exercise of their powers. The purpose of this provision is to adapt statutory provisions relating to constables, Revenue and Customs officers and immigration officers so that they can apply to designated SOCA staff, and to confer upon the Director General relevant functions in relation to these designated staff. For example, under the provisions of the Police and Criminal Evidence Act 1984 certain powers of a constable need the authorisation of an officer of a specified rank or above. These provisions will need to be adapted so that they apply by reference to staff of a specified grade within SOCA. A similar power is contained in section 114(2)(a) of PACE in respect of officers of Customs and Excise.

### ***Section 53: Employment provisions***

150. The purpose of this section is to ensure that members of staff of SOCA who have been designated with the powers of a constable enjoy the full rights of employees under employment rights legislation, including the right to join a trades union. This provision reflects the fact that employment with SOCA is not to be treated as police service.

### ***Section 54: Interpretation of Chapter 2***

151. This section defines terms used in Chapter 2.