

**2022 No. 74**

**PROCEEDS OF CRIME**

**The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2022**

*Made* - - - -

*1st March 2022*

*Coming into operation* -

*23rd March 2022*

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) (Amendment) Order (Northern Ireland) 2022 and shall come into operation on 23rd March 2022.

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

**Amendment of the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016(e)**

2.—(1) The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 is amended as follows.

(2) In Article 2 (application of Article 17 of the 1989 Order)—

- (a) omit paragraph (3)(c).
- (b) in paragraph (5), for “and supported by an information in writing”, substitute “supported by a complaint in writing and”.
- (c) omit paragraph (9)(a).
- (d) after paragraph (10), insert—

“(11) In paragraph (8), omit the words “justice of the peace or”.”.

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- (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) S.R. 2016 No. 33.

- (3) In Article 3 (application of Article 18 of the 1989 Order) for paragraph (6), substitute—  
“(6) In paragraph (11), after “its return”, insert the words “by the appropriate officer of the court”.”.
- (4) In Article 4 (application of Article 23 of the 1989 Order) in paragraph (2), for “this Act”, substitute “the making of this Order”.
- (5) After Article 6 insert the Schedule set out in the Schedule to this Order.

Sealed with the Official Seal of the Department of Justice on 1st March 2022



*Naomi R Long*  
Minister of Justice

## SCHEDULE

### ARTICLES 17, 18, 23 AND 24 OF THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989, AS MODIFIED

#### *“Search warrants—safeguards*

**17.—(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 for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation, or a frozen funds 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.

(2) Where an appropriate officer applies for any such warrant, it shall be his duty—

- (a) to state—
  - (i) the ground on which he makes the application; and
  - (ii) the statutory provision under which the warrant would be issued;
- (b) ...
- (c) ...

(3) An application for such a warrant shall be substantiated on oath.

(4) The appropriate officer shall answer any question that the judge hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant—

- (a) shall specify—
  - (i) the name of the person who applies for it;
  - (ii) the date on which it is issued;
  - (iii) the statutory provision under which it is issued; and
  - (iv) the premises to be searched; and
- (b) in the case of a warrant sought 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) shall identify, so far as is practicable, the material to be sought.

(7) Two copies shall be made of a warrant.

(8) The copies shall be clearly certified as copies by the judge who issues the warrant.

#### *Execution of warrants*

**18.—(1) ...**

(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.

(2A) A person so authorised has the same powers as the appropriate person whom he accompanies in respect of—

(a) the execution of the warrant; and

(a) the seizure of anything to which the warrant relates.

(2B) But he may exercise those powers only in the company of, and under the supervision of, an appropriate person.

(3) Entry and search under a warrant must be within 3 months from the date of its issue.

(3A) ...

(3B) ...

(4) Entry and search under a warrant must be at a reasonable hour unless it appears to the appropriate person executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises which are to be entered and searched is present at the time when an appropriate person seeks to execute a warrant to enter and search them, the appropriate person—

(a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is an appropriate person;

(b) shall produce the warrant to him; and

(c) shall supply him with a certified copy of it.

(6) Where—

(a) the occupier of such premises is not present at the time when an appropriate person seeks to execute such a warrant; but

(b) some other person who appears to the appropriate person to be in charge of the premises is present,

paragraph (5) shall have effect as if any reference to the occupier were a reference to that other person.

(7) If there is no person present who appears to the appropriate person to be in charge of the premises, he shall leave or affix a copy of the warrant in a prominent place on the premises.

(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(9) In the case of a warrant which is issued because the judge is satisfied that the requirement in section 352(6) 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 3 months referred to in paragraph (3) or sooner,

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

(10A) ...

(11) A warrant which is returned under paragraph (10) shall be retained for 12 months from its return by the appropriate officer of the court.

(12) If during the period for which a warrant is to be retained the occupier of premises to which it relates asks to inspect it, he shall be allowed to do so.

#### *Access and copying*

**23.**—(1) 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, a detained cash investigation, a detained property investigation or a frozen funds investigation shall, if so requested by a person showing himself—

- (a) to be the occupier of premises on which it was seized; or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The appropriate person shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to paragraph (8), if a request for permission to be granted access to anything which—

- (a) has been seized by an appropriate person; and
- (b) is retained by the appropriate person or an appropriate officer (within the meaning of Part 8 of the Proceeds of Crime Act 2002),

is made to the appropriate officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an appropriate officer.

(4) Subject to paragraph (8), if a request for a photograph or copy of any such thing is made to the appropriate officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

- (a) allow the person who made the request access to it under the supervision of an appropriate officer for the purpose of photographing or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) An appropriate person may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under paragraph (4).

(6) Where anything is photographed or copied under paragraph (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this Article to grant access to, or to supply a photograph or copy of, anything if the appropriate officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—

- (a) that investigation;
- (b) the investigating of an offence; or

- (c) any criminal proceedings (including proceedings related to the making of a confiscation order) or any proceedings under Chapter 2, 3, 3A, or 3B of Part 5 of the Proceeds of Crime Act 2002 which may be brought as a result of—
  - (i) the investigation of which he is in charge; or
  - (ii) any such investigation as is mentioned in sub-paragraph (b).

(9) The reference to an appropriate person in paragraphs (1), (2), (3)(a) and (5) include a person authorised under Article 18(2) to accompany an appropriate person executing a warrant.

#### *Retention*

**24.**—(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, a detained cash investigation, a detained property investigation or a frozen funds 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.

(2) Without prejudice to the generality of paragraph (1)—

- (a) anything seized for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation may be retained, except as provided by paragraph (4)—
  - (i) for use as evidence at a trial for an offence;
  - (ii) for forensic examination or for investigation in connection with an offence;
  - (iii) for use as evidence in proceedings relating to the making of a confiscation order under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(a)</sup>, the Proceeds of Crime (Northern Ireland) Order 1996<sup>(b)</sup> or Part 4 of the Proceeds of Crime Act 2002 (confiscation: Northern Ireland);
  - (iv) for use as evidence in proceedings under Chapter 2, 3, 3A or 3B of Part 5 of the Proceeds of Crime Act 2002; or
  - (v) for forensic examination in connection with a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation, or for use for the purposes of any such investigation; and
- (b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) ...

(4) Nothing may be retained for any of the purposes mentioned in paragraph (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) ...

(6) ...

(7) The reference in paragraph (1) to anything seized by an appropriate person includes anything seized by a person authorised under Article 18(2) to accompany an appropriate person executing a warrant.”

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<sup>(a)</sup> S.I. 1990 No. 2588 (N.I. 17).

<sup>(b)</sup> S.I. 1996 No. 1299 (N.I. 9).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) Order (Northern Ireland) 2016 (“the 2016 Order”), as amended by the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence (Northern Ireland) Order 1989) (Amendment) Order (Northern Ireland) 2021 (S.R. 2021 No. 155), applies, with modifications, certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 No. 1341 (N.I. 12)) (“the 1989 Order”) 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, a detained cash investigation, a detained property investigation and a frozen funds investigation and to the powers of seizure under those warrants.

This Order amends the 2016 Order to correct six minor drafting errors relating to the modification of the 1989 Order.

This Order also adds a Schedule to the 2016 Order for ease of reference, setting out how the relevant Articles of the 1989 Order, as modified, should be read and applied when exercising powers under the Proceeds of Crime Act 2002. Within the Schedule a series of dots denotes the relevant provisions of the 1989 Order which do not apply when exercising powers under the Proceeds of Crime Act 2002.

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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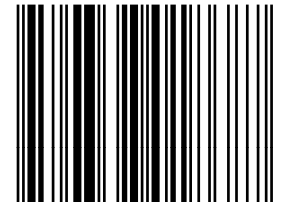
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