

## **HM Revenue & Customs: criminal investigation powers and safeguards**

### **Criminal investigation**

The majority of people and companies in the United Kingdom (UK) pay the tax due and claim only the credits they are entitled to, but there is a small minority who are determined not to pay tax or who set out to defraud the tax and credit system. At the extreme end organised criminal gangs make sophisticated attacks on the system itself by making false claims to repayments or tax credits on a massive scale. It is essential that this criminal element is effectively investigated and prosecuted. Criminal investigation is an important part of HM Revenue & Customs (HMRC) overall enforcement strategy.

This article is published in response to commitments given during the course of consultations on the criminal investigation powers included in the Finance Act 2007. It describes:

- the organisation of criminal investigation work in HMRC
- the criminal investigation powers available to HMRC
- the training that staff have in the use of these powers
- the safeguards that apply to the use of the powers

A separate article describes HMRC's [criminal investigation policy](#).

### **How is criminal investigation work organised?**

HMRC is responsible for investigating crime involving all of the taxes and other regimes it deals with. It is not responsible for criminal prosecutions. The decision whether to bring a criminal prosecution is made by an independent prosecuting authority. In England and Wales this is the Crown Prosecution Service. In Northern Ireland it is the Public Prosecution Service for Northern Ireland. In Scotland it is the Crown Office and Procurator Fiscal Service.

Three directorates in HMRC have staff authorised to use criminal investigation powers:

- Criminal Investigation including Internal Governance
- Specialist Investigation (Road Fuel Testing)
- Risk and Intelligence Service (Criminal Intelligence Group)

**Criminal Investigation** is responsible for all criminal investigations undertaken by HMRC, where criminal investigation has been determined to be the appropriate response to tax or duty fraud. This article deals mainly with their work. Internal Governance is responsible for undertaking investigations into potentially serious disciplinary and criminal allegations involving HMRC staff.

**Specialist Investigations - Road Fuel Testing** is responsible for the detection and disruption of the illicit supply, distribution, sale, storage and misuse of fuel for road vehicles.

**Risk and Intelligence Service - Criminal Intelligence Group** is responsible for profiling and intelligence work. It requires the use of criminal investigative powers as part of its criminal intelligence and case development role.

These are the only directorates in HMRC which will investigate crime and are the only directorates which will be allowed to use HMRC's criminal investigation powers. There is a complete separation of civil and criminal investigations. No one in HMRC dealing with civil enquiries such as tax returns, and claims for tax credits can use criminal powers to further these enquiries.

Within HMRC, Criminal and Enforcement Policy (CEP), has oversight of the criminal legalisation and powers that are at HMRC's disposal. The application of these powers is subject to review and assurance by a Criminal Justice Assurance Team (CJAT). In addition, each of the directorates using criminal powers maintains professional standards functions that oversee management assurance of these powers. Together CEP and CJAT and directorate standards functions, work to ensure compliance with the many safeguards that are built into the legislation and associated Codes of Practice.

### **What criminal investigation powers does HMRC have?**

Criminals, including organised criminals, seek to attack the UK's tax and duty systems to steal taxpayer's money. To counter this HMRC needs similar criminal investigation powers to those that are available to other law enforcement agencies. In particular it needs powers to:

- apply for orders requiring information to be produced - production orders
- apply for search warrants
- make arrests
- search suspects and premises following arrest

### **PACE**

In England and Wales these powers are made available through the Police and Criminal Evidence Act 1984 (PACE). In Northern Ireland they are made available through the Police and Criminal Evidence (Northern Ireland) Order 1989.

The Finance Act 2007 amended PACE and the PACE (NI) Order so that they can be used for all HMRC criminal investigations. There are a small number of former Inland Revenue functions for which PACE powers are not available.

The advantage of using PACE is that it provides a set of powers that are designed for use by law enforcement agencies. It means that tax crime is tackled in the same way as other crime.

Not all the powers in PACE are made available to HMRC. For example, HMRC does not take fingerprints, charge or bail suspects. This has to be done by the police.

Some of the powers in PACE are modified for HMRC. For example, a search warrant may allow HMRC to search persons found on the premises without the need for arrest. This allows HMRC to search a bookkeeper who may have evidence in a briefcase or laptop when a company's premises are searched, but who is not considered a suspect.

## **Scotland**

PACE does not apply in Scotland. Finance Act 2007 introduced a special set of powers that apply in Scotland within the Criminal Law (Consolidation)(Scotland) Act 1995 and the Criminal Procedure (Scotland) Act 1995. These powers address the same areas as PACE.

Following the Cadder Review to assess the rights and safeguards available to persons arrested by the police, The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 was introduced. This act is only applicable to the police.

HMRC has introduced The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 to extend those rights and safeguards to suspects arrested for HMRC offences.

## **Authorisation to use powers**

The criminal investigation powers can be used only by officers who are authorised to use them. An authorised officer is an officer of HMRC, appropriately trained and engaged on operational duties in Criminal Investigation including Internal Governance, Specialist Investigations (Road Fuel Testing), Risk and Intelligence Directorates.

PACE provides that some powers can be exercised only by police constables of a particular rank. When those powers are applied to HMRC the police ranks are converted to HMRC grades of an equivalent authority:

Sergeant	Officer
Inspector	Higher Officer
Chief Inspector	Higher Officer
Superintendent	Senior Officer

## **Authority levels**

HMRC has set internal authorisation levels requiring an authorised officer to get the approval of a higher graded officer before using certain powers. The

authority levels for HMRC are set no lower than the authority levels in the police, the primary user of PACE powers. However in most cases HMRC has set the main authority level required at a minimum of Senior Officer grade, for example, applications to a magistrate or court for a production order or search warrant. The majority of authorities in the police service are held at Inspector level, equivalent to HMRC's Higher Officer grade.

## **Arrest**

The approximate numbers of officers in HMRC who have powers of arrest are

1416 in Criminal Investigation including Internal Governance

118 in Specialist Investigation - Road Fuel Testing

These powers can be used only for HMRC offences. They are not general powers of arrest. As with all of HMRC's criminal investigation powers arrests are made only by authorised officers who have been appropriately trained.

## **Cross-border investigations**

Usually it is obvious fairly early in an investigation where a crime has been committed, that the investigation may require evidence to be gathered in different parts of the UK. This means it is necessary to take account of the differences between the legal systems in England and Wales, Scotland and Northern Ireland. In particular there are significant differences between the legal system in Scotland and those in other parts of the UK.

HMRC's criminal investigation powers can be exercised in all parts of the UK. For example, a search warrant issued by a court in Scotland can be exercised in England if it is endorsed by an English court and vice versa.

Cross border powers contained in the Finance Act 2007 only apply to UK borders and not EU or international borders.

It may be possible to prosecute an offence in more than one part of the UK. The prosecuting authorities have generated guidance on how to determine in which UK country the offence is prosecuted. This is available through the CPS website at: [Jurisdiction](#).

## **Intrusive surveillance**

In the case of serious crime only, HMRC can apply to use the intrusive surveillance powers in the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police Act 1997. The most significant powers are:

the interception of post and telecommunications

intrusive surveillance

property interference

These powers are very effective in the fight against serious and organised crime. But because they are so intrusive their use is subject to strict safeguards.

They can be used only when investigating serious crime. The interception of communications has to be approved personally by the Home Secretary. The use of this power is overseen by the independent Interception of Communications Commissioner.

The most intrusive surveillance requires prior approval of a surveillance commissioner. All other cases of intrusive surveillance have to be reviewed by a surveillance commissioner who can revoke the authorisation. The use of intrusive surveillance is overseen by the Surveillance Commissioners.

The use of these of these powers has to be approved at the highest levels in Criminal Investigation. Only certain members of the senior management team can approve applications for the use of any of these powers.

### **What training and support is given to HMRC officers?**

An officer must be properly trained before they can be authorised to use any of the criminal investigation powers and that training must be kept up to date.

The training covers the PACE Codes of Practice and the Scottish Powers, changes to relevant legislation and HMRC policy and procedures. The broad range of subjects covered include:

- entry, search and seizure powers
- powers of arrest
- cautioning and interviews
- the law of evidence
- personal safety and the use of handcuffs
- responsibilities for disclosure under the Criminal Procedures and Investigation Act 1996

Comprehensive operating procedures are provided in internal guidance. Investigators can also ask for the advice of HMRC criminal lawyers. An HMRC lawyer will be assigned to work on the larger investigations. Investigators and HMRC lawyers will also consult with the prosecuting authorities at an early stage on major prosecutions.

### **What safeguards are there on the use of HMRC's criminal investigation powers?**

There are numerous statutory and non-statutory safeguards on HMRC's use of its criminal investigation powers.

HMRC's criminal investigation powers are used only in its criminal work and are not used in civil investigations or other HMRC activities.

HMRC is not responsible for prosecuting the crimes it investigates. The decision whether or not to prosecute is taken by the relevant independent prosecuting authority.

Like all other aspects of HMRC's work criminal investigation is subject to review by HMRC's Internal Audit directorate.

External oversight is provided by the HM Inspectors of Constabulary, the Scottish and Northern Ireland inspectors and the National Audit Office. Complaints can be made to the Independent Police Complaints Commission, the Ombudsman and the Adjudicator.

Many of the powers require external independent approval before they can be used. The person granting approval has to be satisfied that the relevant conditions are met. Production orders and search warrants have to be issued by a magistrate or a judge. The use of intrusive surveillance powers is subject to external approval at the highest level as described in the section on intrusive surveillance.