EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989 (APPLICATION TO IMMIGRATION OFFICERS AND DESIGNATED CUSTOMS OFFICIALS IN NORTHERN IRELAND) AND CONSEQUENTIAL AMENDMENTS REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments as it amends primary legislation.

2. Declaration

2.1 Alex Norris MP, Minister for Border Security and Asylum at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Matthew Bligh, Deputy Director for Appeals Reform and Criminality, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Michael P. Cunningham at the Home Office can be contacted by email at the following address with any queries regarding the instrument: CriminalityPolicyGuidanceQueries@homeoffice.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will confer powers under the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE 1989 NI ") to designated customs officials and immigration officers operating in Northern Ireland, including powers of search, seizure, and arrest.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is Northern Ireland, except for part 5, which repeals section 22 of the Borders, Citizenship and Immigration Act 2009 (BCIA), and therefore has the same extent as the enactment to which it relates.

4.3 The territorial application of this instrument is Northern Ireland.

5. Policy Context

What is being done and why?

5.1 In England and Wales, immigration officers and designated customs officials are able to exercise the powers set out in the Police and Criminal Evidence Act 1984 ("PACE 1984") by virtue of Police and Criminal Evidence Act 1984 (Application to Immigration Officers and Designated Customs Officials in England and Wales) Order

2013 (“the 2013 Order”). This Order was made under section 23 Borders and Citizenship Act 2009 (“BCIA”) which also contained a further power to make a similar instrument for Northern Ireland by applying the mirror PACE powers contained in PACE 1989 NI. A second SI applying powers to officers and officials in Northern Ireland was due to follow shortly after the 2013 Order. However, due to political issues at that time it was deferred.

5.2 Without these Regulations, immigration officers and designated customs officials in Northern Ireland are not able to use powers contained in PACE 1989 NI and are forced to rely upon an awkward suite of powers contained in the Immigration Acts. These powers do not align with the powers used by their colleagues in England Wales under PACE 1984.

5.3 Conferring PACE 1989 NI powers to officers and officials operating in Northern Ireland is the most appropriate way of ensuring that they have access to the powers that align with those used by their colleagues in England and Wales. It will allow for greater interoperability between law enforcement agencies, eliminating the need for separate briefings for the same operation and any confusion over which officers or officials are empowered to exercise which powers.

5.4 As the mirror powers under PACE 1984 have been used successfully and uncontroversially in England and Wales for 13 years, the risk of legal challenge is assessed as being very low. There are no risks associated with the operationalisation of these measures foreseen either, as all affected officers and officials have already been trained in the use of PACE powers as part of their standard training package. Extensive coverage across local and national news media of recent immigration-related unrest in Northern Ireland has informed the need for a stronger approach to illegal migration in the region.

What was the previous policy, how is this different?

5.5 Immigration officers in Northern Ireland previously relied on the powers conferred to them by the Immigration Acts which enabled them to carry out the functions required of them. In England and Wales, immigration officers presently have access to those PACE 1984 powers which are set out in the 2013 Order, although prior to 2013, England and Wales officers were in the same position and relied on an awkward suite of powers in the Immigration Acts. The BCIA created powers under which both the PACE 1984 and PACE 1989 NI could be applied by secondary legislation to Immigration Officers and designated customs officials.

5.6 Designated customs officials in Northern Ireland were previously able to exercise powers under the PACE 1989 NI via application of section 22 of the BCIA. This was a temporary measure which will now be superseded by this one set of new Regulations that apply to both immigration officers and designated customs officials in Northern Ireland. This instrument achieves this purpose and regularises those powers, putting them into a clearer legal framework.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations confer powers from PACE 1989 NI to officers and officials in Northern Ireland in order to mirror the powers found in the 2013 Order. The 2013 Order applies PACE 1984 to immigration officers and designated customs officials carrying out criminal investigations in England and Wales. This will ensure parity in

the powers exercised by immigration officers and designated customs officials in Northern Ireland and their counterparts in England and Wales.

Why was this approach taken to change the law?

6.2 Regulation 31 repeals section 22 of the BCIA which applied the PACE (Application to Revenue and Customs) Order (Northern Ireland) 2007 to criminal investigations conducted by, and to persons detained by, designated customs officials in Northern Ireland. This was intended to be a temporary measure. As these Regulations apply the same provisions of PACE 1989 NI (with modifications) to such criminal investigations conducted by, and to persons detained by, designated customs officials in Northern Ireland, section 22 was repealed in its entirety. The Home Secretary's order making provision in section 23 of the BCIA is the most efficient and legislatively sound vehicle by which to make these changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 In common with previous statutory instruments pertaining to the conference of PACE 1984 powers to immigration officers and designated customs officials, including the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007 and the 2013 Order, no public consultation was undertaken. Owing to the fact that these mirror powers have been exercised for 13 years in England and Wales with a positive track record and no legal challenges, it was deemed unnecessary to undertake a full, formal consultation process. The Home Office did liaise consistently and comprehensively with operational and policy colleagues across immigration and customs, as well as engaging with external stakeholders and lawyers in the Northern Ireland Department of Justice, Northern Ireland Executive and Northern Ireland Office as well as the Cabinet Office and Ministry of Defence which were sighted given their mutual interests. Colleagues in the devolved bodies requested assurances around accountability which were discussed at working level and resolved to all parties' satisfaction.

8. Applicable Guidance

8.1 Immigration Enforcement Criminal and Financial Investigations have reviewed their existing guidance and identified 31 items where Northern Ireland is referenced. Not all of these will be impacted, and many changes are likely to be minor. The most significant updates will be required in the Criminal Investigation Guidance to PACE Powers, which may need a new dedicated section to explain the changes to Northern Ireland-based officers and officials in appropriate detail. Additionally, any guidance related to the new powers of search, such as those involving persons, premises, and warrants, may also need small updates. These changes will be completed, published and available for staff before the predicted date of operationalisation on 12 March 2026.[1]

8.2 Border Force colleagues will simply clarify across their guidance that these new Regulations now supersede the PACE (Application to Revenue and Customs) Orders 2007. Again, this will be completed before 12 March 2026.

[1] https://www.gov.uk/government/publications/criminal-investigation-guidance-to-the-pace-1984-order-2013

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen. An Equalities Impact Assessment has been prepared and published on 4 December 2025 alongside the instrument on GOV.UK. This assesses the policy change against the nine protected characteristics, making use of datasets provided by Immigration Enforcement, Border Force and the Multi-Agency Hub concerning the personal data people encountered by designated customs officials and immigration officers in Northern Ireland. Minor negative impacts were identified for the characteristics of race, sex and age on the basis that those most likely to be arrested and prosecuted for immigration and customs offences in Northern Ireland are males aged between 18 and 30 who are not British nationals. This is not the result of any direct or indirect discrimination inherent to the policy and operational colleagues will continue to make arrests as they do in all other jurisdictions based solely on available evidence regardless of the suspect's protected characteristics.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these Regulations exclusively serve to confer powers onto immigration officers and designated customs officials in Northern Ireland.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because these Regulations serve to improve the interoperability of Border Force and Immigration Enforcement with partner law enforcement agencies in Northern Ireland, providing some financial savings and reducing the duplication of briefings during operations. These financial savings will be very minor, for example reducing the briefing requirement per joint operation from two to one and enabling some decisions to be made over the telephone as opposed to in person. Owing to the how small and difficult to quantify these savings will be, no formal assessment of them was undertaken.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Home Office will monitor the operation of the powers on an ongoing 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 His Majesty's Inspectorate of Constabulary and Fire & Rescue Services on an ad hoc basis as part of its audit and safeguarding function.

10.2 A statutory review clause is not included in the instrument as there is no regulatory effect on businesses.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument repeals Section 22 of the BCIA. Section 22 of the BCIA applied the PACE (Application to Revenue and Customs) Order of 2007 to designated customs officials undertaking criminal investigations in Northern Ireland, thereby affording PACE 1989 NI powers to customs officials in Border Force. This instrument makes Section 22 obsolete, hence the repeal. The Home Secretary is empowered to make these Regulations by the order making power set out in Section 23 of the BCIA.

12. European Convention on Human Rights

12.1 The Minister for Border Security and Asylum has made the following statement regarding Human Rights:

"In my view the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (Application to Immigration Officers and Designated Customs Officials in Northern Ireland) and Consequential Amendments Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").