

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: The National Crime Agency

Schedule 5: Police, customs and immigration powers

Part 1: Director General: Commissioners' powers exercisable under section 9(1)

187. *Paragraph 1* sets out a further limitation on the Commissioner powers exercisable by the Director General. Section 9 sets out that the powers of the Commissioners are exercisable only in relation to any customs matter. *Paragraph 1* provides that if a power of the Commissioners is exercisable in relation to both a customs matter and any other matter the power is exercisable by the Director General only in relation to a customs matter (as defined in section 9).
188. *Paragraph 2* applies to an enactment if it provides for the issuing of warrants which authorise the Commissioners to exercise any power in relation to a customs matter. The paragraph provides that for the purpose of enabling the Director General to exercise that power in relation to a customs matter the enactment has effect as if the Director General were one of the Commissioners.
189. *Paragraph 3* provides that the Director General cannot exercise the power of the Commissioners to consent to a disclosure of HMRC information under paragraph 2(1) of Schedule 7 or the power of the Commissioners to consent to a further disclosure of HMRC information under *paragraph 2(2)* of Schedule 7.

Part 2: Director General: designation under section 9

190. *Paragraph 4* provides that the Secretary of State must appoint an advisory panel to make recommendations as to the operational powers that the Director General should have (*sub-paragraph (1)*). The panel must be appointed whenever there is an appointment of a Director General, and at any other time that the Secretary of State considers is appropriate. *Sub-paragraph (2)* provides that the requirement to establish an advisory panel is subject to any regulations under paragraph 5. *Sub-paragraph (3)* sets out the membership of the panel which must consist of a person to chair the panel (who must not be a serving civil servant) and other members expert in the training of NCA officers and the respective operational powers – police powers, customs powers and immigration powers. The panel may only consider whether the Director General has received adequate training in respect of the operational powers. The requirements as to capability and suitability for the Director General to exercise operational powers will be addressed as part of the selection and appointment process (*paragraph 7(2)* of Schedule 1). The chair must consider the information given by the expert members in order to decide whether the Director General has received adequate training in order to exercise the operational powers in question and produce a report with recommendations as to the operational powers the Director General should have (*sub-paragraph (5)*).

191. *Paragraph 5* provides that the Secretary of State may make regulations to set out the circumstances in which the Director General may be designated with operational powers other than on the recommendation of the advisory panel. Regulations may provide that the Secretary of State must designate the Director General with operational powers if specified conditions are met (*sub-paragraph (2)*). *Sub-paragraph (3)* provides that the conditions may relate to the training received by a person in one or more of the operational powers before their appointment as Director General.

Part 3: Further provision about designations under sections 9 or 10

192. *Paragraph 6* provides that a designation of an officer as having operational powers may be subject to limitations specified in the designation. This may include limitations on which operational powers the designated officer has or limitations on the purposes for which an NCA officer may exercise operational powers.
193. *Paragraph 7* provides that the designation of an officer as having operational powers does not have any limitation of time unless the designation specifies a period for which it is to have effect. Any designation, however, remains subject to any subsequent modification or withdrawal and only has effect while a person remains an NCA officer.
194. *Paragraph 8* provides that the Director General or other NCA officer may be designated with operational powers whether or not that person already has, or previously had, any such powers. *Sub-paragraph (3)* provides that if a person is both an NCA officer designated with operational powers and a special constable or a member of the PSNI Reserve none of the powers that a person has as an NCA officer are exercisable at any time when the person is exercising any power or privilege of a special constable or a constable of the PSNI Reserve.
195. *Paragraph 9* provides that an NCA officer must produce evidence of his or her designation if they exercise or purport to exercise any operational power in relation to another person and the other person requests the officer to produce such evidence (*sub-paragraph (1)*). This paragraph does not specify the form which such evidence should take. A failure to produce evidence of designation does not make the exercise of the power invalid (*sub-paragraph (2)*).

Part 4: Designations: powers and privileges of constables

196. *Paragraph 10* provides that where the Director General is designated with police powers and privileges, the Director General has in England and Wales and adjacent UK waters all the powers and privileges of an English and Welsh constable and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas. The exercise of police powers is subject to any limitations in the designation.
197. *Paragraph 11* further provides that where an NCA officer (other than the Director General) is designated with police powers and privileges, the NCA officer has: in England and Wales and adjacent UK waters, all the powers and privileges of an English and Welsh constable; in Scotland and the adjacent UK waters, all the powers and privileges of a Scottish constable; in Northern Ireland and the adjacent UK waters, all the powers and privileges of a Northern Ireland constable; and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas (*sub-paragraph (1)*). The exercise of police powers is subject to any limitations in the designation. Furthermore, the exercise of the powers and privileges of a constable in Scotland and Northern Ireland are subject to further requirements by virtue of *sub-paragraphs (3) and (6)*.
198. *Paragraph 11* further provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish general authorisation is in force between the Scottish Ministers and the Director General (*sub-paragraph (4)*). *Sub-paragraph (5)* provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish operational authorisation (that is an agreement between the

Director General and an officer of the Police Service of Scotland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. *Sub-paragraph (7)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer only if a Northern Ireland general authorisation is in force between the Department of Justice in Northern Ireland and the Director General. *Sub-paragraph (8)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer if a Northern Ireland operational authorisation (that is an agreement between the Director General and an officer of the Police Service of Northern Ireland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. A Northern Ireland operational authorisation must conform with a Northern Ireland general authorisation.

199. *Paragraph 12* provides that the exercise of the powers of a constable by the Director General or other designated NCA officer is subject to the same territorial restrictions as a constable exercising those powers. *Paragraph 13* applies to an enactment if it provides for the issuing of warrants which authorise a constable to exercise any power or privilege of a constable. The paragraph further provides that for the purpose of enabling a designated officer to exercise his or her powers or privileges the enactment has effect as if the designated officer were a constable.
200. *Paragraph 14* provides that when exercising direction and control of the NCA in relation to the exercise by NCA officers of the powers and privileges of a Scottish constable, the Director General must comply with instructions given by the Lord Advocate or procurator fiscal in relation to the investigation of offences.
201. *Paragraph 15* provides that those NCA officers designated with policing powers and privileges will not be regarded as being in police service for the purposes of certain specified employment legislation.

Part 5: Designations: powers of officers of Revenue and Customs

202. *Paragraphs 16 to 18* provide that an NCA officer (*paragraph 16*) who has been designated with customs powers has the same powers as an officer of Revenue and Customs in relation to any customs matter. The definition of a 'customs matter' is set out in Section 9 and excludes the matters to which section 7 (former Inland Revenue matters) of the Commissioner for Revenue and Customs Act 2005 applies and taxes and duties. Therefore the exercise of customs powers by the Director General of the NCA and designated NCA officers is in relation to non-revenue matters. In both cases the exercise of customs powers in relation to non-revenue matters is subject to any limitations in the designation. Where a customs power is exercisable in relation to both a customs matter and any other matter, the power is only exercisable by an NCA officer in relation to the customs matter (*paragraph 17*).
203. *Paragraph 18* provides that where an enactment enables a warrant to be issued which authorises an officer of Revenue and Customs to exercise any power in relation to a customs matter, a designated NCA officer is to be treated as if he or she were an officer of Revenue and Customs for the purposes of enabling NCA officers to exercise those powers.

Part 6: Designations: powers of immigration officers

204. *Paragraph 19* enables any NCA officer, designated with the powers of an immigration officer, to exercise all the powers of an immigration officer. The exercise of immigration powers is subject to any limitations in the designation.
205. *Paragraph 20* provides that where an enactment enables a warrant to be issued which authorises an immigration officer to exercise any power of an immigration officer, an NCA officer designated with immigration powers is to be treated as an immigration officer for the purposes of enabling them to exercise those powers.

Part 7: Offences relating to designations

206. *Paragraphs 21 to 23* set out various summary offences relating to obstructing, assaulting or impersonating designated officers. They parallel similar offences in relation to police officers, officers of Revenue and Customs and immigration officers in various enactments.
207. *Paragraph 21* makes it an offence to resist or wilfully obstruct a designated officer acting in the exercise of an operational power or to resist or wilfully obstruct a person assisting a designated officer in the exercise of such a power. *Paragraph 22* makes it an offence to assault a designated officer acting in the exercise of an operational power or to assault a person assisting a designated officer in the exercise of such a power. *Paragraph 23* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated officer. It is also an offence for a designated NCA officer to make any statement or act in a way that falsely suggests that he or she has powers above and beyond those he or she in fact has.
208. *Sub-paragraph (2)* of each of *paragraphs 21 to 23* sets out the maximum penalties for the three offences in England and Wales, Scotland, and Northern Ireland respectively.

Part 8: General

209. *Paragraph 25* provides that the Director General must pay all proceeds of forfeitures under the customs and excise Acts to the Commissioners for Revenue and Customs.
210. *Paragraph 26* provides that, where an enactment relates to a power or privilege of a constable, or a power of an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer and the enactment refers to a constable, an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer, those references should be read as being, or including a reference to, the Director General or other NCA officer as appropriate.
211. *Paragraph 27* confers an order-making power on the 'relevant national authority' (as defined in *paragraph 30*) to make such provision as considered appropriate in consequence of the Director General having the powers of the Commissioners under section 9 or designated offices having operational powers.
212. *Paragraph 28* confers an order-making power on the 'relevant national authority' to amend by order the functions of a person so that they can be exercised by that person in relation to the NCA, the Director General or NCA officers.
213. The order-making powers in *paragraphs 27 and 28* are subject to the affirmative resolution procedure where they amend primary legislation, but are otherwise subject to the negative resolution procedure.
214. *Paragraph 29* provides that before the Secretary of State exercises a power under *paragraph 27 or 28* in relation to enactments that confer any functions on the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs must be consulted (*sub-paragraph (2)(a)*). Before the Secretary of State exercises the power in relation to an enactment which extends to Scotland or Northern Ireland, the Secretary of State must consult the Scottish Ministers or the Department of Justice in Northern Ireland respectively (*sub-paragraphs (2)(b) and (c)*).
215. *Paragraph 30* sets out and defines the various terms that have been used in this Schedule.