

**EXPLANATORY MEMORANDUM TO  
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (APPLICATION TO REVENUE  
AND CUSTOMS) ORDER 2007**

**2007 No. 3175**

**THE POLICE AND CRIMINAL EVIDENCE (APPLICATION TO REVENUE AND  
CUSTOMS) ORDER (NORTHERN IRELAND) 2007**

**2007 No. SR 464**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This explanatory memorandum covers two instruments. The effect of both instruments is to apply certain provisions of the Police and Criminal Evidence Act 1984 (PACE) to HMRC subject to modifications made in the articles to the orders. The Northern Ireland order does this by applying the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989, SI 1989/1341, (the 1989 order).
  - 2.2 The England and Wales order revokes the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985, SI 1985/1800, and the orders that have amended that order.
  - 2.3 The Northern Ireland order revokes the Police and Criminal Evidence (Application to Customs and Excise) Order (Northern Ireland), SR 1989/465, and the orders that have amended that order.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Background**
  - 4.1 For many years Her Majesty's Customs and Excise (HM Customs & Excise) were able to use certain provisions of PACE when conducting criminal investigations. In England and Wales this power was provided by section 114(2) of PACE. This allowed the Treasury to make orders applying provisions of the 1984 Act to HM Customs & Excise. In Northern Ireland this power was provided by article 85 of the 1989 order. This allowed the Treasury to make orders applying provisions of the 1989 order to HM Customs & Excise.
  - 4.2 The Treasury has used these powers to make orders applying the provisions of PACE or the 1989 order to HM Customs & Excise. These are the orders that are revoked by the orders covered by this explanatory memorandum.

- 4.3 When HMRC was formed in 2005 the powers available to the two former Departments were ring-fenced. Powers available to HM Customs and Excise can be used only when carrying out functions formerly dealt with by that department. So the provisions of PACE can be used by HMRC only when dealing with functions that were formerly dealt with by HM Customs & Excise. Paragraphs 7 and 9 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (CRCA) prevents the Treasury making orders applying the provisions of PACE or the 1989 order to functions formerly dealt with by the Inland Revenue.
- 4.4 Sections 82(2), 83(2) and 84(1) of the Finance Act 2007 change that. Sections 82(2) and 83(2) allow the Treasury to make orders applying the provisions of PACE or the 1989 order to investigations conducted by officers of Revenue and Customs. Section 84(1) removes the restriction in paragraphs 7 and 9 of Schedule 2 to CRCA.
- 4.5 The orders described in this memorandum are made in accordance with this new authority. They apply the provisions of PACE or the 1989 order to all functions of HMRC except a small number where the department acts as an agent for other government departments.

## **5. Territorial Extent and Application**

SI 2007/3175 applies to England and Wales. SR 2007/464 applies to Northern Ireland.

## **6. European Convention on Human Rights**

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 HMRC is responsible for investigating suspected crime involving any of its functions. To do this effectively it needs powers that are modern and efficient. The powers must also be proportionate with appropriate safeguards for citizens. For England, Wales and Northern Ireland the generally used powers for investigating crime are those in PACE or the 1989 order. These provide the powers and safeguards that Parliament considers generally appropriate for investigating crime.
- 7.2 HMRC is already able to use certain PACE powers or powers in the 1989 order when investigating crime involving former HM Customs & Excise functions. These powers include the standard tools of criminal investigation such as search warrants, powers of arrest and orders requiring the production of information. Applying PACE or the 1989 order so that they can be used for all its functions will give HMRC a single set of modern criminal investigation powers.
- 7.3 This will give HMRC the tools it needs to investigate criminal activity involving former Inland Revenue functions more effectively. It will also make it easier to investigate criminal activity that spans former HM Customs and Excise and Inland Revenue functions such as VAT and corporation tax more efficiently. But

the use of the powers will be subject to the safeguards that apply to criminal investigations generally.

- 7.4 The proposal to allow HMRC to use PACE or the 1989 order when investigating suspected crime involving former Inland Revenue functions was the subject of a consultation paper issued on 30 March 2006. This can be found under lapsed consultations on the HMRC Internet site at [www.hmrc.gov.uk/consultations](http://www.hmrc.gov.uk/consultations). The majority of those who responded supported this proposal provided proper safeguards were put in place.
- 7.5 More detailed proposals were published on 17 January 2007. This consultation paper can be found under lapsed consultations on the HMRC Internet site at [www.hmrc.gov.uk/consultations](http://www.hmrc.gov.uk/consultations). Again most respondents supported the use of PACE or the 1989 order provided proper safeguards were put in place. In particular they wanted the powers to be used only in criminal investigations and only by officers who are trained and authorised to use them.
- 7.6 A number of detailed suggestions were made in response to the consultation and in meetings with interested parties. Most of these suggestions were adopted in the legislation.
- 7.7 In response to the request that proper safeguards are in place HMRC agreed to publish material on its Internet site. This will set out how criminal investigation work is organised in HMRC, which officers are entitled to use the powers and how use of the powers is authorised. This material will be published before 1 December 2007.

## **8. Impact**

- 8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 There is no impact on the public sector.

## **9. Contact**

Matthew Sawyer at HMRC, tel: 0207 147 2403 or e-mail: [matthew.sawyer@hmrc.gsi.gov.uk](mailto:matthew.sawyer@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.