

2016 No. 33

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016

Made - - - -

5th February 2016

Coming into operation -

1st March 2016

The Department of Justice makes the following Order in exercise of the powers conferred by sections 355(3A)(a) and 459(3) and (7A) of the Proceeds of Crime Act 2002(b) and now vested in it(c).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 and shall come into operation on 1st March 2016.

(2) In this order, “the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989(d).

Application of Article 17 of the 1989 Order

2.—(1) Article 17 of the 1989 Order (search warrants - safeguards) applies to search and seizure warrants sought for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation, with the modifications made by this article.

(2) For paragraph (1), substitute—

“(1) This Article and Article 18 have effect in relation to the issue to an appropriate officer (within the meaning of Part 8 of the Proceeds of Crime Act 2002 (investigations)) of a search and seizure warrant under section 352 of the Proceeds of Crime Act 2002(e) for the purposes of a confiscation investigation, a money laundering investigation or a detained

(a) Section 355 is amended by section 66(6) of the Policing and Crime Act 2009 (c. 26); subsection (3A) is inserted by Article 12 of, and paragraphs 47 and 66(1) and (3) of Schedule 14 to, the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976) (“the 2010 Order”).

(b) 2002 c.29.

(c) The section 459 powers of the Secretary of State are transferred to the Department of Justice by Article 12 of, and paragraphs 47 and 74(1), (2) and (7) of Schedule 14 to, the 2010 Order.

(d) S.I. 1989 No. 1341 (N.I. 12). Relevant amendments affecting Articles 17, 18, 23 and 24 of the 1989 Order have been made by the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I.2)).

(e) Section 352 is amended by sections 76 and 80 of, and paragraph 105 of Schedule 8 and paragraph 7 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), paragraph 10 of Schedule 19 to the Coroners and Justice Act 2009 (c. 25), paragraph 137 of Schedule 9 to, and paragraph 31 of Schedule 21 to, the Crime and Courts Act 2013 (c.22), paragraph 12 of Schedule 48 to the Finance Act 2013 (c. 29) and Article 3(3)(b) of, and paragraph 26 of Schedule 2 to, the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834).

cash investigation; and an entry on or search of premises under such a warrant is unlawful unless the warrant complies with this Article and is executed in accordance with Article 18.”.

- (3) In paragraph (2)—
 - (a) for “a constable” substitute “an appropriate officer”;
 - (b) at the end of sub-paragraph (a)(i) insert “and”;
 - (c) in sub-paragraph (a)(ii), for “enactment” substitute “statutory power”;
 - (d) at the end of sub-paragraph (a)(ii) omit “and”; and
 - (e) omit the rest of the paragraph.
- (4) Omit paragraph (2A).
- (5) In paragraph (3) omit the words “and supported by an information in writing”.
- (6) In paragraph (4)—
 - (a) for “constable” substitute “appropriate officer”; and
 - (b) omit the words “justice of the peace or”.
- (7) In paragraph (5) omit the words after “one occasion only”.
- (8) Omit paragraph (5A).
- (9) In paragraph (6)—
 - (a) in sub-paragraph (a)(iii), for “enactment” substitute “statutory power”;
 - (b) for sub-paragraph (a)(iv) substitute—

“(iv) the premises to be searched; and”;
 - (c) in sub-paragraph (b)—
 - (i) at the beginning insert “in the case of a warrant which is issued because the judge is satisfied that the requirement in section 352(6)(a) of the Proceeds of Crime Act 2002 is satisfied (production order made and not complied with).”;
 - (ii) for “articles or persons” substitute “material”.
- (10) In paragraph (7) omit the words after “of a warrant”.

Application of Article 18 of the 1989 Order

3.—(1) Article 18 of the 1989 Order (execution of warrants) applies to search and seizure warrants sought for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation, with the modifications made by this article.

- (2) Omit paragraph (1).
- (3) For paragraph (2), substitute—

“(2) A search and seizure warrant issued under section 352 of the Proceeds of Crime Act 2002 may authorise persons to accompany any appropriate person (within the meaning of Part 8 of that Act) who is executing it.”.
- (4) Omit paragraphs (3A) and (3B).
- (5) For paragraphs (9) to (10A), substitute—

“(9) In the case of a warrant which is issued because the judge is satisfied that the requirement in section 352(6)(a) of the Proceeds of Crime Act 2002 is satisfied (production order made and not complied with), an appropriate person executing a warrant shall make an endorsement on it stating—

 - (a) whether the material sought was found; and
 - (b) whether any material was seized, other than material which was sought.
- (10) A warrant which—
 - (a) has been executed; or

(b) has not been executed, upon the expiry of the period of three months referred to in paragraph (3) or sooner,

must be returned to the appropriate officer of the court from which it was issued.”.

(6) In paragraph (11), for the words after “its return” to the end, substitute “by the appropriate officer of the court”.

(7) For “the constable” wherever those words appear, substitute “the appropriate person”.

(8) For “a constable” wherever those words appear, substitute “an appropriate person”.

Application of Article 23 of the 1989 Order

4.—(1) Article 23 of the 1989 Order (access and copying) applies to powers of seizure under search and seizure warrants issued for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation, with the modifications made by this article.

(2) In paragraph (1), for the words from the beginning to “after this Act” substitute “An appropriate person (within the meaning of Part 8 of the Proceeds of Crime Act 2002) who seizes anything under a search and seizure warrant issued under section 352 of the Proceeds of Crime Act 2002 for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation”.

(3) In paragraph (2), for “constable” substitute “appropriate person”.

(4) In paragraph (3)—

(a) in sub-paragraph (a), for “a constable” substitute “an appropriate person”;

(b) in sub-paragraph (b), for “police for the purpose of investigating an offence” substitute “appropriate person or an appropriate officer (within the meaning of Part 8 of the Proceeds of Crime Act 2002)”;

(c) insert “appropriate” before “officer” the first time that word appears; and

(d) for “a constable” where it appears at the end of the paragraph, substitute “an appropriate officer”.

(5) In paragraph (4)—

(a) insert “appropriate” before “officer” the first time that word appears; and

(b) in sub-paragraph (a) for “a constable” substitute “an appropriate officer”.

(6) In paragraph (5) for “a constable” substitute “an appropriate person”.

(7) In paragraph (8)—

(a) before “officer” insert “appropriate”;

(b) for sub-paragraph (b) substitute—

“(b) the investigating of an offence; or”;

(c) in sub-paragraph (c) after “proceedings” insert “(including proceedings related to the making of a confiscation order)”.

(8) In paragraph (9) for “a constable” substitute “an appropriate person” both times it appears.

Application of Article 24 of the 1989 Order

5.—(1) Article 24 of the 1989 Order (retention) applies to powers of seizure under search and seizure warrants issued for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation, with the modifications made by this article.

(2) For paragraph (1) substitute—

“(1) Subject to paragraph (4), anything which has been seized by an appropriate person (within the meaning of Part 8 of the Proceeds of Crime Act 2002) or taken away by an appropriate person under a search and seizure warrant issued under section 352 of the Proceeds of Crime Act 2002 for the purposes of a confiscation investigation, a money

laundering investigation or a detained cash investigation may be retained by the appropriate person or an appropriate officer (within the meaning of Part 8 of the Proceeds of Crime Act 2002) so long as is necessary in all the circumstances.”.

(3) In paragraph (2)(a)—

- (a) for “criminal investigation” substitute “confiscation investigation, a money laundering investigation or a detained cash investigation”;
- (b) at the end of head (i), omit “or”;
- (c) at the end of head (ii), omit “and”, and
- (d) after head (ii) insert—
 - “(iii) for use as evidence in proceedings relating to the making of a confiscation order under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(a), the Proceeds of Crime (Northern Ireland) Order 1996(b) or Part 4 of the Proceeds of Crime Act 2002 (confiscation: Northern Ireland);
 - (iv) for use as evidence in proceedings under Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 (recovery of cash in summary proceedings); or
 - (v) for forensic examination in connection with a confiscation investigation, a money laundering investigation or a detained cash investigation, or for use for the purposes of any such investigation; and”.

(4) Omit paragraphs (3), (5) and (6).

(5) In paragraph (4), for “either” substitute “any”.

(6) In paragraph (7), for “a constable” substitute “an appropriate person” both times it appears.

Revocation and saving

6.—(1) Subject to paragraph (2), the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003(c) (“the 2003 Order”) is revoked, insofar as it extends to Northern Ireland.

(2) The 2003 Order continues to apply in relation to—

- (a) any application for a search and seizure warrant under section 352 of the Proceeds of Crime Act 2002 made before 1st March 2016.
- (b) any search and seizure warrant issued under section 352 of the Proceeds of Crime Act 2002—
 - (i) which is in existence on the coming into operation of this Order; or
 - (ii) as the result of an application mentioned in paragraph (a);
- (c) any power of seizure under a search and seizure warrant mentioned in paragraph (b); and
- (d) any proceedings arising in relation to—
 - (i) an application mentioned in paragraph (a);
 - (ii) a search and seizure warrant mentioned in paragraph (b); or
 - (iii) a power of seizure mentioned in paragraph (c).

(3) The proceedings mentioned in paragraph (2)(d) are not to be regarded as concluded until there is no further possibility of any appeal in relation to those proceedings.

Sealed with the Official Seal of the Department of Justice on 5th February 2016

(a) S.I. 1990 No. 2588 (N.I. 17).
(b) S.I. 1996 No. 1299 (N.I. 9).
(c) S.I. 2003/174.



David Ford
Minister of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies, with modifications, certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 No. 1341 (N.I. 12)) to search and seizure warrants obtained in Northern Ireland under section 352 of the Proceeds of Crime Act 2002 (c. 29) for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation, and to the powers of seizure under those warrants.

The Order also revokes, for Northern Ireland, the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003 (S.I. 2003/174) (“the 2003 Order”) insofar as it extends to Northern Ireland. Article 6 contains a saving, preserving the 2003 Order in relation to undetermined applications for warrants made before 1st March 2016, and warrants which are in existence on the coming into operation of this Order; to powers of seizure under such warrants; and to any proceedings arising in relation to such applications, warrants or powers of seizure (including appeals).

An impact assessment has not been produced for this Order as no impact is foreseen on the private, voluntary or public sectors.

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£4.25

NI2016020815 02/2016 19585

<http://www.legislation.gov.uk/id/nisr/2016/33>

ISBN 978-0-33-800379-9



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