EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (APPLICATION TO IMMIGRATION OFFICERS AND DESIGNATED CUSTOMS OFFICIALS IN ENGLAND AND WALES) ORDER 2013

2013 No. [XXXX]

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

2. Purpose of the instrument

2.1. The purpose of the instrument is to apply certain provisions of the Police and Criminal Evidence Act 1984 ("PACE") to criminal investigations conducted by immigration officers, and designated customs officials and to persons detained by designated customs officials. This includes powers of arrest, search of premises and seizure of evidence as well as obligations in respect of persons detained on suspicion of having committed customs offences.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative Context

4.1. Immigration officers have not previously had access to the PACE powers. Customs officials currently have access to certain PACE powers relating to the criminal investigation and detention of suspects by virtue of the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs Order) 2007 ("the 2007 PACE Order"). These powers were provided via application of section 22 of the Borders, Citizenship and Immigration Act 2009 ("the BCIA"). This glossing was a temporary measure pending the coming into force of one Order that applied to both immigration officers and customs officials within the Home Office and this current Order will fulfil various undertakings that have been made to Parliament.

4.2. This Order thus extends certain PACE powers (such as powers of arrest, search and seizure) to immigration officers carrying out criminal immigration investigations and effectively replicates the PACE powers already available to customs officials under the 2007 PACE Order with the addition of some extra PACE provisions. It also repeals some of the provisions of section 22 of the BCIA.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

6.1. Mark Harper, Minister of State for Immigration, Home Office, has made the following statement regarding Human Rights:
"*In my view the provisions of the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013 are compatible with the Convention rights.*"

7. Policy background

7.1. The UK Border Agency came into existence on 1st April 2009 as an amalgamation of the Border and Immigration Agency and the border customs work that was previously undertaken by HMRC. At that time Border Force was a division of UK Border Agency. In early 2012 Border Force became a separate operational command within the Home Office and in April 2013 the operations of UK Border Agency were subsumed in the core Home Office and responsibility for immigration criminal investigations passed to a separate Immigration Enforcement command. This Order ensures that Immigration Enforcement/Border Force customs officials no longer have to rely on the 2007 PACE Order to exercise PACE powers. This produces a more effective and transparent mechanism through which they access the powers they require to conduct criminal investigations. In addition, this Order will simplify the current position in relation to the powers of criminal investigators by enabling immigration officers to access equivalent provisions of PACE to their customs counterparts when undertaking criminal investigations.

7.2. This Order will ensure that customs officials and immigration officers in England and Wales are subject to all relevant provisions and safeguards of PACE when conducting criminal investigations or when detaining persons in connection with any such investigation.

7.3. In recent years, the UK Border Agency (Immigration Enforcement's)/Border Force's role as a law enforcement agency has evolved. There are now increased numbers of trained criminal investigators in the Immigration Enforcement command and there is a greater focus, in their investigations, on tackling organised immigration crime such as human trafficking, facilitation of illegal migrants and document fraud. It is therefore appropriate that officers should be operating within a PACE-compliant framework and this Order will ensure that customs officials and immigration officers in England and Wales are subject to all relevant provisions and safeguards of PACE when conducting criminal investigations or when detaining persons in connection with any such investigation.

7.4. The law enforcement landscape is expected to change further with the advent of the proposed National Crime Agency and its Border Policing Command. Immigration Enforcement/Border Force are increasingly likely to be required to work alongside police and other law enforcement partners on immigration investigations and this Order will make it easier to deploy mixed investigative teams and will help to maximise the effectiveness of individual officers.

8. Consultation outcome

8.1. In common with previous statutory instruments relating to these provisions no public consultation was undertaken.

9. Guidance

9.1. The Home Office will provide instructions and guidance to its officers to ensure that those responsible for immigration and customs investigations are suitably equipped to discharge their responsibilities under the Act.

10. Impact

10.1. No impact is foreseen on business, charities or voluntary bodies.

10.2. There is not expected to be any significant impact on the public sector. A limited amount of resource will be required to up skill and brief affected staff but this will be handled within "business as usual" and is not expected to have any detrimental impact.

10.3. An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring & review

12.1. The Department will monitor the operation of the powers on an on-going basis to ensure that the provisions are implemented and adhered to and that the safeguards set out are observed. In addition the application of the provisions in respect of detainees will be monitored by H.M. Inspectorate of Constabulary on an ad hoc basis as part of its audit and safeguarding function.

13. Contact

The following officials are able to answer queries regarding the instrument:

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