

# CRIME AND COURTS ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 21: Power of immigration officers: further provision*

658. *Paragraphs 1 to 4* make further amendments to Part 3 of the Police Act 1997 to provide for immigration officers to apply for authorisation to interfere with property and wireless telegraphy. Authorisation will be sought from a senior official of the Home Office, who is also an immigration officer and designated for this purpose.
659. The amendments make the necessary changes to Part 3 of that Act so that:
- the senior official in the Home Office designated for this purpose must not grant an authorisation for property and wireless interference save where the application is made by an immigration officer (*paragraph 2(3)*);
  - an authorisation for property and wireless interference may only be granted for the purpose of preventing or detecting an immigration or nationality offence (*paragraph 2(4) to (6)*);
  - a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the authorising officer (*paragraph 3*);
  - the Prime Minister may exclude from a copy of any report of the Chief Surveillance Commissioner to be laid before Parliament any matters which may prejudice the functions of the Secretary of State relating to immigration (*paragraph 4*).
660. Guidance will be produced by the Home Office in due course stipulating that applications for authorisation for intrusive surveillance are to be made only by immigration criminal investigators.
661. *Paragraphs 5 to 13* make further amendments to RIPA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:
- the senior official in the Home Office designated for this purpose must not grant an authorisation for carrying out intrusive surveillance save where the application is made by an immigration officer (*paragraph 7*);
  - a deputy, who is also designated for this purpose, may authorise urgent applications in the absence of the senior authorising officer (*paragraph 8*);
  - any grant, renewal or cancellation of an authorisation for intrusive surveillance must be notified to a Surveillance Commissioner (*paragraph 9*);
  - except in urgent cases, authorisations granted for intrusive surveillance will not take effect until they have been approved by a Surveillance Commissioner and written notice of the Commissioner's decision has been given to the person who granted the authorisation (*paragraph 10*);

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- a Surveillance Commissioner may quash or cancel an authorisation (*paragraph 11*);
  - immigration officers are subject to the obligation to comply with any request of a Surveillance Commissioner to supply documents or information required by that Commissioner for the purpose of enabling him or her to carry out the Commissioner's functions (*paragraph 12*); and
  - an authorisation by a senior official within the Home Office is not subject to the prohibition on authorisations extending to Scotland (*paragraph 13*).
662. *Paragraphs 14 to 38* make further amendments to the POCA to bring the powers of immigration officers under that Act into line with those of customs officers. The changes to the powers of immigration officers include:
- Introducing a power for an immigration officer to seize property, and to retain such property pursuant to a restraint order, when exercising an immigration function;
  - Granting senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to approve seizures of property, and to search premises, people and vehicles;
  - Conferring on senior immigration officers (that is, those of an equivalent rank to a senior police officer) the power to give notice for the forfeiture of cash without a court order (so as to avoid wasting public funds in going to court where cash is unclaimed);
  - Allowing immigration officers to release cash that is the subject of a forfeiture notice;
  - Allowing immigration officers to apply for search and seizure warrants for the purposes of confiscation, money laundering, and detained cash investigations. In the context of detained cash investigations, the amendments will also allow immigration officers to retain relevant material seized under such a warrant;
  - Enabling immigration officers to apply for production orders, customer information orders (so long as they are sufficiently senior/have the appropriate authorisation) and account monitoring orders for the purposes of confiscation and money laundering investigations;
  - Enabling immigration officers to apply for production orders and customer information orders for detained cash investigations;
  - Allowing senior immigration officers to apply for, or to vary, a customer information order or to approve such an application by an immigration officer;
  - In exercising these functions, immigration officers will be subject to a code of practice made under section 377 of the POCA (*paragraph 37*);
  - In cases of serious default by an immigration officer during an investigation, compensation may be payable to the victim by the Secretary of State (*paragraph 19*).
663. *Paragraph 39* amends section 24 of the UK Borders Act 2007 to provide that approval for a search for cash by an immigration officer, under the POCA, may only be given by a person who is of an equivalent rank to a police inspector (namely a senior immigration officer).
664. *Paragraph 40* contains a saving provision so that sections 1(4), 3(5), 7(5) and 11(4) (the glossing provisions) of the Borders, Citizenship and Immigration Act 2009 ("BCIA") continue to apply to the provisions of any Act amended by section 55 of, or Schedule 21 to, the Act. The glossing provisions of the BCIA taken together ensure that references in relevant legislation to Her Majesty's Revenue and Customs ("HMRC"),

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the Commissioners for HMRC or an officer of Revenue and Customs are construed as including a reference to the Secretary of State, the Director of Border Revenue or a designated customs official or designated customs revenue official as the case may be. This is necessary to facilitate the machinery of government change introduced by BCIA as a result of which HMRC has the lead responsibility for customs matters in-country and, in operational terms at least, the Home Office (through the UK Border Force) has the lead responsibility for the same customs matters at the border.

665. *Paragraphs 41 to 43* modify the application of the Criminal Justice and Public Order Act 1994 so that immigration officers have the same powers as a constable when exercising cross border powers under sections 136 to 139 of the Criminal Justice and Public Order Act 1994.
666. *Paragraphs 44 to 49* amend the Criminal Law (Consolidation) (Scotland) Act 1995 so that the provisions in that Act relating to the questioning and detention and treatment of suspects apply to immigration officers and their investigations.
667. *Paragraph 50* makes consequential amendments relating to legal aid in Scotland. The consequential amendments add immigration and nationality offences to section 8A of the Legal Aid (Scotland) Act 1986 so that legal advice and assistance will be available in certain circumstances. The provision also amends regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (criminal advice and assistance: automatic availability in certain circumstances) and regulation 3 of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 so that they also include immigration or nationality offences. These modifications are necessary to ensure that those detained, questioned or arrested have access to legal aid and legal advice (subject to certain restrictions).