



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 5

CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

CHAPTER 3

RECOVERY OF CASH IN SUMMARY PROCEEDINGS

Searches

289 Searches

- (1) If a customs officer or constable who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash—
 - (a) which is recoverable property or is intended by any person for use in unlawful conduct, and
 - (b) the amount of which is not less than the minimum amount,he may search for the cash there.
- (2) If a customs officer or constable has reasonable grounds for suspecting that a person (the suspect) is carrying cash—
 - (a) which is recoverable property or is intended by any person for use in unlawful conduct, and
 - (b) the amount of which is not less than the minimum amount,he may exercise the following powers.
- (3) The officer or constable may, so far as he thinks it necessary or expedient, require the suspect—
 - (a) to permit a search of any article he has with him,
 - (b) to permit a search of his person.

Status: This is the original version (as it was originally enacted).

- (4) An officer or constable exercising powers by virtue of subsection (3)(b) may detain the suspect for so long as is necessary for their exercise.
- (5) The powers conferred by this section—
 - (a) are exercisable only so far as reasonably required for the purpose of finding cash,
 - (b) are exercisable by a customs officer only if he has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979 (c. 2)).
- (6) Cash means—
 - (a) notes and coins in any currency,
 - (b) postal orders,
 - (c) cheques of any kind, including travellers' cheques,
 - (d) bankers' drafts,
 - (e) bearer bonds and bearer shares,
 found at any place in the United Kingdom.
- (7) Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by an order made after consultation with the Scottish Ministers.
- (8) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979 (c. 2)).

290 Prior approval

- (1) The powers conferred by section 289 may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer.
- (3) A judicial officer means—
 - (a) in relation to England and Wales and Northern Ireland, a justice of the peace,
 - (b) in relation to Scotland, the sheriff.
- (4) A senior officer means—
 - (a) in relation to the exercise of the power by a customs officer, a customs officer of a rank designated by the Commissioners of Customs and Excise as equivalent to that of a senior police officer,
 - (b) in relation to the exercise of the power by a constable, a senior police officer.
- (5) A senior police officer means a police officer of at least the rank of inspector.
- (6) If the powers are exercised without the approval of a judicial officer in a case where—
 - (a) no cash is seized by virtue of section 294, or
 - (b) any cash so seized is not detained for more than 48 hours,
 the customs officer or constable who exercised the powers must give a written report to the appointed person.

Status: This is the original version (as it was originally enacted).

- (7) The report must give particulars of the circumstances which led him to believe that—
 - (a) the powers were exercisable, and
 - (b) it was not practicable to obtain the approval of a judicial officer.
- (8) In this section and section 291, the appointed person means—
 - (a) in relation to England and Wales and Northern Ireland, a person appointed by the Secretary of State,
 - (b) in relation to Scotland, a person appointed by the Scottish Ministers.
- (9) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of his appointment, including any remuneration or expenses to be paid to him, are to be determined by the person appointing him.

291 Report on exercise of powers

- (1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.

“Financial year” means—

 - (a) the period beginning with the day on which this section comes into force and ending with the next 31 March (which is the first financial year), and
 - (b) each subsequent period of twelve months beginning with 1 April.
- (2) The report must give his opinion as to the circumstances and manner in which the powers conferred by section 289 are being exercised in cases where the customs officer or constable who exercised them is required to give a report under section 290(6).
- (3) In the report, he may make any recommendations he considers appropriate.
- (4) He must send a copy of his report to the Secretary of State or, as the case may be, the Scottish Ministers, who must arrange for it to be published.
- (5) The Secretary of State must lay a copy of any report he receives under this section before Parliament; and the Scottish Ministers must lay a copy of any report they receive under this section before the Scottish Parliament.

292 Code of practice

- (1) The Secretary of State must make a code of practice in connection with the exercise by customs officers and (in relation to England and Wales and Northern Ireland) constables of the powers conferred by virtue of section 289.
- (2) Where he proposes to issue a code of practice he must—
 - (a) publish a draft,
 - (b) consider any representations made to him about the draft by the Scottish Ministers or any other person,
 - (c) if he thinks it appropriate, modify the draft in the light of any such representations.
- (3) He must lay a draft of the code before Parliament.
- (4) When he has laid a draft of the code before Parliament he may bring it into operation by order.

Status: This is the original version (as it was originally enacted).

- (5) He may revise the whole or any part of the code issued by him and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
- (6) A failure by a customs officer or constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.
- (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

293 Code of practice (Scotland)

- (1) The Scottish Ministers must make a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by virtue of section 289.
- (2) Where they propose to issue a code of practice they must—
 - (a) publish a draft,
 - (b) consider any representations made to them about the draft,
 - (c) if they think it appropriate, modify the draft in the light of any such representations.
- (3) They must lay a draft of the code before the Scottish Parliament.
- (4) When they have laid a draft of the code before the Scottish Parliament they may bring it into operation by order.
- (5) They may revise the whole or any part of the code issued by them and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
- (6) A failure by a constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.
- (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.