The Chief Officer of Police 24 December 1992
England and Wales

Dear Sir

HOME OFFICE CIRCULAR 121/1992
1.1.93: PORT CHECKS UNDER THE PREVENTION OF TERRORISM ACT

This circular offers guidance on the implications of the Single Market from 1 January 1993 for police checks at ports under the Prevention of Terrorism (Temporary Provisions) Act 1989. It has been prepared in consultation with the Association of Chief Police Officers and has been approved by the Standing Committee on Ports Policing.

2. The powers that police officers have under Schedule 5 to the Prevention of Terrorism Act are not affected by any developments taking place from 1 January 1993. The Government has made clear that these are essential powers, which must continue to be exercised effectively. While working practices may need to change to meet the level and nature of traffic, and changes in the deployment of other agencies, there are no grounds for reducing the commitment that the police make to this work. Police checks should, however, be based increasingly on prior intelligence and on targeting.

3. This circular also sets out the arrangements that will be operated by the Immigration Service and HM Customs and Excise from 1 January 1993 and it will be important to ensure that all three services co-operate closely at local level and do all they can to complement and support each other.

Single European Act

4. The Single European Act, signed in 1986, committed the European Community (EC) and its Member States to establish, "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty" (Article 8A of the Treaty of Rome inserted by the Single European Act). The United Kingdom Government has always stated its belief that Article 8A, in line with other provisions of the Treaty, applies only to EC nationals, and that it does not therefore affect the right to maintain
immigration controls on non-EC nationals.

5. The Single European Act also contains a General Declaration by Member States that, "Nothing in these provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques". The Government believes that the UK's island geography means that immigration control and police checks can most effectively be carried out at ports and airports. Throughout the negotiations on EC internal frontiers, the Government has made clear its intention to continue to operate immigration control on the existing pattern in respect of non-EC nationals, together with any necessary checks to confirm the nationality of EC nationals, and to conduct such checks as are necessary to combat terrorism, drug trafficking and other serious crime. From 1 January 1993, therefore, such controls and checks will still be carried out.

Immigration Service checks

(i) control on passengers arriving from elsewhere in the EC

6. As indicated in paragraph 4, above, the Government does not accept that the introduction of the Single Market requires the removal of all immigration controls at the EC's internal frontiers. It does not intend to remove such controls on the nationals of non-EC countries and will continue to support these controls with a light check on EC nationals simply to ensure that those passing through the EC channel are indeed EC nationals. Steps have been taken in the last year or so to expedite the passage of EC nationals, eg by the creation in the summer of a separate channel at Dover for cars carrying only EC nationals. Arrangements already in place will continue, but there will be no change on 1 January 1993 to existing policy on checking the documents of EC nationals arriving from elsewhere in the EC.

7. On 17 December, the Home Secretary answered a Parliamentary Question confirming that passengers entering the United Kingdom from other EC countries (except the Republic of Ireland) will continue to be required to present their passports or other national identity documents to the immigration officer for inspection. In the case of British citizens and other EC nationals, this is simply to establish their nationality.

8. None of the other Member States intends to make fundamental changes on 1 January 1993 to the arrangements in force at its frontiers with other Member States for controlling immigration and for police checks. Those countries which are parties to the Schengen Convention (all EC Member States except Denmark, Ireland and the United Kingdom) expect to abolish frontier controls at the land frontiers between their territories, and subsequently at airports in respect of flights between their countries, in the course of 1993. The Government will be considering our own arrangements for handling arriving EC nationals in the light of these and other developments in the Community. Any future change
in arrangements for checking EC nationals must, however, be compatible with the retention of effective immigration control on third country nationals, together with adequate safeguards against the entry of terrorists and other serious criminals.

(ii) embarkation control

9. There will be no change to the embarkation control on 1 January 1993. Chief officers should refer to the Annex to this circular, which sets out for consultation with the police proposals for changes to come into effect later in 1993.

HM Customs and Excise checks

10. With the implementation of the Single Market, HM Customs and Excise will no longer be carrying out frontier checks for fiscal purposes and, consequently, the red and green channels at intra-Community ports will disappear, while at other ports there will be an exit for intra-Community travellers that does not involve going through the red or green channel. Customs enquiry points will remain for the public to ask questions or to report their suspicions about smuggling.

11. Customs powers against smuggling, under Article 36 of the Treaty of Rome, remain unchanged and Customs will continue to carry out spot checks for drugs and other prohibited and restricted items. The list of prohibited and restricted items is, however, being reduced.

12. While the Customs presence at intra-Community ports will be reduced, the flexible, risk-based approach that Customs has been developing since it reviewed its controls in 1989 will continue to identify, target and check movements. Such an approach clearly depends on the effective gathering and exploitation of information and intelligence and therefore on close co-operation with the police and the Immigration Service, as well as with customs services in other countries and with trading contacts. HM Customs and Excise are keen to strengthen liaison and operational arrangements with the police, the Immigration Service and others in order to achieve the most effective deployment of their powers and resources.

Police checks under the Prevention of Terrorism Act

13. The main purposes of the port powers under Schedule 5 to the Prevention of Terrorism Act are to prevent terrorists from entering any part of the UK and to support the Secretary of State's powers of exclusion under the Act. In addition, port checks provide an opportunity for arresting people who are wanted for other criminal offences and for obtaining information about the movement of those who may be of interest to the police and the Security Service.

14. As set out in paragraph 2, above, the introduction of the Single Market from 1 January 1993 will not affect these powers and they should continue to be exercised on an effective and selective
basis. In this regard, it will be important, as the National Co-ordinator for Ports Policing has urged, to place greater dependence on intelligence in order to target checks effectively.

Co-operation with HMIS and HMC&E

15. While the commitment to ports policing is unchanged and while police powers under the Prevention of Terrorism Act are unaffected, the arrangements made at ports by the Immigration Service and by Customs currently have, and will continue to have, implications for the way in which those powers are exercised. The broad strategy for Immigration Service and Customs checks has been set out above, but it will be necessary for all three services to co-operate closely at the local level to ensure that checks are as effective as possible and that the services complement and support each other. In appropriate circumstances, the sharing of information, resources and equipment, for example, could be helpful.

16. Chief officers will wish, therefore, to consider the need for changes in organisation and in working practices in order to ensure full co-operation with other agencies and the best use of the resources of all concerned. Discussions are taking place at a national level (including ACPO) to see what might be done to reinforce such local co-operation and further guidance will be issued as necessary.

Small ports and airports

17. One area in which inter-agency co-operation will be of particular importance is in relation to small ports and airports. From 1 January 1993, there will no longer be a permanent Customs presence at some small ports and airports where they currently carry out functions on behalf of the Immigration Service. Few, if any, such ports can be regarded as posing an immigration problem: it is rare for passengers arriving at such places to be refused entry to the country and it would be disproportionately expensive for the Immigration Service to have a permanent presence there, as most passengers are EC nationals. The Immigration Service therefore plans to operate a level of control based on risk assessment and will not normally attend where the ship or aircraft has arrived from another EC country and where the operator declares that it contains only EC nationals. Where the passengers include non-EC nationals, the operators will be asked to obtain details of them and pass these immediately to the nearest immigration office. A judgement will then be made about whether to attend in person. In the small minority of cases where the ship or aircraft has originated from outside the EC, the Immigration Service will be in attendance.

18. The level of coverage which will be required in order to safeguard against illegal entry and to ensure that operators comply with the arrangements for notifying flights and passenger details will clearly vary from port to port. The Immigration Service at local level will make a thorough assessment in consultation with the police and Customs before formulating detailed proposals for each port.
19. In relation to small airports, a recent EC Regulation (No 2408/92) on the liberalisation of intra-Community air services will mean that from 1 January 1993, such services, run by a Community air carrier with a valid operating licence granted by a Member State in accordance with Regulation No 2407/92, will no longer have to seek permission before using a non-designated airport and will not be subject to direction to a designated airport under paragraph 26 of Schedule 2 to the Immigration Act 1971 (in relation to intra-EC traffic) and paragraph 8 of Schedule 5 to the Prevention of Terrorism Act (in relation to Common Travel Area traffic). Any enquiries about the new EC licences which cannot be resolved locally should be directed to the air transport licensing section of the Civil Aviation Authority on 071-832 5695. All commercial air services, however, will still have to meet the requirements for the proper disembarkation of passengers and crew contained in paragraph 27 of Schedule 2 to the 1971 Act and paragraph 10 of Schedule 5 to the 1989 Act.

20. In relation to private aircraft, Customs have decided, after consultation with the Immigration Service, to allow intra-EC flights to land anywhere in the United Kingdom, including unlicensed aerodromes and farmers' fields, provided that reasonable prior notice has been given. This arrangement does not affect the power under paragraph 8 of Schedule 5 to the Prevention of Terrorism Act to direct Common Travel Area traffic to a designated airport, or the requirements under paragraph 10 for the proper disembarkation of passengers and crew.

21. The main implication of these changes at small ports and airports is that it will be essential for close working relationships to be maintained between the Immigration Service, Customs and the police, and chief officers may wish to consider their current arrangements in this area. As is demonstrated by existing work in many parts of the country, the sharing of information on small boats and light aircraft, for example, and the co-ordination of random attendance to check particular arrivals will help to ensure that each agency is able to contribute to the work of the others and to extract the maximum benefit from the total resources available.

EC/EFTA Agreement

22. The EC Member States and the EFTA countries (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) signed an Agreement in May this year to establish a European Economic Area (EEA), in which the main principles of the Single Market, the free movement of goods, persons, services and capital, would be extended to the EFTA countries. The Agreement was to have come into force on 1 January 1993 if, by that time, all the countries involved had ratified it. Because Switzerland voted against the Agreement in a recent referendum, it will now have to be renegotiated and is therefore unlikely to come into force before 1994. For the time being, EFTA nationals will be treated like any other third country nationals and will continue to use the non-EC channel.
Public enquiries

23. If there are public or media enquiries about arrangements from 1 January 1993, police forces should explain that their powers are unchanged and that those powers will be effectively exercised for the prevention of terrorism and other serious crime; any queries about immigration checks should be referred to the Immigration Service. In carrying out their functions at ports from 1 January 1993, police officers should make clear to passengers that they are carrying out police checks under the Prevention of Terrorism Act.

Enquiries

24. Any enquiries about this circular may be addressed to Clive Peckover in F4 Division (071-273 3557).

Distribution

25. I would be grateful if you would pass a copy of this circular to your senior port officers.

Yours faithfully

F J WARNE
F4 Division
EMBARKATION CONTROL

This Annex sets out changes that it is proposed to make during 1993 to the embarkation control. As noted in paragraph 3, below, the proposed changes are subject to consultation with the police and should not therefore be discussed outside the police service during the consultation period. Any comments that chief officers may wish to make should be passed to the Secretary of the ACPO Council Committee on Terrorism and Allied Matters (J Sharples Esq QPM, Chief Constable, Merseyside Police, PO Box 59, Liverpool, L69 1JD) by the end of February 1993.

2. The Immigration Service has concluded that such contribution as embarkation checks make to the immigration control does not justify the staff resources that are invested in them. The embarkation cards collected from a minority of departing passengers provide an insufficiently precise indication of those who have not departed at the end of their stay to form a reliable basis for enforcement work. The Immigration Service now relies largely on intelligence and on close liaison with the police to identify and target overstayers and illegal entrants.

3. The Home Secretary has therefore agreed in principle that, subject to consultation with the police, the Immigration Service should cease to conduct the embarkation control at seaports and small airports serving destinations elsewhere in the EC. At other points of departure, the embarkation control on third country nationals should be maintained, but the one in ten inspection of UK and other EC passports (for which there is no longer any particular logic) should be stopped.

4. These changes would not prevent the Immigration Service from mounting more intensive, ad hoc checks where there was specific intelligence that an identified individual of interest to the police in connection with serious crime was likely to leave the country by a particular port over a particular period of time, or where there was a serious security alert over a limited period of time. It is notable, however, that a recent survey of selected points of departure threw up only one case in the last 12 months (a ward of court) where the embarkation control picked up information which was passed on to another agency. It is also notable that, at what is probably our most significant frontier in terms of counter-terrorism (that with Ireland), there is already no Immigration Service presence.