

SCHEDULES

SCHEDULE 21

POWERS OF IMMIGRATION OFFICERS: FURTHER PROVISION

PART 1

GENERAL

Police Act 1997

- 1 The Police Act 1997 is amended as follows.
- 2 (1) Section 93 (authorisations to interfere with property etc) is amended in accordance with this paragraph.
 - (2) In subsection (1B), after “Customs” insert “, an immigration officer”.
 - (3) In subsection (3)—
 - (a) in paragraph (d), omit the final “or”;
 - (b) after paragraph (d) insert—
 - “(da) if the authorising officer is within subsection (5)(ha), by an immigration officer;”.
 - (4) In subsection (4)—
 - (a) in the words after paragraph (b), for “it” substitute “the conduct”;
 - (b) after “1979” insert “or, where the authorising officer is within subsection (5) (ha), any of the offences is an immigration or nationality offence”.
 - (5) In subsection (5)(h), omit “or”.
 - (6) After subsection (6B), insert—
 - “(6C) For the purposes of this section, an offence is an immigration or nationality offence if conduct constituting the offence—
 - (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
 - (b) is undertaken for the purposes of, or otherwise in relation to, any of these enactments—
 - (i) the British Nationality Act 1981;
 - (ii) the Hong Kong Act 1985;
 - (iii) the Hong Kong (War Wives and Widows) Act 1996;
 - (iv) the British Nationality (Hong Kong) Act 1997;
 - (v) the British Overseas Territories Act 2002;

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(vi) an instrument made under any of those Acts.”.

3 In section 94 (authorisations given in absence of authorising officer), in subsection (2), after paragraph (f) insert—

“(fa) where the authorising officer is within paragraph (ha) of that subsection, by a senior official (within the meaning of the Regulation of Investigatory Powers Act 2000) in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated by the Secretary of State for the purposes of this section;”.

4 In section 107 (supplementary provisions relating to Commissioners), in subsection (4), after paragraph (c) insert—

“(d) the functions of the Secretary of State relating to immigration.”.

Regulation of Investigatory Powers Act 2000

5 The Regulation of Investigatory Powers Act 2000 is amended as follows.

6 In section 32(6) (authorisation of intrusive surveillance: senior authorising officers), in paragraph (m), omit the final “and”.

7 (1) Section 33 (rules for grant of authorisations) is amended in accordance with this paragraph.

(2) After subsection (4) insert—

“(4ZA) A senior official who is a senior authorising officer by virtue of a designation by the Secretary of State under section 32(6)(ma) shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an immigration officer.”.

(3) In subsection (5)(a), after “Customs” insert “, an immigration officer”.

8 (1) Section 34 (grant of authorisations in the senior officer’s absence) is amended in accordance with this paragraph.

(2) In subsection (1)(a), after “Customs” insert “or an immigration officer”.

(3) In subsection (2)(a), after “Customs” insert “or the Secretary of State”.

(4) In subsection (4), after paragraph (l) insert—

“(la) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation under section 32(6)(ma), if the person is a senior official in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated for the purposes of this paragraph by the Secretary of State as a person entitled so to act in an urgent case;”.

9 (1) Section 35 (notification of authorisations for intrusive surveillance) is amended in accordance with this paragraph.

(2) In subsection (1), after “Customs” insert “, immigration”.

(3) In subsection (10)—

(a) in the words before paragraphs (a) to (c), after “Customs” insert “, immigration”;

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- (b) in paragraph (b), for “by the Commissioners for Her Majesty’s Revenue and Customs” substitute “under section 32(6)(m) or (ma)”.
- 10 (1) Section 36 (approval required for authorisations to take effect) is amended in accordance with this paragraph.
- (2) In subsection (1)—
- (a) in paragraph (d) omit “or”;
- (b) after paragraph (d) insert—
- “(da) an immigration officer; or”.
- (3) In subsection (6)—
- (a) in paragraph (g) omit the final “and”;
- (b) after paragraph (g) insert—
- “(ga) where the authorisation was granted by a senior official designated under section 32(6)(ma) or entitled to act for such an official under section 34(4)(la), the senior official designated under section 32(6)(ma); and”.
- 11 In section 37 (quashing of authorisations), in subsection (1)—
- (a) in paragraph (d) omit “or”;
- (b) after paragraph (d) insert—
- “(da) an immigration officer; or”.
- 12 In section 40 (information to be provided to Surveillance Commissioners), in subsection (1)—
- (a) in paragraph (d) omit the final “and”;
- (b) after paragraph (d) insert—
- “(da) every immigration officer and every other official in the department of the Secretary of State by whom functions relating to immigration are exercisable, and”.
- 13 In section 46 (restrictions on authorisations extending to Scotland), in subsection (3)—
- (a) in paragraph (e) omit the final “and”;
- (b) after paragraph (e) insert—
- “(ea) the department of the Secretary of State by whom functions relating to immigration are exercisable; and”.

Proceeds of Crime Act 2002

- 14 The Proceeds of Crime Act 2002 is amended as follows.
- 15 In section 41A (restraint orders: power to retain seized property etc), in subsection (3), after paragraph (c) insert—
- “(ca) an immigration officer;”.
- 16 (1) Section 47C (power to seize property) is amended in accordance with this paragraph.
- (2) Subsection (6) is amended as follows—
- (a) after paragraph (a) insert—
- “(aa) where applicable, in accordance with subsection (6A) or (6B).”;

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(b) for “(b) is exercisable” substitute—

“(6A) The power conferred by this section is exercisable”.

(3) After subsection (6A) insert—

“(6B) The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.”.

(4) After subsection (7) insert—

“(8) Relevant nationality enactment” means any enactment in—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.”.

17 In section 47G (“appropriate approval”), in subsection (3), after paragraph (a) insert—

“(aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

18 In section 47M (further detention in other cases), in subsection (3), after paragraph (a) insert—

“(aa) an immigration officer;”.

19 In section 72 (serious default), in subsection (9), after paragraph (e) insert—

“(ea) if the person in default was an immigration officer, the compensation is payable by the Secretary of State;”.

20 In section 120A (restraint orders: power to retain seized property etc), in subsection (3), after paragraph (b) insert—

“(ba) an immigration officer;”.

21 (1) Section 127C (power to seize property) is amended in accordance with this paragraph.

(2) Subsection (6) is amended as follows—

(a) after paragraph (a) insert—

“(aa) where applicable, in accordance with subsection (6A) or (6B).”;

(b) for “(b) is exercisable” substitute—

“(6A) The power conferred by this section is exercisable”.

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(3) After subsection (6A) insert—

“(6B) The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.”.

(4) After subsection (7) insert—

“(8) Relevant nationality enactment” means any enactment in—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.”.

22 In section 127G (“appropriate approval”), in subsection (3), after paragraph (a) insert—

“(aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

23 In section 127M (further detention in other cases: Scotland), in subsection (3), after paragraph (a) insert—

“(aa) an immigration officer;”.

24 In section 190A (restraint orders: power to retain seized property), in subsection (3), after paragraph (c) insert—

“(ca) an immigration officer;”.

25 (1) Section 195C (power to seize property) is amended in accordance with this paragraph.

(2) Subsection (6) is amended as follows—

(a) after paragraph (a) insert—

“(aa) where applicable, in accordance with subsection (6A) or (6B).”;

(b) for “(b) is exercisable” substitute—

“(6A) The power conferred by this section is exercisable”.

(3) After subsection (6A) insert—

“(6B) The power conferred by this section is exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the

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United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.”.

(4) After subsection (7) insert—

“(8) Relevant nationality enactment” means any enactment in—

- (a) the British Nationality Act 1981,
 (b) the Hong Kong Act 1985,
 (c) the Hong Kong (War Wives and Widows) Act 1996,
 (d) the British Nationality (Hong Kong) Act 1997,
 (e) the British Overseas Territories Act 2002, or
 (f) an instrument made under any of those Acts.”.

26 In section 195G (“appropriate approval”), in subsection (3), after paragraph (a) insert—

- “(aa) in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

27 In section 195M (further detention in other cases: Northern Ireland), in subsection (3), after paragraph (a) insert—

- “(aa) an immigration officer;”.

28 In section 297A (forfeiture notice), in subsection (6), after paragraph (a) insert—

- “(aa) an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.”.

29 In section 297F (release of cash subject to forfeiture notice), in subsection (4), after “Customs,” insert “immigration officer;”.

30 In section 351 (supplementary provision about production orders), in subsection (5) —

- (a) after “customs officer” (in the first place) insert “or an immigration officer”;
 (b) after “customs officer” (in the second place) insert “or immigration officer”.

31 In section 352 (search and seizure warrants), in subsection (5)—

- (a) in paragraph (a), after “a customs officer” insert “or an immigration officer”;
 (b) in paragraph (c), after “Customs” insert “or an immigration officer”.

32 In section 353 (requirements where production order not available), in subsection (10)—

- (a) in paragraph (a)—
 (i) for “investigator or” substitute “investigator;”
 (ii) after “customs officer” insert “or an immigration officer”;
 (b) in paragraph (c)—
 (i) for “investigator or” substitute “investigator;”
 (ii) after “Customs” insert “or an immigration officer”.

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- 33 In section 356 (further provisions: civil recovery and detained cash), in subsection (11)(b), after “Customs” insert “or an immigration officer”.
- 34 In section 357 (disclosure orders), in subsection (8)—
- (a) in paragraph (c), omit the final “and”;
 - (b) at the end of paragraph (d), insert “; and—
 - (c) in relation to a confiscation investigation carried out by an immigration officer, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland or any specified person.”.
- 35 (1) Section 369 (supplementary provision about customer information orders) is amended in accordance with this paragraph.
- (2) In subsection (5)—
 - (a) after “customs officer” (in the first place) insert “or an immigration officer”;
 - (b) after “customs officer” (in the second place) insert “or immigration officer”.
 - (3) In subsection (7), after “customs officer” insert “or an immigration officer”.
- 36 In section 375 (supplementary provision about account monitoring orders), in subsection (4)—
- (a) after “customs officer” (in the first place) insert “or an immigration officer”;
 - (b) after “customs officer” (in the second place) insert “or immigration officer”.
- 37 (1) Section 377 (code of practice of Secretary of State etc) is amended in accordance with this paragraph.
- (2) In subsection (1), after paragraph (e) insert—
 - “(f) immigration officers.”.
 - (3) In subsection (5), for “(e)” substitute “(f)”.
- 38 In section 412 (interpretation of Chapter 3 of Part 8 — Scotland), in the provision which relates to references to a “constable”, after “customs and excise officer” insert “and to an immigration officer”.

UK Borders Act 2007

- 39 In section 24 of the UK Borders Act 2007 (seizure of cash by immigration officers under Proceeds of Crime Act 2002), in subsection (2)(c), for “of the rank of at least Assistant Director” substitute “at or above the grade which is designated by the Secretary of State as being equivalent to the rank of police inspector”.

Saving of provisions of Borders, Citizenship and Immigration Act 2009

- 40 The amendments made to any other Act by section 55 or this Schedule do not prevent sections 1(4), 3(5), 7(5) and 11(4) of the Borders, Citizenship and Immigration Act 2009 from applying to the amended Act (including those provisions of that Act as amended by section 55 or this Schedule).