

Crime and Courts Bill

Fact Sheet 9 of 12 on the National Crime Agency

The National Crime Agency: operational powers

1. The NCA Plan, published in June 2011¹ set out the vision for NCA officers:

“The NCA will comprise officers from a range of backgrounds and specialisms, reflecting the varied nature of its work. We will ensure that NCA officers, as operational crime-fighters, are able to make full use of a wide range of law enforcement and investigate powers. Subject to training, NCA officers can be given the powers of a police constable, customs and immigration powers. This creates a strong set of powers and will mean that NCA officers are able to deploy techniques which are not available to the police.”

2. The NCA will be an operational crime-fighting agency which will lead the UK’s fight against serious, organised and complex crime, providing a new focus on economic crime and strengthening policing at the border. The Bill provides that NCA officers can be designated with powers of a police constable, immigration and customs powers. Powers that NCA officers need to ensure that they can deliver the functions of the NCA to protect the public and make an immediate and enduring impact on the fight against serious, organised and complex criminality. As the activities of criminal groups become increasingly more sophisticated and diverse, the powers held by law enforcement must be sufficient to tackle them.

Operational powers

3. The NCA will be a crime-fighting agency and NCA officers will be operational crime-fighters. Not all NCA officers however will need operational powers, and NCA officers may not need all the operational powers. To provide the Director General with the flexibility that he or she needs to create the most effective operational workforce, the Bill enables him or her to designate NCA officers with one or more of the following:

- Powers and privileges of a constable;
- Powers of an immigrations officer; and
- Powers of a customs officer (in relation to non-revenue matters).

¹ <http://www.homeoffice.gov.uk/publications/crime/nca-creation-plan>

4. The suite of powers which will be exercisable by NCA officers will enable them to do a range of things crucial to any criminal investigator including gaining entry to property, searching (people and premises), seizing goods, detaining and arresting suspects and executing warrants. Certain powers are available to the police, immigration officers and customs officers, while others are available only to immigration officers and/or customs officers (and reflect the particular circumstances of the criminal matters which they are called upon to investigate), but not to the police. It is operationally critical though, that NCA officers should be able to use all these powers.

Designation of powers

5. NCA officers do not need to have held operational powers prior to becoming an NCA officer, nor are they automatically provided with operational powers upon appointment. The Bill provides the power to the Director General of the NCA to designate NCA officers with operational powers. Before the DG can designate an NCA officer with operational powers they must be satisfied that the NCA officer meets certain conditions; that an NCA officer is suitable and capable of holding the operational powers and that they have been adequately trained in the operational powers. These conditions are set out in the Bill (clause 9(2)).

6. The police powers available to NCA officers include the powers of a constable in England and Wales, together with the powers of a constable in Scotland and the powers of a constable in Northern Ireland. The Bill provides separate arrangements for the designation of police powers in Scotland and Northern Ireland in recognition of the fact that policing and justice are both devolved matters.

7. NCA officers will be able to hold the respective powers of a constable, immigration officer and customs officer but they are not 'office holders'. An NCA officer who is designated with operational powers is not therefore a constable, nor are they an immigration officer or customs officer – if designated they can hold the powers of those offices, but they will not hold the office itself.

8. The power of the Director General to designate NCA officers with operational powers can be delegated to a senior NCA officer.

Operational powers of the Director General

9. The Director General of the NCA will be an operational crime-fighter. Whilst he or she will lead the organisation, the Bill also makes it clear that the Director General is also an NCA officer. As an NCA officer, therefore, the Bill also provides that the Director General can also hold one or more of the same operational powers as an NCA officer. Like NCA officers, the Director General will be subject to the same conditions of suitability, capability and training, although the arrangements are different.

10. The process for providing the Director General with operational powers differs to that for NCA officers. Paragraph 7 of Schedule 1 provides that a person may only be appointed as Director General provided that he or she is capable of effectively exercising operational powers and are a suitable person to exercise such powers.

11. As with NCA officers, the DG NCA will also need to be adequately trained in the operational powers before being designated with them. The power to designate the Director General with operational powers rests with the Home Secretary. To provide independent assurance to the Home Secretary that the training requirements have been met, the Bill provides for an advisory panel to be established for the purpose of providing independent advice on the designation process. The arrangements for the advisory panel are set out in Schedule 5.

12. The advisory panel will be appointed by the Home Secretary and will be made up of a chair and a panel of 'expert members' who are expert in the training arrangements for each of the operational powers that will be subject to a designation. The expert members will advise the chair on whether the training requirement has been met and the chair will produce a report for the Home Secretary to advise on whether the training requirement for the respective powers that will be designated has been met or not. The Home Secretary, in designating the Director General with operational powers, must comply with the recommendation of the advisory panel.

13. It will also be possible for the Home Secretary, by regulations, to set out specific conditions where operational powers can be designated to the Director General without convening the advisory panel. For example, where the Director General has received training in one or more of the operational powers prior to being appointed Director General it may be appropriate for regulations to set out the conditions whereby existing training and experience is relevant and timely then an advisory panel may not be required to be convened in order to designate those powers. (See Schedule 5, paragraph 4)

14. In addition the Director General will also be conferred with the powers of the Commissioners of Revenue and Customs (the Commissioners) in relation to non-revenue matters). Providing the powers of the Commissioners to the Director General addresses gaps that had arisen in the previous arrangements for the Serious Organised Crime Agency (SOCA). The Serious Organised Crime and Police Act 2005 allowed the Director General of SOCA to designate SOCA staff with customs powers but made no provision for the exercise within SOCA of any associated powers of the Commissioners. This created considerable operational difficulties.

15. For example, SOCA officers could use customs officers' powers (in non-tax matters) to seize goods, vehicles or vessels used in smuggling but were then unable to make decisions relating to the subsequent return sale or destruction of those things, as those powers were given in statute to the Commissioners. By providing the Commissioner powers (for non-revenue matters) to the Director General, these and other gaps will be addressed.

Home Office
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