EXPLANATORY MEMORANDUM TO

THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003 (EXERCISE OF FUNCTIONS) ORDER 2009

2009 No. 3021

1. This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1 This Order prescribes that the powers conferred on a constable under sections 17 and 19 of the Crime (International Co-operation) Act 2003 ('the 2003 Act') may, in certain circumstances, be exercised by a general customs official or by a customs revenue officials.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This Order is necessary in light of Part 1 of the Borders, Citizenship and Immigration Act 2009 ('the 2009 Act') which provides for the Secretary of State, the Director of Border Revenue and their designated customs officials to exercise certain functions of HM Revenue and Customs ('HMRC') in relation to general customs and customs revenue matters at the Border.

4.2 Part 1 of the 2003 Act provides statutory powers pursuant to which the United Kingdom can both seek and provide various forms of mutual legal assistance concerning criminal matters (MLA). Where the execution of a request for MLA concerning evidence located in England, Wales or Northern Ireland requires the use of search and seizure powers, the territorial authority which is dealing with the request may, under section 13 of the 2003 Act, direct that a search warrant be applied for under section 17 of that Act; a search warrant under section 17 of the 2003 Act falls to be applied for by a constable. Section 19 of the 2003 Act provides that evidence seized by a constable under or by virtue of section 17 of that Act must be forwarded directly to the court or overseas authority which made the request or to the relevant territorial authority, who will then forward it in turn to that court or overseas authority.

4.3 Section 27(2)(b) of the 2003 Act allows the Secretary of State to provide by order, in relation to England and Wales or Northern Ireland, for any function conferred on a constable under sections 13 to 26 of the 2003 Act to be exercisable instead in prescribed circumstances by a prescribed person. This Order prescribes that the functions conferred on a constable under sections 17 and 19 of the 2003 Act may be exercised by a general customs official in relation to an offence, or offences, which

if committed in the UK would relate to a general customs matter, and by a customs revenue official in relation to an offence, or offences, which if committed in the UK would relate to a customs revenue matter

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

Lord West of Spithead, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Crime (International Cooperation) Act 2003 (Designation of Participating Countries) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 The formation of the UKBA brought together staff from HMRC, the Border and Immigration Agency and UK Visas to protect the UK Border. Following Royal Assent of the Border, Citizenship and Immigration Act on 21st July 09 provided for the UKBA to exercise certain functions of HM Revenue & Customs at the border.. As part of this, former officers of HM Revenue and Customs will be transferred to the UKBA to investigate frontier detections made at the border, such as drugs or weapons smuggling.

7.2 As a result of this transfer the UKBA will be executing certain MLA requests in relation to drugs, criminal cash, products of animal origin, firearms and offensive weapons, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, plant health and chemical, biological, radiological and nuclear hazards. In order to be able to properly perform the functions required to execute MLA requests it will be necessary to confer powers equivalent to a constable on certain UKBA Officials in relation to certain sections of the Crime (International Co-operation) Act 2003.

7.3 Previously incoming MLA requests in relation to the above named areas have been handled by HMRC. It has been agreed that the transfer to UKBA of new work in these fields will take place on 9 December 2009. In order to allow this to happen smoothly this Order is necessary.

8. Consultation Outcome

8.1 Consultation with the, Her Majesty's Revenue and Customs, Crown Prosecution Service and the Revenue and Customs Prosecutions Office. No objections were raised.

9. Guidance

9.1 None.

10. Impact

10.1 There is likely to be no impact on business, charities or voluntary bodies as they are already required to be compliant with the necessary legislation.

10.2 Budgets for this work, which was previously undertaken by HMRC, including staff costs are being transferred to UKBA so there should be no additional costs.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The outcome will be subject to internal review following twelve months to assess if any unexpected impact has occurred.

13. Contact

Kenny Bowie at the Home Office Tel: 020 7035 0388 or e-mail: Kenny.Bowie@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.