

Subsidiary Legislation made under s. 695.

**CRIMINAL PROCEDURE AND EVIDENCE ACT 2011  
(APPLICATION TO HM CUSTOMS) ORDER 2012**

**(LN. 2012/188)**

*Commencement*      **23.11.2012**

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**SCHEDULE 1**

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**SCHEDULE 2**

*The Minister, after consultation with the Minister with responsibility for finance, in exercise of the powers conferred upon him by section 695 of the Criminal Procedure and Evidence Act 2011 has made the following Order—*

**Title and commencement.**

1. This Order may be cited as the Criminal Procedure and Evidence Act 2011 (Application to HM Customs) Order 2012 and shall come into force on the 23 November 2012.

**Application.**

2.(1) The provisions of the Act 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 customs and to persons detained by such officers. This is subject to the modifications in paragraphs (2) and (3) and articles 3 to 15 and Schedule 2.

(2) The Act 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 substitute words and phrases in Column 2 of that Part.

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

**Exceptions.**

3. Nothing in the application of the Act to HM Customs confers on a customs officer any power—

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

**Seizure and retention of things found upon search.**

4.(1) Where in the Act a police officer is given power to seize and retain any thing found upon a lawful search of person or premises, a customs officer 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 HM Customs have functions.

(2) Nothing in the application of the Act to HM Customs prevents any thing lawfully seized by a person under any enactment from being accepted and retained by a customs officer.

(3) Section 27 of the Act (access and copying) shall not apply to any thing seized by an officer of HM Customs as liable to forfeiture.

### **Excluded and special procedure material.**

5. In its application by virtue of article 2 above the Act shall have effect as if the following section were inserted after section 18—

#### **“18A HM Customs**

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 HM Customs has functions, is neither excluded material nor special procedure material for the purposes of any enactment such as is mentioned in section 13(2) above.”.

### **Modification of section 56 of the Act (Designated police stations).**

6.(1) Section 56 of the Act (designated police stations) is modified as follows.

(2) For subsection 56(1) substitute—

“(1) The Minister may designate one or more examination stations or offices of HM Customs which, subject to sections 48(4) and (5), are to be the places to be used for the purposes of detaining arrested persons.”

(3) For subsection 56(2) substitute—

“(2) The Minister’s power under subsection (1) above is to designate offices of HM Customs appearing to him to provide enough accommodation for that purpose.”.

### **Modification of section 57 of the Act (Custody officers at police stations).**

7.(1) Section 57 of the Act (custody officers at police stations) is modified as follows.

(2) For subsection (2) substitute—

“(2) A custody officer for an office or examination station of HM Customs designated under section 56(1) above shall be appointed by the Collector of Customs or by such other customs officer as the Collector of Customs may direct.”.

**Modification of section 75 of the Act (Records of detention).**

8.(1) Section 75 of the Act (records of detention) is modified as follows.

(2) For subsection (1) substitute—

“(1) The Collector of Customs must keep written records showing on an annual basis—

- (a) the number of persons kept in HM Customs detention for more than 24 hours and subsequently released without charge;
- (b) the number of applications for warrants of further detention and the results of the applications; and
- (c) in relation to each warrant of further detention—
  - (i) the period of further detention authorised by it;
  - (ii) the period which the person named in it spent in HM Customs detention on its authority; and
  - (iii) whether he was charged or released without charge.”.

(3) For subsection (2) substitute—

“(2) Every annual report made by the Collector of Customs shall contain information about the matters mentioned in subsection (1) above in respect of the period to which the report relates.”.

**Modification of section 81 of the Act (Intimate searches).**

9.(1) Section 81 of the Act (intimate searches) shall have effect as if it related only to things such as are mentioned in subsection (1)(a) of that section.

(2) The annual report of the Collector of Customs shall contain information about searches under section 81 which have been carried out during the period to which the report relates.

**Modification of section 358(3) of the Act (Definition of independent person).**

10. Section 358(3) of the Act (definition of independent person) shall be modified to the extent that the definition of “independent person” shall, in addition to the persons mentioned therein, also include a customs officer or any other person acting under the authority of the Collector of Customs.

**Use of reasonable force.**

11. Where any provision of the Act as applied to HM Customs—

- (a) confers a power on a customs officer, 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.**

12. Section 42 of the Act (arrest without warrant) does not limit any enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon customs officers the power to arrest or detain persons.

**Search of persons.**

13. Where a customs officer searches premises in reliance on a warrant under section 12 of, or paragraph 12 of Schedule 1 to, the Act 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 Act contained in Schedule 1 to this Order may be exercised only by customs officers acting with the authority (which may be general or specific) of the Collector of Customs.

**Power of detention (Class A or B Drugs).**

15. Nothing in the Act or in this Order affects the exercise by a customs officer of the power of detention contained in the proviso to section 9(2) of the Imports and Exports Act, 1986.

**Codes of practice.**

16.(1) Subject to the provisions of section 695(1), this Order and in particular subparagraph (2) of this paragraph, the Codes of Practice issued under the Act apply to customs officers investigating offences etc. as they apply in relation to police officers.

(2) The Codes of Practice do not apply to customs officers exercising their powers to stop and search under the Imports and Exports Act 1986.

**SCHEDULE 1**

**Provisions of the Act applied to HM Customs**

Article 2(1)

Section 12 (power of justice of the peace to authorise entry and search of premises)

Section 13 (special provisions as to access) and Schedule 1 (special procedure)

Section 19 (search warrants-safeguards)

Section 20 (execution of warrants)

Section 21(1)(a)(i), (1)(b), (1)(e), (1)(f), (2), (4) (entry for purpose of arrest etc)

Section 22 (entry and search after arrest)

Section 23 (general power of seizure)

Section 24 (copies)

Section 25 (General power of seizure)

Section 26

Section 27 (Access and copying) (subject to the modification in article 4)

Section 28 (retention)

Section 29 (additional powers of seizures from premises)

Section 30 (Additional powers of seizure from the person)

Section 31 (Notice of exercise of powers etc.)

Section 32 (Examination and return of property seized)

Section 33 (Obligation to return items subject to legal privilege)

Section 34 (Obligation to return excluded and special procedure material)

Section 35 (Retention of seized property)

Section 36 (Retention of property seized under section 29 or 30)

Section 37 (Person to whom seized property is to be returned)

Section 38 (Application to the Magistrates' Court)

Section 39 (Cases in which duty to secure arises)

Section 40 (The duty to secure)

Section 41 (Use of inextricably linked property)

Section 42 (arrest without warrant: constables) (subject to the modification in article 12)

Section 46 (information to be given on arrest)

Section 47 (voluntary attendance at police station etc)

Section 48(1) and (3) to (10) (arrest elsewhere than at police station)

Section 53 (arrest for further offence)

Section 54 (search upon arrest) (subject to the modifications in article 4)

Section 55(1) to (5) (limitations on police detention)

Section 56 (designated police stations) (subject to the modification in article 6)

Section 57 (custody officers at police stations) (subject to the modification in article 7)

Section 58 (duties of custody officer before charge)

Section 62 (responsibilities in relation to persons detained)

Section 63 (review of police detention)

Section 64 (Use of telephone for review)

Section 65 (limits on period of detention without charge)



Section 66 (authorisation of continued detention)

Section 67(1) to (12) and (14) to (17) (warrants of further detention)

Section 68 (extension of warrants of further detention)

Section 69 (detention before charge supplementary)

(The references to Sections 63 to 69 are subject to the modification in article 15)

Section 75 (records of detention) (subject to the modification in article 8)

Section 79 (searches of detained persons)

Section 80 (Searches and examinations to ascertain identity)

Section 81 (Intimate searches) (subject to the modifications above)

Section 82 (Xrays and ultrasound scans)

Section 83 (right to have someone informed when arrested)

Section 84 (additional rights of children and young persons)

Section 107 (Photographing of suspects)

Section 358 (confessions by mentally handicapped persons) (subject to the modification in article 10)

Section 685-692 (codes of practice)

Section 693 (police officers performing duties of higher rank)

**SCHEDULE 2**

Article 3(2)

**Part 1**

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

|                        |   |
|------------------------|---|
| Commissioner of Police | Collector of Customs                          |
| Police Officer         | Customs Officer (Officer of HM Customs)       |
| Police detention       | Customs Detention                             |
| Police station         | Examination Station or office (of HM Customs) |
| Police                 | HM Customs                                    |

**Part 2**

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

|                             |                                     |
|-----------------------------|-------------------------------------|
| Sergeant                    | HM Customs Executive Officer        |
| Inspector & Chief Inspector | HM Customs Higher Executive Officer |
| Superintendent              | HM Customs Senior Executive Officer |