

Full Regulatory Impact Assessment

Title

Criminal Investigation Powers

Purpose and intended effect

The policy objective is to develop modern, proportionate, efficient and effective powers, with commensurate safeguards for citizens, for HMRC to investigate suspected criminal activity.

Background

HMRC inherited various powers from its predecessor departments and these were “ring fenced” so that they could only be used for their original purpose.

HMRC aspires to have criminal investigation powers that:

- Are proportionate to the suspended offence and comply with the Human Rights Act.
- Provide a fair balance between the powers HMRC needs and safeguards for citizens.
- Are consistent across HMRC’s responsibilities as far as possible (so giving certainty both to citizens and HMRC)
- Are efficient, effective and modern
- Gather evidence that may be reliably used in court proceedings.
- Are consistent with, and respect the principles underlying, the criminal justice system.

For England, Wales and Northern Ireland the existing, generally used powers for the investigation of crime are those in the Police and Criminal Evidence Act 1984 (PACE). Certain of these powers are already available to HMRC for use when investigating suspected offences related to ex-HM Customs and Excise (HMCE) matters. Making these powers available for ex-Revenue matters as well would provide HMRC with the powers and safeguards that Parliament has already considered appropriate generally for the investigation of crime.

PACE does not apply in Scotland so separate, comparable powers for Scotland are being introduced.

Rationale for Government intervention

Intervention is needed to bring criminals to justice and protect society and the Exchequer. For this to be done efficiently and effectively HMRC needs appropriate powers which provide commensurate safeguards for citizens.

Changes are needed to the current position as the criminal investigation powers HMRC inherited from the former departments are inconsistent, often out of step with the wider law enforcement community and cause practical

difficulties. The problems with the current powers were detailed in the technical consultation document published in 17th January 2007.

Consultation

The aim of HMRC's Review of Powers, Deterrents and Safeguards is to provide a framework of law and practice for HMRC that is appropriate to the Department's tasks and allows those tasks to be carried out effectively and efficiently while also providing appropriate safeguards for citizens.

On 24 March 2005 the review published the consultation paper "HM Revenue & Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards". A Consultative Committee was established, including tax experts, business representatives and others, to reflect the views of the wider taxpayer community. The Consultative Committee endorsed the principle that HMRC should treat tax crime in the same way as crime is treated when it occurs in other spheres of society.

The 30 March 2006 consultation paper¹ mentioned the possibility of adopting the relevant PACE powers for HMRC to use in England, Wales and Northern Ireland and that there would be consultation on the powers needed for Scotland. The majority of responses to that document who commented on the proposals were in favour of harmonising criminal investigation powers for England, Wales and Northern Ireland by adopting the relevant parts of PACE. Most of those who responded supported the view that tax crime should be treated in the same way as any other crime and that the adoption of the relevant parts of PACE plus an appropriate solution in Scotland was a sensible approach. All respondents strongly favoured the adoption of these powers being accompanied by adequate safeguards. A summary of responses to the consultation document was published in October 2006.

The more detailed technical document published on 17th January 2007 sought views on the option to adopt the relevant PACE powers and consulted on the appropriateness of these powers for Scotland. The consultation document also included draft clauses aimed at achieving the objectives as set out and comments were invited.

Stakeholders were invited to meet with HMRC as part of the consultation process. A number of organisations took up this offer with successful and informative meetings resulting.

Responses to the January technical consultation document have largely mirrored the comments made in response to consultation in August 2006 with most supporting the adoption of PACE and regarding the changes as necessary and proportionate. Many welcomed the changes made in response to the August consultation and the explanation of the safeguards that accompany these powers.

¹ Modernising Powers, Deterrents and Safeguards: The developing programme of work available at <http://www.hmrc.gov.uk/about/powers-appeal.htm>

Some respondents have reservations including that; HMRC should not be engaged in criminal investigation work; and HMRC officers, even specialist criminal investigators, should not be able to arrest people. As explained in the 17 January consultation document, Parliament has made HMRC responsible for criminal investigations involving its responsibilities, including those concerning taxes and tax credits and serious organised criminality. This measure is to ensure HMRC has proportionate powers (accompanied by appropriate safeguards) to allow it to discharge that responsibility. On powers of arrest HMRC currently relies on the police to make arrests in respect of ex-Inland Revenue matters and difficulties can arise, particularly with large and complex investigations involving a number of police forces across the UK. These difficulties increase the risk of tax and tax credit losses, evidence being destroyed, problems apprehending suspects and proceeds of crime being moved abroad before they can be seized. These measures will resolve those difficulties.

Details about the review are published at www.hmrc.gov.uk/about/powers-appeal.htm

Options

Option One: Do Nothing

This would mean continued inconsistency in the way the tax crime is investigated across HMRC and would be out of step with the principle endorsed by the Consultative Committee on Powers, Deterrents and Safeguards that tax crime should be investigated in the same way as other crime. The disadvantages that compliant taxpayers suffer through these powers not being available across HMRC to investigate those who are criminally non-compliant will remain. The current gaps in those powers, and the different powers for ex-Customs and ex-Revenue matters, increase uncertainty for those under investigation and can hinder effective investigation by HMRC officers. This would continue to be the case.

Option Two: Apply appropriate criminal investigation powers across HMRC

Parliament has already determined what is appropriate generally for the investigation of crime for England, Wales and Northern Ireland and enshrined it largely in PACE. This legislation is well understood and respected. The option for HMRC to adopt the relevant parts of PACE for all HMRC's criminal investigations would enable HMRC to retain up to date powers for criminal investigation, which would regularly be subject to Parliamentary scrutiny. It would also ensure that HMRC remained properly equipped across the range of its activity to investigate tax crimes and related money laundering activity effectively, including attacks by organised crime on the tax and tax credit systems. Following full consultation this option is being adopted.

For Scotland, PACE powers do not apply so the January 2007 consultation document set out issues to be considered when developing powers for HMRC to use when investigating crimes under the jurisdiction of Scottish courts.

Following that consultation this option for Scotland is being adopted.

The document summarising responses to the January 2007 consultation includes details of the changes made to option two in response to the consultation which include:

- dropping proposals concerning fingerprinting, charging and bailing suspects,
- dropping proposals for PACE search warrants and production orders to be issued where there are reasonable grounds to believe an offence “is being or is about to be committed” (as opposed to “has been” committed).

Costs and benefits

Sectors and groups affected

These measures will help HMRC tackle crime more effectively and efficiently. Legitimate businesses and citizens in general will benefit as HMRC’s ability to tackle and deter criminal activity will be increased.

Benefits

The changes being made will provide HMRC with consistent powers, and safeguards, which will reduce inefficient duplication and bureaucracy in training and procedures and during investigations. Some of HMRC’s current powers are also slow and cumbersome to use, the new powers will address these problems. Operational efficiencies will result as criminal investigations should be less costly to undertake post introduction of these powers.

The provision of a power of arrest for ex-Inland Revenue matters will reduce the risk of tax and tax credit losses, evidence being destroyed, problems apprehending suspects and proceeds of crime being moved abroad before they can be seized.

The cross-border provisions will help ensure evidence is gathered, and suspects are apprehended, using powers appropriate for the jurisdiction where a prosecution may take place. This will reduce the risk of mistakes being made or procedural problems arising during prosecutions.

Compliant taxpayers can be doubly disadvantaged by criminal activity relating to tax and tax credits. Not only do compliant taxpayers end up paying an unfair share of what is needed to fund government expenditure, but compliant businesses can find themselves unfairly undercut in the market place by lower prices subsidised from unpaid taxes or over claimed tax credits.

Representations from citizens and businesses consistently stress the need for HMRC to deliver a level playing field. This includes tackling suspected criminal activity efficiently and effectively to deliver justice, deter crime and the social harm it causes, and help deliver fairness. These measures will improve HMRC’s ability to tackle criminal activity and so help to reduce the harmful effect of these crimes and bring the criminals to justice.

Costs

The only increased costs for any legitimate sectors as a result of the measures being introduced are some training costs for the legal sector as they get to know and understand the new rules. However, training costs are not expected to be large as the new rules are largely based on widely understood precedents or the adoption of existing powers.

HMRC will need to train staff on the proposed changes and amend the relevant guidance. However, this work is covered by existing budgets as part of the usual on-going programmes of work.

Small firms impact test

There would be no impact on small firms. A very small number of small firms will be involved in criminal investigations by HMRC and so could be affected by the use of these powers. However, the proposals would not change the impact of such an investigation on a small firm, neither would the proposals directly result in an increased number of investigations. Where small firm are subject to criminal investigation using these powers the greater consistency, efficiency and certainty afforded will impact positively.

Competition assessment

These measures will help to improve competition by reducing the unfair advantage gained by those taxpayers that deliberately do not comply with their tax obligations. This will benefit all compliant taxpayers.

Enforcement, sanctions and monitoring

The robust procedures in place to monitor the use of criminal investigation powers by HMRC will continue post implementation. They include the following:

- Internal authorisation that must be sought before a power is used
- External authorisation where appropriate (for example production orders being issued by a sheriff or judge)
- HMRC's internal audit and professional standards units review the use of powers
- External reviews by Her Majesty's Inspectorate of Constabulary for England, Wales and Northern Ireland and Her Majesty's Inspectorate of Constabulary for Scotland.

Communication of the Changes

Communication to HMRC staff of all changes to procedure, policy and legislative change are through the Enforcement Handbook. Notifications alerting staff to changes will be included on the HMRC intranet news pages and all HMRC officers using these powers are required to follow the procedures and instructions contained in the Handbook. Communication of changes will also be made through appropriate training courses (see below). Existing guidance will be updated and changed in accordance with Criminal

Justice & Enforcement Standards.

HMRC has undertaken to publish material setting out information on which officers are entitled to use criminal investigation powers, how that work is organised in HMRC and how the powers are authorised (paragraph 4.7 of the January 2007 consultation document). This material will be released on the internet where HMRC's criminal investigation policy is already published.

Training given to HMRC Officers

The structure of HMRC, with a separate Criminal Investigations Directorate, ensures the same officers do not deal with both criminal and non-criminal investigations. Officers responsible for criminal investigations will receive all the relevant training and will not have any other duties such as carrying out routine compliance work.

The measure will extend PACE powers that already exist and are already used by HMRC officers in respect of former Customs and Excise matters. There will be an extension of the powers to former Inland Revenue matters and not an introduction of new powers. There already exists a framework of training and assurance to ensure compliance and assess risks. That will continue in respect of these proposals and officers will receive appropriate training prior to execution of any of the powers if they have not previously used them. Refresher training will also continue for those officers currently using the powers.

For Scotland the new powers are very similar to the existing ones and the existing training and assurance procedures will be amended to take account of the new powers.

Consultation Responses

HMRC has received a number of responses to the recent consultations and this has included a number of face-to-face meetings with stakeholders.

HMRC have taken into account the responses to the consultation on the draft clauses. It has not been possible to adopt all the suggestions made in response to the consultation on the draft clauses. The reasons for this are provided where possible as part of the publication of the responses to the consultation.

Implementation and delivery plan

Announcement of the implementation was made at Budget 2007 with the legislation going through Parliament in Finance Bill 2007, subject to the Parliamentary process and Royal Assent. Operational implementation will involve a training plan devised to ensure officers using the powers for the first time receive adequate training before use (officers will not be allowed to use the powers without prior training). The framework that is already in place to ensure that staff have received the correct training and maintained regular refresher training will continue. As the powers are already available in respect of former Customs and Excise matters, officers already trained can start

immediately depending on the operational need.

The changes being made come into force according to an order to be made by the Treasury. The order will not be made until the training has been rolled out appropriately. Once the new powers are in place the old ones that have been superseded will be repealed.

Post Implementation Review

Reviews and external oversight are already in place where these powers are currently exercised and this will continue post implementation.

Summary and recommendations

Adopting PACE powers across HMRC is part of providing a modern set of powers and safeguards for the whole of the UK. The approach set out under option two has been decided on and this means adopting certain PACE powers that are already available to HMRC for use when investigating suspected offences related to ex-HM Customs and Excise (HMCE) matters. Similar provisions are being made in Scotland where PACE does not apply. This is consistent with the key principle that tax crime should be treated in the same way as other crime and facilitates clarity and certainty in the way tax crime is treated across HMRC.

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REGULATORY IMPACT ASSESSMENT

HMRC and the Taxpayer: Modernising Powers, Deterrents and Safeguards: Criminal Investigation Powers: Finance Bill 2007

Statement of Ministerial Approval

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

DAWN PRIMAROLO MP

PAYMASTER GENERAL

26 March 2007