



# 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.

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- (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 [<sup>F1</sup>(calculated in accordance with section 295(1B)) ],

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the customs officer or constable who exercised the powers must give a written report to the appointed person.

- (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.

#### Textual Amendments

- F1** Words in s. 290(6) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 100\(3\), 178\(7\)\(a\); S.I. 2005/1521, art. 2\(1\)\(c\)](#)

## 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,

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- (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.
- (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.

### *Seizure and detention*

### **294 Seizure of cash**

- (1) A customs officer or constable may seize any cash if he has reasonable grounds for suspecting that it is—
- (a) recoverable property, or

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- (b) intended by any person for use in unlawful conduct.
- (2) A customs officer or constable may also seize cash part of which he has reasonable grounds for suspecting to be—
  - (a) recoverable property, or
  - (b) intended by any person for use in unlawful conduct,if it is not reasonably practicable to seize only that part.
- (3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates, is less than the minimum amount.

**Modifications etc. (not altering text)**

- C1 S. 294 restricted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 2 para. 13](#); [S.I. 2005/1126, art. 2\(2\)\(d\)](#)

**295 Detention of seized cash**

- (1) While the customs officer or constable continues to have reasonable grounds for his suspicion, cash seized under section 294 may be detained initially for a period of 48 hours.
- [<sup>F2</sup>(1A) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (1B).
- (1B) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of—
  - (a) any Saturday or Sunday,
  - (b) Christmas Day,
  - (c) Good Friday,
  - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the cash is seized, or
  - (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the cash is seized.]
  - (2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the sheriff; but the order may not authorise the detention of any of the cash—
    - (a) beyond the end of the period of three months beginning with the date of the order,
    - (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.
  - (3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (2) extending the period.
  - (4) An application for an order under subsection (2)—
    - (a) in relation to England and Wales and Northern Ireland, may be made by the Commissioners of Customs and Excise or a constable,
    - (b) in relation to Scotland, may be made by the Scottish Ministers in connection with their functions under section 298 or by a procurator fiscal,

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and the court, sheriff or justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.

- (5) The first condition is that there are reasonable grounds for suspecting that the cash is recoverable property and that either—
  - (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
  - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (6) The second condition is that there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
  - (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
  - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (7) An application for an order under subsection (2) may also be made in respect of any cash seized under section 294(2), and the court, sheriff or justice may make the order if satisfied that—
  - (a) the condition in subsection (5) or (6) is met in respect of part of the cash, and
  - (b) it is not reasonably practicable to detain only that part.
- (8) An order under subsection (2) must provide for notice to be given to persons affected by it.

#### Textual Amendments

**F2** S. 295(1A)(1B) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. [100\(2\)](#), [178\(7\)\(a\)](#); S.I. 2005/1521, art. 2(1)(c)

## 296 Interest

- (1) If cash is detained under section 295 for more than 48 hours [<sup>F3</sup>(calculated in accordance with section 295(1B))], it is at the first opportunity to be paid into an interest-bearing account and held there; and the interest accruing on it is to be added to it on its forfeiture or release.
- (2) In the case of cash detained under section 295 which was seized under section 294(2), the customs officer or constable must, on paying it into the account, release the part of the cash to which the suspicion does not relate.
- (3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Chapter.

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### Textual Amendments

- F3** Words in s. 296(1) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. [100\(3\)](#), [178\(7\)\(a\)](#); [S.I. 2005/1521](#), art. 2(1)(c)

## 297 Release of detained cash

- (1) This section applies while any cash is detained under section 295.
- (2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the cash if the following condition is met.
- (3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 295 for the detention of the cash are no longer met in relation to the cash to be released.
- (4) A customs officer, constable or (in Scotland) procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

### *Forfeiture*

## 298 Forfeiture

- (1) While cash is detained under section 295, an application for the forfeiture of the whole or any part of it may be made—
  - (a) to a magistrates' court by the Commissioners of Customs and Excise or a constable,
  - (b) (in Scotland) to the sheriff by the Scottish Ministers.
- (2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part—
  - (a) is recoverable property, or
  - (b) is intended by any person for use in unlawful conduct.
- (3) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.
- (4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

## [<sup>F4</sup>299 Appeal against decision under section 298

- (1) Any party to proceedings for an order for the forfeiture of cash under section 298 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal—
  - (a) in relation to England and Wales, to the Crown Court;
  - (b) in relation to Scotland, to the Sheriff Principal;

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- (c) in relation to Northern Ireland, to a county court.
- (2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.
- (3) The court hearing the appeal may make any order it thinks appropriate.
- (4) If the court upholds an appeal against an order forfeiting the cash, it may order the release of the cash.]

#### Textual Amendments

- F4** S. 299 substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 101(1), 178(7)(a)** (with [s. 101\(2\)](#)); [S.I. 2005/1521](#), **art. 2(1)(d)** (with [art. 2\(2\)](#))

### 300 Application of forfeited cash

- (1) Cash forfeited under this Chapter, and any accrued interest on it—
  - (a) if forfeited by a magistrates' court in England and Wales or Northern Ireland, is to be paid into the Consolidated Fund,
  - (b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.
- (2) But it is not to be paid in—
  - (a) before the end of the period within which an appeal under section 299 may be made, or
  - (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

#### *Supplementary*

### 301 Victims and other owners

- (1) A person who claims that any cash detained under this Chapter, or any part of it, belongs to him may apply to a magistrates' court or (in Scotland) the sheriff for the cash or part to be released to him.
- (2) The application may be made in the course of proceedings under section 295 or 298 or at any other time.
- (3) If it appears to the court or sheriff concerned that—
  - (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,
  - (b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property, and
  - (c) that cash belongs to him,
 the court or sheriff may order the cash to which the application relates to be released to the applicant.
- (4) If—
  - (a) the applicant is not the person from whom the cash to which the application relates was seized,
  - (b) it appears to the court or sheriff that that cash belongs to the applicant,



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- (c) the court or sheriff is satisfied that the conditions in section 295 for the detention of that cash are no longer met or, if an application has been made under section 298, the court or sheriff decides not to make an order under that section in relation to that cash, and
  - (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,
- the court or sheriff may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

### **302 Compensation**

- (1) If no forfeiture order is made in respect of any cash detained under this Chapter, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court or (in Scotland) the sheriff for compensation.
- (2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours [<sup>F5</sup>(calculated in accordance with section 295(1B))], the cash was not held in an interest-bearing account while detained, the court or sheriff may order an amount of compensation to be paid to the applicant.
- (3) The amount of compensation to be paid under subsection (2) is the amount the court or sheriff thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.
- (4) If the court or sheriff is satisfied that, taking account of any interest to be paid under section 296 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court or sheriff may order compensation (or additional compensation) to be paid to him.
- (5) The amount of compensation to be paid under subsection (4) is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- (6) If the cash was seized by a customs officer, the compensation is to be paid by the Commissioners of Customs and Excise.
- (7) If the cash was seized by a constable, the compensation is to be paid as follows—
  - (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met,
  - (b) in the case of a constable of a police force in Scotland, it is to be paid by the police authority or joint police board for the police area for which that force is maintained,
  - (c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), it is to be paid out of money provided by the Chief Constable.
- (8) If a forfeiture order is made in respect only of a part of any cash detained under this Chapter, this section has effect in relation to the other part.

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**Textual Amendments**

- F5** Words in s. 302(2) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. [100\(3\)](#), [178\(7\)\(a\)](#); S.I. 2005/1521, art. 2(1)(c)

**303 “The minimum amount”**

- (1) In this Chapter, the minimum amount is the amount in sterling specified in an order made by the Secretary of State after consultation with the Scottish Ministers.
- (2) For that purpose the amount of any cash held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

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