

2005 No. 425

**CUSTOMS AND EXCISE, ENGLAND AND WALES
CUSTOMS AND EXCISE, NORTHERN IRELAND**

**The Crime (International Co-operation) Act 2003 (Exercise of
Functions) Order 2005**

<i>Made</i> - - - -	<i>1st March 2005</i>
<i>Laid before Parliament</i>	<i>2nd March 2005</i>
<i>Coming into force</i> - -	<i>23rd March 2005</i>

The Treasury, in exercise of the powers conferred upon them by section 27(1) of the Crime (International Co-operation) Act 2003(a), hereby make the following Order:

**PART 1
GENERAL**

Citation, commencement and extent

1.—(1) This Order may be cited as the Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2005 and shall come into force on 23rd March 2005.

(2) This Order extends to England and Wales and Northern Ireland.

Interpretation

2.—(1) In this Order—

“the Act” means the Crime (International Co-operation) Act 2003;

“assigned matter” means any matter in relation to which the Commissioners are for the time being required in pursuance of any enactment to perform any duties;

“the Commissioners” means the Commissioners of Customs and Excise;

“customs officer” includes a person acting under the direction of such an officer;

“relevant offence” means conduct constituting an offence under the law of a country outside the United Kingdom which, if it occurred in England and Wales or Northern Ireland, would be an offence contrary to an enactment relating to an assigned matter;

“request for assistance” means a request for assistance in obtaining evidence in England and Wales or Northern Ireland.

(2) Any reference to a section or subsection in articles 3 to 12 is a reference to a section or subsection of the Act.

PART 2

FUNCTIONS OF THE COMMISSIONERS

Functions exercisable by the Commissioners

3. Any of the functions conferred on the Secretary of State (including functions conferred on him as the territorial authority in relation to evidence in England and Wales or Northern Ireland) under—

- (a) section 13 (request for assistance from overseas authorities);
- (b) section 14 (powers to arrange for evidence to be obtained);
- (c) section 15 (nominating a court etc. to receive evidence);
- (d) section 19 (forwarding seized evidence);
- (e) paragraph 6 of Schedule 1 to the Act (forwarding evidence),

may be exercised by the Commissioners instead of the Secretary of State where the circumstances mentioned in articles 4 to 8 below occur; and for the purposes of this Order a reference to the Secretary of State in those sections or that paragraph shall be taken to include the Commissioners.

Requests for assistance from overseas authorities

4.—(1) The Commissioners may exercise the function under section 13 of arranging for evidence in England and Wales or Northern Ireland to be obtained under section 15 where—

- (a) a request for assistance has been made in connection with criminal proceedings or a criminal investigation mentioned in section 14(1)(a), and
- (b) those proceedings or that investigation relate wholly or mainly to a relevant offence.

(2) For the purpose of making a decision about a request for assistance the Commissioners must exercise the functions in section 14.

Directing that a search warrant be applied for

5. The Commissioners may exercise the function under section 13 of directing that a search warrant be applied for under or by virtue of section 16 or 17 where a request for assistance has been made wholly or mainly in connection with a relevant offence.

Nominating a court etc to receive evidence

6. The Commissioners may exercise the function under section 15 of nominating a court to receive any evidence to which a request for assistance relates, where the request for assistance has been made wholly or mainly in connection with a relevant offence.

Forwarding seized evidence

7. The Commissioners may exercise the function under section 19 of forwarding evidence to the court or authority which made a request for assistance where that evidence has been sent to them by a customs officer under section 17 for such forwarding.

Forwarding evidence

8. The Commissioners may exercise the function under paragraph 6 of Schedule 1 to the Act of forwarding evidence to the court or authority which made a request for assistance where the evidence has been received by the court nominated by the Commissioners under section 15.

PART 3

FUNCTIONS OF A CUSTOMS OFFICER

Extension of statutory search powers

9. Any function conferred on a constable by virtue of section 16 in relation to a warrant or order under section 8 of, or Schedule 1 to the Police and Criminal Evidence Act 1984(a) may be exercised by a customs officer instead of a constable where—

- (a) the Commissioners have given a direction under section 13, or
- (b) any such function is to be exercised by a customs officer for the purposes of an investigation relating wholly or mainly to a relevant offence by an international joint investigation team of which he is a member.

Applying for and executing a search warrant

10. Any function conferred on a constable under section 17 (applying for and executing a search warrant) may be exercised by a customs officer instead of a constable where the Commissioners have given a direction under section 13 that an application be made for a search warrant.

Sending seized evidence

11. Any function conferred under section 19 (sending seized evidence) on a constable in England and Wales or Northern Ireland must be exercised by a customs officer instead of a constable where the evidence has been seized by a customs officer under—

- (a) a search warrant or production order issued by virtue of section 16, or
- (b) a search warrant issued under section 17.

References

12. For the purposes of this Order any reference to a constable in sections 16, 17 or 19 shall be taken to include a customs officer.

Revocation

13. The Criminal Justice (International Co-operation) Act 1990 (Exercise of Powers) Order 1991(b) is hereby revoked.

1st March 2005

Nick Ainger
Jim Murphy
Two of the Lords Commissioners
HM Treasury

(a) 1984 c. 60. There is an amendment to section 8 not relevant to this Order. Schedule 1, paragraph 5 has been amended by Schedule 2, paragraph 14 to the Criminal Justice and Police Act 2001 (c.16).
(b) S.I. 1991/1297.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to England and Wales and Northern Ireland and comes into force on 23rd March 2005, enables the Commissioners of Customs and Excise and customs officers to exercise certain functions under the Crime (International Co-operation) Act 2003.

Article 3 of the Order provides that the functions conferred on the Secretary of State under sections 13, 14, 15 and 19 of, and paragraph 6 of Schedule 1 to the 2003 Act may be exercised by the Commissioners in certain circumstances.

Under those provisions the Commissioners may assist any court exercising criminal jurisdiction, or a prosecuting authority, outside the United Kingdom and certain other foreign or international authorities in arranging for evidence to be obtained (section 13). The Commissioners may arrange for such evidence to be obtained if it is being obtained in connection with criminal proceedings or an investigation outside the United Kingdom (section 14). They may nominate a court to receive such evidence (section 15). As part of that assistance the Commissioners may direct that an application be made for a search warrant (section 13).

Articles 4 to 6 set out the circumstances in which those functions may be exercised by the Commissioners, namely where the request for assistance relates to an overseas offence which, if committed in England and Wales or Northern Ireland, would be an offence relating to an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979.

Articles 7 and 8 enable the Commissioners to forward directly to the overseas authority any evidence seized under sections 16 or 17 of the 2003 Act, and any evidence received by the nominated court (section 19, and Schedule 1, paragraph 6).

Articles 9 to 11 provide that the functions conferred on a constable may be exercised by a customs officer (and any person acting under the direction of a customs officer) in certain circumstances. Article 9 enables a customs officer to exercise the powers under section 8 of, or Schedule 1 to the Police and Criminal Evidence Act 1984 as extended to offences outside the United Kingdom. He may exercise those powers where the Commissioners have given a direction under section 13 of the 2003 Act or if he is a member of an international joint investigation team investigating an overseas offence which, if committed in England and Wales or Northern Ireland, would be an offence relating to an assigned matter.

Article 10 enables a customs officer to apply for and execute a search warrant where the Commissioners have given a direction under section 13 of the 2003 Act.

Article 11 requires a customs officer to forward seized evidence to the court or authority which made the request for assistance or to the Commissioners for forwarding to the court or authority.

Article 13 revokes The Criminal Justice (International Co-operation) Act 1990 (Exercise of Powers) Order 1991.

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