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Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 1

THE SERIOUS ORGANISED CRIME AGENCY

VALID FROM 01/01/2006

CHAPTER 2

SOCA: SPECIAL POWERS OF DESIGNATED STAFF

Designations

VALID FROM 01/03/2006

43 Designation of SOCA staff as persons having powers of constable etc.

- (1) The Director General of SOCA may designate a member of the staff of SOCA as one or more of the following—
 - (a) a person having the powers of a constable;
 - (b) a person having the customs powers of an officer of Revenue and Customs;
 - (c) a person having the powers of an immigration officer.
- (2) A designation under this section—
 - (a) may be made subject to any limitations specified in the designation (whether as to the powers exercisable by virtue of it, the purposes for which they are exercisable or otherwise); and

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- (b) has effect either for a period so specified or without limit of time.
- (3) Subsection (2) applies subject to any modification or withdrawal of the designation under section 45.
- (4) A member of SOCA's staff may be designated as a person having the powers mentioned in any of paragraphs (a) to (c) of subsection (1) whether or not—
 - (a) he already has (for any reason) any powers falling within any of those paragraphs, or
 - (b) he had any such powers before becoming a member of SOCA's staff.
- (5) But a person may not be designated as a person having the powers mentioned in any of paragraphs (a) to (c) of subsection (1) unless the Director General is satisfied that that person—
 - (a) is capable of effectively exercising the powers that would be exercisable by virtue of the designation,
 - (b) has received adequate training in respect of the exercise of those powers, and
 - (c) is otherwise a suitable person to exercise those powers.
- (6) Where an employee of SOCA—
 - (a) before becoming such an employee, held an office by virtue of which he had any powers falling within subsection (1)(a), (b) or (c), and
 - (b) has not resigned that office,
 that office is to be treated as suspended so long as he remains in SOCA's employment, and revives if (and only if) on ceasing to be so employed he returns to service as the holder of that office.
- (7) References in this section to the powers of a constable, the customs powers of an officer of Revenue and Customs or the powers of an immigration officer are to be read in accordance with sections 46 to 49.

44 Delegation of power to designate

- (1) The Director General of SOCA may, to such extent as he may specify, delegate his functions under section 43 to an employee of SOCA at the prescribed level.
- (2) “At the prescribed level” means employed in a grade or on a pay scale not lower than that specified in an order made by the Secretary of State.

VALID FROM 01/04/2006

45 Modification or withdrawal of designations

- (1) The Director General of SOCA may at any time modify or withdraw a designation made under section 43 by giving a notice to that effect to the designated person.
- (2) An employee of SOCA by whom the power to make designations under section 43 is exercisable by virtue of section 44 may at any time modify or withdraw a relevant designation by giving a notice to that effect to the designated person.

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- (3) For the purposes of this section “a relevant designation”, in relation to such an employee, means a designation of a kind that the employee is authorised to make by virtue of section 44.

VALID FROM 01/04/2006

Powers exercisable

46 Person having powers of a constable

- (1) This section applies to a member of SOCA's staff who is for the time being designated under section 43 as a person having the powers of a constable.
- (2) The designated person has all the powers and privileges of a constable.
- (3) Those powers and privileges are exercisable by the designated person—
 - (a) throughout England and Wales and the adjacent United Kingdom waters, and
 - (b) in accordance with section 47, in Scotland or Northern Ireland and the adjacent United Kingdom waters.
- (4) If any of those powers and privileges, when exercisable by a constable, are subject to any territorial restrictions on their exercise, they are similarly subject to those restrictions when exercised by the designated person.
- (5) If any of those powers and privileges, when exercisable by a constable, are exercisable elsewhere than in the United Kingdom or the adjacent United Kingdom waters, they are similarly exercisable by the designated person.
- (6) The designated person also has any powers exercisable by virtue of subsection (7).
- (7) Any enactment under which a constable may be authorised by warrant to exercise any power in relation to any matter has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were a constable.
- (8) Subsections (2) to (7) have effect subject to any limitation specified in the designation under section 43(2).
- (9) In this section references to the powers and privileges of a constable are references to the powers and privileges of a constable whether under any enactment or otherwise.

47 Person having powers of constable: Scotland and Northern Ireland

- (1) This section provides for persons designated as mentioned in section 46(1) (“relevant persons”) to exercise the powers and privileges mentioned in section 46(2) in Scotland or Northern Ireland and the adjacent United Kingdom waters.
- (2) If so agreed by—
 - (a) the Scottish Ministers, and

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(b) SOCA,

the powers and privileges are exercisable by relevant persons in Scotland and the adjacent United Kingdom waters to such extent and in such circumstances as may be specified in the agreement.

(3) If so agreed by—

(a) the Director of the Scottish Drug Enforcement Agency or a person nominated by him for the purposes of this subsection, and

(b) SOCA,

a relevant person may exercise the powers and privileges in Scotland in connection with a particular operation.

(4) A person nominated for the purposes of subsection (3) must be either—

(a) a person for the time being appointed as Deputy Director of that Agency, or

(b) an appropriate officer of a police force for an area in Scotland.

(5) If so agreed by—

(a) the Secretary of State, and

(b) SOCA,

the powers and privileges are exercisable by relevant persons in Northern Ireland and the adjacent United Kingdom waters to such extent and in such circumstances as may be specified in the agreement.

(6) If—

(a) an agreement under subsection (5) (“the general authorisation”) is in force, and

(b) an appropriate officer of the Police Service of Northern Ireland and SOCA so agree in conformity with the general authorisation,

a relevant person may exercise the powers and privileges in Northern Ireland in connection with a particular operation in accordance with the agreement mentioned in paragraph (b).

(7) In this section—

“appropriate officer” means an officer of or above the rank of assistant chief constable;

“the Scottish Drug Enforcement Agency” and “the Director” of that Agency have the meanings given by section 42(2).

48 Person having customs powers

(1) This section applies to a member of SOCA's staff who is for the time being designated under section 43 as a person having the customs powers of an officer of Revenue and Customs.

(2) The designated person has, in relation to any customs matter, the same powers as an officer of Revenue and Customs would have.

(3) The designated person also has any powers exercisable by virtue of subsection (4).

(4) Any enactment under which an officer of Revenue and Customs may be authorised by warrant to exercise any power in relation to any customs matter has effect, for

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the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were an officer of Revenue and Customs.

- (5) Where any power is exercisable by an officer of Revenue and Customs both—
- (a) in relation to a customs matter, and
 - (b) in relation to any other matter,
- it is exercisable by the designated person only in relation to the customs matter.
- (6) Subsections (2) to (5) have effect subject to any limitation specified in the designation under section 43(2).
- (7) In this section “customs matter” means any matter other than—
- (a) a matter to which section 7 of the Commissioners for Revenue and Customs Act 2005 (c. 11) applies (former Inland Revenue matters), or
 - (b) any tax or duty not mentioned in Schedule 1 to that Act (which lists such matters).

49 Person having powers of an immigration officer

- (1) This section applies to a member of SOCA's staff who is for the time being designated under section 43 as a person having the powers of an immigration officer.
- (2) The designated person has, in relation to any matter in relation to which powers are exercisable by an immigration officer, the same powers as such an officer would have.
- (3) The designated person also has any powers exercisable by virtue of subsection (4).
- (4) Any enactment under which an immigration officer may be authorised by warrant to exercise any power in relation to any matter has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were an immigration officer.
- (5) Subsections (2) to (4) have effect subject to any limitation specified in the designation under section 43(2).
- (6) In this section “immigration officer” means a person who is an immigration officer within the meaning of the Immigration Act 1971 (c. 77).

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Exercise of powers

50 Designations: supplementary

- (1) If a designated person—
- (a) exercises any power in relation to another person in reliance on his designation under section 43, or
 - (b) purports to do so,

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he must produce evidence of his designation to the other person if requested to do so.

- (2) A failure to comply with subsection (1) does not make the exercise of the power invalid.
- (3) For the purpose of determining liability for the unlawful conduct of members of SOCA's staff, any conduct by a designated person in reliance, or purported reliance, on his designation is to be taken to be—
 - (a) if he is employed by SOCA, conduct in the course of his employment, or
 - (b) if he is a person to whom section 28 applies by virtue of subsection (3)(a) of that section, conduct falling within subsection (1) of that section.
- (4) In the case of any unlawful conduct within subsection (3) which is a tort, SOCA is accordingly to be treated as a joint tortfeasor.

This subsection does not apply to Scotland.

51 Assaults, obstruction or deception in connection with designations

- (1) A person commits an offence if he assaults—
 - (a) a designated person acting in the exercise of a relevant power, or
 - (b) a person who is assisting a designated person in the exercise of such a power.
- (2) A person commits an offence if he resists or wilfully obstructs—
 - (a) a designated person acting in the exercise of a relevant power, or
 - (b) a person who is assisting a designated person in the exercise of such a power.
- (3) A person commits an offence if, with intent to deceive—
 - (a) he impersonates a designated person,
 - (b) he makes any statement or does any act calculated falsely to suggest that he is a designated person, or
 - (c) he makes any statement or does any act calculated falsely to suggest that he has powers as a designated person that exceed the powers he actually has.
- (4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction—
 - (a) to imprisonment for a term not exceeding 51 weeks, or
 - (b) to a fine not exceeding level 5 on the standard scale,
 or to both.
- (5) A person guilty of an offence under subsection (2) is liable on summary conviction—
 - (a) to imprisonment for a term not exceeding 51 weeks, or
 - (b) to a fine not exceeding level 3 on the standard scale,
 or to both.
- (6) In this section “relevant power”, in relation to a designated person, means a power or privilege exercisable by that person by virtue of the designation under section 43.

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- (7) In the application of this section to Scotland the references to 51 weeks in subsections (4)(a) and (5)(a) are to be read as references to 12 months in each case.
- (8) In the application of this section to Northern Ireland the references to 51 weeks are to be read as follows—
 - (a) in subsection (4)(a) the reference is to be read as a reference to 6 months, and
 - (b) in subsection (5)(a) the reference is to be read as a reference to 1 month.

Supplementary

52 Modification of enactments

- (1) The Secretary of State may by order provide for any enactment (or description of enactments) to apply in relation to—
 - (a) designated persons, or
 - (b) the exercise of powers by such persons under this Chapter,with such modifications as he considers necessary or expedient.
- (2) An order under this section may include provision for or in connection with—
 - (a) extending to such persons any exemption or protection afforded by an enactment to any other description of persons;
 - (b) providing for the disclosure of information to, or the doing of other things in relation to, such persons under any enactment;
 - (c) conferring on the Director General of SOCA functions exercisable in relation to such persons.
- (3) Subsection (2) does not affect the generality of subsection (1).
- (4) In this section any reference to designated persons includes a reference to any description of such persons.
- (5) Before exercising the power conferred by subsection (1) in relation to an enactment which (expressly or otherwise) confers any function on—
 - (a) the Commissioners for Her Majesty's Revenue and Customs, or
 - (b) an officer of Revenue and Customs,the Secretary of State must consult the Commissioners.
- (6) Before exercising the power conferred by subsection (1) in relation to an enactment which extends to Scotland, the Secretary of State must consult the Scottish Ministers.
- (7) The power conferred by subsection (1) is exercisable by the Scottish Ministers (rather than by the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.

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53 Employment provisions

- (1) A member of SOCA's staff who is for the time being designated under section 43 as a person having the powers of a constable is not, by virtue of section 46(2), to be treated as being in police service for the purposes of the enactments mentioned in subsection (2).
- (2) The enactments are—
 - (a) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (person in police service excluded from definitions of “worker” and “employee”);
 - (b) section 200 of the Employment Rights Act 1996 (c. 18) (certain provisions of the Act not to apply to persons in police service);
 - (c) Article 145 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12)); and
 - (d) Article 243 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).

54 Interpretation of Chapter 2

- (1) In this Chapter—
 - “designated person” means a person for the time being designated under section 43;
 - “United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom's territorial sea.
- (2) Any reference in this Chapter to the exercise of powers by virtue of a designation under section 43 is, in a case where any limitations were imposed under subsection (2) of that section, a reference to their exercise in conformity with those limitations.

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