

2007 No.

REVENUE AND CUSTOMS

The Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Order in exercise of the powers conferred by Article 85 (1) and (2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 Act(a):

Citation and commencement

1. This Order may be cited as the Police and Criminal Evidence (Application to Revenue and Customs) Order 2007 and shall come into force on xx xx 2007.

Interpretation

2.—(1) In this Order—

“the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989;

“the customs and excise Acts” has the meaning given to it by section 1 of the Customs and Excise Management Act 1979(b);

“director” means the director of Criminal Investigations for Her Majesty’s Revenue and Customs;

“office of Revenue and Customs” means premises wholly or partly occupied by Her Majesty’s Revenue and Customs;

“relevant indictable offence” means an indictable offence which relates to a matter in relation to which Her Majesty’s Revenue and Customs have functions apart from a matter specified in section 54(4) (b) or (f) of, or in paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005(c) (former Inland Revenue matters).

“relevant investigation” means a criminal investigation conducted by officers of Revenue and Customs which relates to a matter in relation to which Her Majesty’s Revenue and Customs have functions apart from a matter specified in section 54(4) (b) or (f) of, or in paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters).

(a) SI 1989/1341 (N.I. 12) as amended by SI 2007/288 (N.I. 2) and 2007 c.x
(b) 1979 c.2
(c) 2005 c.11

- (2) A person is in Revenue and Customs detention for the purpose of this Order if—
- (a) he has been taken to an office of Revenue and Customs after being arrested for an offence; or
 - (b) he is arrested at an office of Revenue and Customs after attending voluntarily at the office or accompanying an officer of Revenue and Customs to it,

and is detained there or detained elsewhere in the charge of an officer of Revenue and Customs, and nothing shall prevent a detained person from being transferred between Revenue and Customs detention and police detention.

Application

3.—(1) Subject to the modifications in paragraphs (2) and (3) of this Article, in articles 4 to 14 below and in Schedule 2 to this Order, the provisions of the 1989 Order contained in Schedule 1 to this Order which relate to investigations of offences conducted by police officers or to persons detained by the police shall apply to relevant investigations conducted by officers of Revenue and Customs and to persons detained by such officers.

(2) The 1989 Order shall have effect as if the words and phrases in Column 1 of Part 1 of Schedule 2 to this Order were replaced by the substituted words and phrases in Column 2 of that Part.

(3) Where in the 1989 Order any act or thing is to be done by a constable or police officer of a specified rank, that act or thing shall be done by an officer of Revenue and Customs of at least the grade specified in Column 2 of Part 2 of Schedule 2 to this Order, and the 1989 Order shall be construed accordingly.

Exceptions

4. Nothing in the application of the 1989 Order to Revenue and Customs shall be construed as conferring on an officer of Revenue and Customs any power—

- (a) to charge a person with any offence;
- (b) to release a person on bail;
- (c) to detain a person for an offence after he has been charged with that offence.

Seizure and retention of things found upon search

5.—(1) Where in the 1989 Order a constable is given power to seize and retain any thing found upon a lawful search of person or premises, an officer of Revenue and Customs shall have the same power notwithstanding that the thing found is not evidence of an offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions.

(2) Nothing in the application of the 1989 Order to Revenue and Customs shall be construed to prevent any thing lawfully seized by a person under any statutory provision from being accepted and retained by an officer of Revenue and Customs.

(3) Article 23 of the 1989 Order (access and copying) shall not apply to any thing seized as liable to forfeiture under the customs and excise Acts.

Excluded and special procedure material

6. In its application by virtue of Article 3 above the 1989 Order shall have effect as if the following Article were inserted after Article 16—

“16A. Material in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office and which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions, is neither excluded material nor special procedure material for the purposes of any statutory provision such as is mentioned in Article 11(2).”

Restriction on other powers to apply for production of documents

7. In its application by virtue of Article 3 above the 1989 Order shall have effect as if the following Article were inserted after Article 16A—

“16B.

(1) An officer of Revenue and Customs may make an application for the delivery of, or access to, documents under a provision specified in paragraph (3) only if the condition in paragraph (2) is satisfied.

(2) The condition is that the officer thinks that an application under Schedule 1 would not succeed because the material required does not consist of or include special procedure material.

(3) The provisions are—

- (a) section 20BA and Schedule 1AA of the Taxes Management Act 1970(a) (serious tax fraud);
- (b) paragraph 11 of Schedule 11 to the Value Added Tax Act 1994(b) (VAT);
- (c) paragraph 4A of Schedule 7 to the Finance Act 1994(c) (insurance premium tax);
- (d) paragraph 7 of Schedule 5 to the Finance Act 1996(d) (landfill tax);
- (e) paragraph 131 of Schedule 6 to the Finance Act 2000(e) (climate change levy);
- (f) paragraph 8 of Schedule 7 to the Finance Act 2001(f) (aggregates levy);
- (g) Part 6 of Schedule 13 to the Finance Act 2003(g) (stamp duty land tax).”.

Modification of Article 20 of the 1989 Order

8.—(1) Article 20 of the 1989 Order is modified as follows.

(2) For Article 20 (1) substitute—

“(1) Subject to the following provisions of this Article, an officer of Revenue and Customs may enter and search any premises occupied or controlled by a person who is under arrest for any relevant indictable offence if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates—

- (a) to that offence; or
- (b) to some other indictable offence which is connected with or similar to that offence.”.

Intimate searches

9. Article 56 of the 1989 Order shall have effect as if it related only to things such as are mentioned in sub-paragraph (1)(a) of that Article.

(a) 1970 c.9
(b) 1994 c.23
(c) 1994 c.9
(d) 1996 c.8
(e) 2000 c.17
(f) 2001 c.9
(g) 2003 c. 14

Use of reasonable force

- 10.** Where any provision of the 1989 Order as applied to Revenue and Customs—
- (a) confers a power on an officer of Revenue and Customs, and
 - (b) does not provide that the power may only be exercised with the consent of some person other than that officer,

the officer may use reasonable force, if necessary, in the exercise of the power.

Arrest without warrant

- 11.** Article 26 (2) of the 1989 Order^(a) does not limit—
- (a) section 138(1) of the Customs and Excise Management Act 1979^(b);
 - (b) section 20 and paragraph 4 of Schedule 3 to the Criminal Justice (International Co-operation) Act 1990^(c);
 - (c) any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon officers of Revenue and Customs the power to arrest or detain persons.

Definition of independent person

12. Article 75(3) of the 1989 Order shall be modified to the extent that the definition of “independent person” shall, in addition to the persons mentioned therein, also include an officer of Revenue and Customs or any other person acting under the authority of the Commissioners for Her Majesty’s Revenue and Customs.

Search of persons when warrant executed

13. Where an officer of Revenue and Customs searches premises under the authority of a warrant under Article 10 of, or paragraph 9 of Schedule 1 to, the 1989 Order, he may search any person found on the premises—

- (a) where he has reasonable cause to believe that person to be in possession of material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;
- (b) But no person should be searched except by a person of the same sex.

Authorisation

14. Powers and functions in the provisions of the 1989 Order contained in Schedule 1 to this Order may be exercised only by officers of Revenue and Customs acting with the authority (which may be general or specific) of the Commissioners for Her Majesty’s Revenue and Customs.

Revocation

- 15.** The instruments specified in Schedule 3 are revoked.

(a) SI 1989/1341 (N.I. 12); Article 26(2) was substituted by Article 15 SI 2007/288 (N.I. 2)
(b) 1979 c.2
(c) 1990 c.5

SCHEDULE 1

Article 3(1)

Provisions of the 1989 Order applied to Revenue and Customs

Article 10

Article 11 (1) and (2) and Schedule 1

Article 17

Article 18

Article 19 (1) (b), (2), (3)

Article 20 (1) to (8) (paragraph (1) (subject to the modification in Article 8)

Article 21

Article 22

Article 23 (subject to the modification in Article 5)

Article 24 (1) to (4)

Article 26 (2) (subject to the modifications in Article 11)

Article 30

Article 31

Article 32 (1) to (4)(a) and (5) to (14)

Article 33

Article 34 (1) to (9) (subject to the modifications in Article 5)

Article 35 (1) to (6)

Article 36

Article 37 except paragraph (6) (d)

Article 38 (1) to (10) and the definition of “endorsed for bail” in paragraph (14)

Article 40

Article 41

Article 42

Article 43

Article 44

Article 45

Article 50

Article 51 (d)

Article 52

Article 55

Article 56 (subject to the modifications in Articles 5 and 9)

Article 57 (1) to (9)

Article 58 (except the substituted subsections (10) and (11))

Article 59 (1) to (11)

Article 62(1) to (9)

Article 63

Article 64 (1) to (7)

Article 66

Article 84

SCHEDULE 2

Article 3(2)

PART 1

Substitution of equivalent words and phrases in the 1989 Order.

Where in the 1989 Order a word or phrase specified in Column 1 is used, in the application of the 1989 Order to Revenue and Customs, there shall be substituted the equivalent word or phrase in column 2—

<i>Column 1</i>	<i>Column 2</i>
<i>Words and phrases used in the 1989 Order</i>	<i>Substituted words and phrases</i>
Chief Constable (except where the term appears in Articles 64(5) and (7))	Director (save in Article 50 where there shall be substituted the Commissioners for Her Majesty's Revenue and Customs)
constable	officer of Revenue and Customs
designated police station	designated office of Revenue and Customs
police detention (except in Article 2 and Article 40 (1)(a) the second time the words occur)	revenue and customs detention
police officer	officer of Revenue and Customs
police station	office of Revenue and Customs
rank	grade
station	office of Revenue and Customs
the police	Her Majesty's Revenue and Customs
"under section 15(1) of the Police Act (Northern Ireland) 1970"	of the Commissioners for Her Majesty's Revenue and customs

PART 2

Equivalent grades of officers of Revenue and Customs

Where in the 1989 Order an act or thing is to be done by a constable or police officer of the rank specified in Column 1, that same act or thing shall, in the application of the 1989 Order to Revenue and Customs, be done by an officer of Revenue and Customs of at least an equivalent grade specified in Column 2—

<i>Column 1</i>	<i>Column 2</i>
Rank of constable or police officer	Grade of officer of Revenue and Customs
Sergeant	Officer
Inspector	Higher officer
Chief Inspector	Higher officer
Superintendent	Senior officer
Chief Superintendent	Senior officer

SCHEDULE 3

Article 15

Revocations

<i>Orders revoked</i>	<i>References</i>
Police and Criminal Evidence (Application to Customs and Excise) Order (Northern Ireland) 1989	SI 1985/1800
Police and Criminal Evidence (Application to Customs and Excise) (Amendment) Order (Northern Ireland) 1995	SI 1987/439
Police and Criminal Evidence (Application to Customs and Excise) (Amendment) Order (Northern Ireland) 1996	SI 1996/3217

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989, subject to specified modifications, to relevant investigations conducted by officers of Revenue and Customs and to persons detained by such officers. A relevant investigation is a criminal investigation conducted by officers of Revenue and Customs which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions apart from certain specified former Inland Revenue matters.

Article 3 of the Order applies the provisions of the 1989 Order contained in Schedule 1, subject to specified modifications, to relevant investigations conducted by officers of Revenue and Customs and to persons detained by such officers. Schedule 2 to the Order substitutes terms applicable to Revenue and Customs for certain words and phrases in the 1989 Order and sets out equivalent Revenue and Customs grades for specified ranks of constable or police officer.

Article 4 ensures that officers of Revenue and Customs do not have powers to charge a person, release a person on bail or to detain a person after charge.

Article 5(1) permits officers of Revenue and Customs to retain things found during a lawful search notwithstanding that the thing found is not evidence of an offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions. Article 5(2) ensures that nothing in the application of the 1989 Order to Revenue and Customs shall be construed to prevent any thing lawfully seized by a person under any statutory provision from being accepted and retained by an officer. Article 5(3) provides that the provisions in the 1989 Order on access and copying shall not apply to any thing seized as liable to forfeiture under the customs and excise Acts.

Article 6 inserts Article 16A into the 1989 Order which provides that material acquired or created in the course of a trade or business is not excluded or special procedure material for the purposes of any statutory provision mentioned in Article 11(2) of the 1989 Order.

Article 7 inserts Article 16B into the 1989 Order which restricts the use of powers to apply for the production of documents under other enactments. An officer of Revenue and Customs may only use those other powers if he thinks that an application under Schedule 1 of the 1989 Order would not succeed because the material required does not consist of or include special procedure material.

Article 8 modifies Article 20 (1) of the 1989 Order to restrict the power of entry and search after arrest to relevant indictable offences.

Article 9 modifies Article 56 of the 1989 Order (intimate searches) so that it has effect as if it related only to items which might cause injury.

Article 10 modifies Article 75(3) of the 1989 Order (confessions by mentally handicapped persons) by expanding the definition of "independent person" to include an officer of Revenue and Customs or any other person acting under the authority of the Commissioners for Her Majesty's Revenue and Customs.

Article 11 provides that where any provision of the 1989 Order applied to Revenue and Customs confers a power on an officer of Revenue and Customs (and does not provide that the power may only be exercised with the consent of some person other than the officer) the officer may use reasonable force in the exercise of the power.

Article 12 modifies Article 26 (2) of the 1989 Order (Arrest without warrant: constables) so that it does not limit other enactments which confer upon officers of Revenue and Customs the power to arrest or detain persons.

Article 13 provides that an officer of Revenue and Customs searching premises under the authority of a warrant under Article 10 of, or paragraph 11 of Schedule 1 to the 1989 Order, may search persons found on the premises where he has reasonable cause to believe that person to be in possession of material likely to be of substantial value to the investigation of the offence. The power must be exercised by a person of the same sex as the person being searched.

Article 14 provides that powers and functions in the provisions of the 1989 Order applied to Revenue and Customs by the Order may only be exercised by officers of Revenue and Customs who are authorised to do so by the Commissioners for Her Majesty's Revenue and Customs.

Article 15 and Schedule 3 provide for the revocation of earlier instruments.