
STATUTORY INSTRUMENTS

1985 No. 1800**CUSTOMS AND EXCISE****The Police and Criminal Evidence Act 1984
(Application to Customs and Excise) Order 1985**

Made - - - - 20th November 1985
Laid before Parliament 28th November 1985
Coming into Operation 1st January 1986

The Treasury, in exercise of the powers conferred on them by section 114(2) of the Police and Criminal Evidence Act 1984(a), hereby make the following Order:

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 and shall come into operation on 1st January 1986.

2.— (1) In this Order, unless the context otherwise requires—

“the Act” means the Police and Criminal Evidence Act 1984;

“assigned matter” has the meaning given to it by section 1 of the Customs and Excise Management Act 1979(b);

“the customs and excise Acts” has the meaning given to it by section 1 of the Customs and Excise Management Act 1979;

“customs office” means a place for the time being occupied by Her Majesty’s Customs and Excise;

“officer” means a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.

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

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

(b) he is arrested at a customs office after attending voluntarily at the office or accompanying an officer to it,

and is detained there or is detained elsewhere in the charge of an officer, and

(a) 1984 c. 60.
(b) 1979 c. 2.

nothing shall prevent a detained person from being transferred between customs detention and police detention.

3.— (1) Subject to the modifications in paragraphs (2) and (3) of this article, in articles 4 to 11 below and in Schedule 2 to this Order, the provisions of the Act 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 investigations conducted by officers of Customs and Excise of offences which relate to assigned matters, and to persons detained by such officers.

(2) The Act 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 substitute words and phrases in Column 2 of that Part.

(3) Where in the Act any act or thing is to be done by a constable of a specified rank, that act or thing shall be done by an officer of at least the grade specified in Column 2 of Part 2 of Schedule 2 to this Order, and the Act shall be interpreted as if the substituted grade were specified in the Act.

4. Nothing in the application of the Act to Customs and Excise shall be construed as conferring upon an officer any power—

- (a) to charge a person with any offence;
- (b) to release a person on bail;
- (c) to detain a person for an offence after he has been charged with that offence.

5.— (1) Where in the Act a constable is given power to seize and retain any thing found upon a lawful search of person or premises, an officer shall have the same power notwithstanding that the thing found is not evidence of an offence in relation to an assigned matter.

(2) Nothing in the application of the Act to Customs and Excise shall be construed to prevent any thing lawfully seized by a person under any enactment from being accepted and retained by an officer.

(3) Section 21 of the Act (access and copying) shall not apply to any thing seized as liable to forfeiture under the customs and excise Acts.

6. In its application by virtue of article 3 above the Act shall have effect as if the following section were inserted after section 14—

“14A. 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 an assigned matter, as defined in section 1 of the Customs and Excise Management Act 1979, is neither excluded material nor special procedure material for the purposes of any enactment such as is mentioned in section 9(2) above.”.

7. Section 18(1) of the Act shall be modified as follows:—

“18.—(1) Subject to the following provisions of this section, an officer of Customs and Excise may enter and search any premises occupied or controlled by a person who is under arrest for any arrestable offence which relates to an assigned matter, as defined in section 1 of the Customs and Excise Management Act 1979, 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 arrestable offence which is connected with or similar to that offence.”.

8.—(1) The Commissioners of Customs and Excise shall keep on an annual basis the written records mentioned in subsection (1) of section 50 of the Act.

(2) The Annual Report of the Commissioners of Her Majesty's Customs and Excise shall contain information about the matters mentioned in subsection (1) of section 50 of the Act in respect of the period to which it relates.

9.—(1) Section 55 of the Act shall have effect as if it related only to things such as are mentioned in subsection (1)(a) of that section.

(2) The Annual Report of the Commissioners of Her Majesty's Customs and Excise shall contain the information mentioned in subsection (15) of section 55 of the Act about searches made under that section.

10. Section 77(3) of the Act shall be modified to the extent that the definition of “independent person” shall, in addition to the persons mentioned therein, also include an officer or any other person acting under the authority of the Commissioners of Customs and Excise.

11. Where any provision of the Act as applied to Customs and Excise—

(a) confers a power on an officer, and

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

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

*T. Garel-Jones,
Ian B. Lang,*

Two of the Lords Commissioners
of Her Majesty's Treasury.

20th November 1985.

SCHEDULES

(Article 3)

SCHEDULE 1

PROVISIONS OF THE ACT APPLIED TO CUSTOMS AND EXCISE

Section 8
Section 9 and Schedule 1
Section 15
Section 16
Section 17(1)(b), (2), (4)
Section 18 subject to the modification in article 7 hereof
Section 19
Section 20
Section 21 subject to the modifications in article 5 hereof
Section 22(1) to (4)
Section 28
Section 29
Section 30(1) to (4)(a) and (5) to (11)
Section 31
Section 32(1) to (9) subject to the modifications in article 5 hereof
Section 34(1) to (5)
Section 35
Section 36
Section 37
Section 39
Section 40
Section 41
Section 42
Section 43
Section 44
Section 50 subject to the modification in article 8 hereof
Section 51(d)
Section 52
Section 54
Section 55 subject to the modifications in articles 5 and 9 hereof
Section 56(1) to (9)
Section 57(1) to (9)
Section 58(1) to (11)
Section 62
Section 63
Section 64(1) to (6)

SCHEDULE 2

(Article 3)

PART 1

Substitution of equivalent words and phrases in the Act.

Where in the Act a word or phrase specified in Column 1 below is used, in the application of the Act to Customs and Excise, there shall be substituted the equivalent word or phrase in Column 2 below—

Column 1	Column 2
WORDS AND PHRASES USED IN THE ACT	SUBSTITUTED WORDS AND PHRASES
area chief officer constable designated police station officer of a force maintained by a police authority police area police detention (except in section 118 and in section 39(1)(a) the second time the words occur) police force police officer police station rank station the police	collection collector officer designated customs office officer collection customs detention HM Commissioners of Customs and Excise officer customs office grade customs office HM Customs and Excise

PART 2

Equivalent grades of officers.

Where in the Act an act or thing is to be done by a constable of the rank specified in Column 1 below, that same act or thing shall, in the application of the Act to Customs and Excise, be done by an officer of at least the grade specified in Column 2 below—

Column 1	Column 2
RANK OF CONSTABLE	GRADE OF OFFICER
sergeant inspector superintendent	executive officer higher executive officer senior executive officer

EXPLANATORY NOTE

(This Note is not part of the Order.)

Article 3 of the Order applies to officers of Customs and Excise, subject to specified modifications, provisions of the Police and Criminal Evidence Act 1984, contained in Schedule 1 to the Order, relating to investigation of offences and detention of persons by the police. Schedule 2 to the Order substitutes for words and phrases in the Act, equivalent terms applicable to Customs and Excise, and for police ranks, the equivalent Customs and Excise grades.

Article 4 ensures that officers of Customs and Excise do not have powers to charge a person with any offence, to release a person on bail, or to detain a person for an offence after he has been charged with that offence. Article 5 allows officers of Customs and Excise to retain articles found during a lawful search which are evidence of any offence and to retain articles seized by others. Article 5 also distinguishes articles seized under the Act from goods seized as liable to forfeiture under the Customs and Excise Acts, and provides that the provisions on access and copying do not apply to goods seized as liable to forfeiture.

Article 6 retains the existing power of Customs and Excise officers to obtain search warrants where the material sought is acquired or created in the course of a trade, business or profession. Article 7 limits the right of an officer of Customs and Excise to enter and search premises under section 18(1) of the Act to premises occupied or controlled by a person who is under arrest for an arrestable offence which relates to an assigned matter as defined in section 1 of the Customs and Excise Management Act 1979.

Article 8 provides for the keeping of records and publication of information regarding persons held in customs detention. Article 9 extends existing powers of intimate search to include searches by officers of Customs and Excise for items with which the detainee might cause physical injury to himself or others and provides for the publication of information regarding such searches. Article 10 expands the definition of those persons who may not be regarded as an independent person for the purpose of admissibility of a confession by a mentally handicapped person as evidence to include Customs and Excise officers and any other person acting under authority of the Commissioners of Customs and Excise. Article 11 provides that officers of Customs and Excise may use reasonable force in exercising powers conferred by the Act.

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