



Policing and Crime Act 2009

2009 CHAPTER 26

PART 5

PROCEEDS OF CRIME

Confiscation

51 Recovery of expenses etc

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 55 (sums received by designated officer in England and Wales) for subsection (7) substitute—
 - “(7) Subsection (4) does not apply in relation to the remuneration of a receiver if the receiver is a person falling within subsection (8).
- (8) The following fall within this subsection—
 - (a) a constable,
 - (b) a person employed by a police authority in England and Wales under section 15 of the Police Act 1996 or a member of staff of the City of London police force,
 - (c) an accredited financial investigator,
 - (d) a member of staff of the Crown Prosecution Service,
 - (e) a member of staff of the Serious Fraud Office,
 - (f) a member of staff of the Revenue and Customs Prosecutions Office,
 - (g) a member of staff of the Commissioners for Her Majesty's Revenue and Customs,
 - (h) a member of staff of SOCA,
 - (i) a member of staff of any government department not mentioned above.

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- (9) It is immaterial for the purposes of subsection (7) whether a person falls within subsection (8) by virtue of a permanent or temporary appointment or a secondment from elsewhere.
- (10) The reference in subsection (8) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that subsection by the Secretary of State under section 453.”
- (3) In section 203 (sums received by chief clerk in Northern Ireland) for subsection (7) substitute—
- “(7) Subsection (4) does not apply in relation to the remuneration of a receiver if the receiver is a person falling within subsection (8).
- (8) The following fall within this subsection—
- (a) a constable,
 - (b) a member of staff of the Northern Ireland Policing Board,
 - (c) an accredited financial investigator,
 - (d) a member of staff of the Public Prosecution Service for Northern Ireland,
 - (e) a member of staff of the Serious Fraud Office,
 - (f) a member of staff of a Northern Ireland department,
 - (g) a member of staff of the Commissioners for Her Majesty's Revenue and Customs,
 - (h) a member of staff of SOCA.
- (9) It is immaterial for the purposes of subsection (7) whether a person falls within subsection (8) by virtue of a permanent or temporary appointment or a secondment from elsewhere.
- (10) The reference in subsection (8) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that subsection by the Secretary of State under section 453.”

Commencement Information

II S. 51 in force at 25.1.2010 by S.I. 2009/3096, art. 3(f)

VALID FROM 01/06/2015

52 Power to retain seized property: England and Wales

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) After section 41 insert—

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“41A Restraint orders: power to retain seized property etc.

- (1) A restraint order may include provision authorising the detention of any property to which it applies if the property—
 - (a) is seized by an appropriate officer under a relevant seizure power, or
 - (b) is produced to an appropriate officer in compliance with a production order under section 345.
- (2) Provision under subsection (1) may, in particular—
 - (a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;
 - (b) relate to property that has already been seized or produced or to property that may be seized or produced in future.
- (3) “Appropriate officer” means—
 - (a) an accredited financial investigator;
 - (b) a constable;
 - (c) an officer of Revenue and Customs;
 - (d) a member of staff of SOCA;
 - (e) a member of staff of the relevant director (within the meaning of section 352(5A)).
- (4) “Relevant seizure power” means a power to seize property which is conferred by or by virtue of—
 - (a) section 47C,
 - (b) section 352, or
 - (c) Part 2 or 3 of the Police and Criminal Evidence Act 1984 (including as applied by order under section 114(2) of that Act).
- (5) The Secretary of State may by order amend the definition of “relevant seizure power”.

(3) After section 44 insert—

“44A Detention of property pending appeal

- (1) This section applies where—
 - (a) a restraint order includes provision under section 41A authorising the detention of property, and
 - (b) the restraint order is discharged under section 42(5) or 43(3)(b).
- (2) This section also applies where—
 - (a) a restraint order includes provision under section 41A authorising the detention of property, and
 - (b) the restraint order is varied under section 42(5) or 43(3)(b) so as to omit any such provision.
- (3) The property may be detained until there is no further possibility of an appeal against—
 - (a) the decision to discharge or vary the restraint order, or

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(b) any decision made on an appeal against that decision.”

VALID FROM 01/06/2015

53 Power to retain seized property: Scotland

(1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.

(2) After section 120 insert—

“120A Restraint orders: power to retain seized property etc.

(1) A restraint order may include provision authorising the detention of any property to which it applies if the property—

- (a) is seized by an appropriate officer under a relevant seizure power, or
- (b) is produced to an appropriate officer in compliance with a production order under section 380.

(2) Provision under subsection (1) may, in particular—

- (a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;
- (b) relate to property that has already been seized or produced or to property that may be seized or produced in future.

(3) “Appropriate officer” means—

- (a) a constable;
- (b) an officer of Revenue and Customs;
- (c) a member of staff of SOCA.

(4) “Relevant seizure power” means a power to seize property conferred by or by virtue of—

- (a) section 127C or 387,
- (b) a warrant granted under any other enactment or any rule of law, or
- (c) any other enactment, or any rule of law, under which the authority of a warrant is not required.”

(3) After section 122 insert—

“122A Detention of property pending appeal

(1) This section applies where—

- (a) a restraint order includes provision under section 120A authorising the detention of property, and
- (b) the restraint order is recalled under section 121(7).

(2) This section also applies where—

- (a) a restraint order includes provision under section 120A authorising the detention of property, and
- (b) the restraint order is varied under section 121(7) so as to omit any such provision.

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- (3) The property may be detained until there is no further possibility of an appeal against (or review of)—
 - (a) the decision to recall or vary the restraint order, or
 - (b) any decision made on an appeal against (or review of) that decision.”

VALID FROM 01/03/2016

54 Power to retain seized property: Northern Ireland

(1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.

(2) After section 190 insert—

“190A Restraint orders: power to retain seized property

- (1) A restraint order may include provision authorising the detention of any property to which it applies if the property—
 - (a) is seized by an appropriate officer under a relevant seizure power, or
 - (b) is produced to an appropriate officer in compliance with a production order under section 345.
- (2) Provision under subsection (1) may, in particular—
 - (a) relate to specified property, to property of a specified description or to all property to which the restraint order applies;
 - (b) relate to property that has already been seized or produced or to property that may be seized or produced in future.
- (3) “Appropriate officer” means—
 - (a) an accredited financial investigator;
 - (b) a constable;
 - (c) an officer of Revenue and Customs;
 - (d) a member of staff of SOCA;
 - (e) a member of staff of the relevant director (within the meaning of section 352(5A)).
- (4) “Relevant seizure power” means a power to seize property conferred by or by virtue of—
 - (a) section 195C,
 - (b) section 352, or
 - (c) Part 3 or 4 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (including as applied by order under Article 85(1) of that Order).
- (5) The Secretary of State may by order amend the definition of “relevant seizure power”.”

(3) After section 193 insert—

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“193A Detention of property pending appeal

- (1) This section applies where—
 - (a) a restraint order includes provision under section 190A authorising the detention of property, and
 - (b) the restraint order is discharged under section 191(5) or 192(3)(b).
- (2) This section also applies where—
 - (a) a restraint order includes provision under section 190A authorising the detention of property, and
 - (b) the restraint order is varied under section 191(5) or 192(3)(b) so as to omit any such provision.
- (3) The property may be detained until there is no further possibility of an appeal against—
 - (a) the decision to discharge or vary the restraint order, or
 - (b) any decision made on an appeal against that decision.”

VALID FROM 22/11/2014

55 Search and seizure of property: England and Wales

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) After section 47 insert—

“Search and seizure powers

47A Sections 47B to 47S: meaning of “appropriate officer”

- (1) In sections 47B to 47S “appropriate officer” means—
 - (a) an officer of Revenue and Customs,
 - (b) a constable, or
 - (c) an accredited financial investigator.
- (2) In subsection (1)(c) the reference to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State under section 453.

47B Conditions for exercise of powers

- (1) An appropriate officer may exercise the power conferred by section 47C if satisfied that any of the following conditions is met.
- (2) The first condition is that—
 - (a) a criminal investigation has been started in England and Wales with regard to an indictable offence,
 - (b) a person has been arrested for the offence,

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- (c) proceedings for the offence have not yet been started against the person in England and Wales,
 - (d) there is reasonable cause to believe that the person has benefited from conduct constituting the offence, and
 - (e) a restraint order is not in force in respect of any realisable property.
- (3) The second condition is that—
- (a) a criminal investigation has been started in England and Wales with regard to an indictable offence,
 - (b) a person has been arrested for the offence,
 - (c) proceedings for the offence have not yet been started against the person in England and Wales, and
 - (d) a restraint order is in force in respect of any realisable property.
- (4) The third condition is that—
- (a) proceedings for an indictable offence have been started in England and Wales and have not been concluded,
 - (b) there is reasonable cause to believe that the defendant has benefited from conduct constituting the offence, and
 - (c) a restraint order is not in force in respect of any realisable property.
- (5) The fourth condition is that—
- (a) proceedings for an indictable offence have been started in England and Wales and have not been concluded, and
 - (b) a restraint order is in force in respect of any realisable property.
- (6) The fifth condition is that—
- (a) an application by the prosecutor has been made under section 19, 20, 27 or 28 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the defendant has benefited from criminal conduct.
- (7) The sixth condition is that—
- (a) an application by the prosecutor has been made under section 21 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).
- (8) The seventh condition is that—
- (a) an application by the prosecutor has been made under section 22 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).
- (9) The third or fourth condition is not met if the officer believes that—

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- (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed.
- (10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—
- (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor does not intend to proceed.
- (11) In relation to the first or second condition references in sections 47C to 47S to the defendant are to the person mentioned in that condition.
- (12) In relation to the first or second condition section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

47C Power to seize property

- (1) On being satisfied as mentioned in section 47B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—
- (a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or
 - (b) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.
- (2) But the officer may not seize—
- (a) cash, or
 - (b) exempt property.
- (3) “Cash” has the same meaning as in section 289.
- (4) “Exempt property” means—
- (a) such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally in the defendant's employment, business or vocation;
 - (b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family.
- (5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the defendant are to be read as references to the recipient of that gift.

Section 47B(11) is subject to this subsection.

- (6) The power conferred by this section—
- (a) may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and
 - (b) is exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).

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(7) “Relevant offence” means—

- (a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 47B is met, the offence mentioned in that condition,
- (b) in a case where the officer is satisfied that any of the other conditions in section 47B is met, the offence (or any of the offences) concerned.

47D Search power: premises

- (1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—
 - (a) the officer has reasonable grounds for suspecting may be found there, and
 - (b) if found there, the officer intends to seize under section 47C.
- (2) The power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (3) “Premises” has the meaning given by section 23 of the Police and Criminal Evidence Act 1984.

47E Search power: people

- (1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 47C.
- (2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—
 - (a) to permit a search of any article with the person,
 - (b) to permit a search of the person.
- (3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.
- (4) A power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (5) 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).

47F Search power: vehicles

- (1) The powers specified in subsection (4) are exercisable if—
 - (a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 47C, and
 - (b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.
- (2) The powers are exercisable only if the vehicle is—

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- (a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
 - (b) in any other place to which at that time people have ready access but which is not a dwelling.
- (3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—
- (a) that the person does not reside in the dwelling, and
 - (b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.
- (4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 47C, require the person to—
- (a) permit entry to the vehicle,
 - (b) permit a search of the vehicle.
- (5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.
- (6) A power conferred by this section may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

47G “Appropriate approval”

- (1) This section has effect for the purposes of sections 47C, 47D, 47E and 47F.
- (2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer.
- (3) A senior officer means—
 - (a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
 - (b) in relation to the exercise of a power by a constable, a senior police officer,
 - (c) in relation to the exercise of a power by an accredited financial investigator, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State under section 453.
- (4) A senior police officer means a police officer of at least the rank of inspector.

47H Exercise of powers without judicial approval

- (1) An appropriate officer must give a written report to the appointed person in any case where—

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- (a) the officer seizes property under section 47C without the approval of a justice of the peace, and
 - (b) any of the property seized is not detained for more than 48 hours.
- (2) An appropriate officer must also give a written report to the appointed person in any case where—
 - (a) the officer exercises any of the powers conferred by sections 47D, 47E and 47F without the approval of a justice of the peace, and
 - (b) no property is seized under section 47C.
- (3) A report under this section must give particulars of the circumstances which led the officer to believe that—
 - (a) the powers were exercisable, and
 - (b) it was not practicable to obtain the approval of a justice of the peace.
- (4) The appointed person means a person appointed for the purposes of this subsection by the Secretary of State.
- (5) The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Secretary of State.
- (6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).
- (7) In calculating a period of 48 hours in accordance with this subsection, no account is to be taken of—
 - (a) any Saturday or Sunday,
 - (b) Christmas Day,
 - (c) Good Friday, or
 - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

47I Report by appointed person on exercise of powers

- (1) As soon as possible after the end of each financial year, the person appointed under section 47H(4) must prepare a report for that year.
- (2) “Financial year” means—
 - (a) the period beginning with the day on which section 55 of the Policing and Crime Act 2009 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.
- (3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 47C, 47D, 47E and 47F are being exercised in cases where the officer who exercised them is required to give a report under section 47H.
- (4) The report may make any recommendations the appointed person considers appropriate.
- (5) The appointed person must send a copy of the report to the Secretary of State.

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- (6) The Secretary of State must—
 - (a) publish any report received under subsection (5), and
 - (b) lay a copy before Parliament.
- (7) Before acting under subsection (6) the Secretary of State must exclude from the report any matter which the Secretary of State thinks is likely to prejudice any criminal investigation or criminal proceedings.
- (8) If the Secretary of State excludes any matter from the report the Secretary of State must comply with subsection (6) in relation to the whole of the report as soon as the Secretary of State thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

47J Initial detention of seized property

- (1) This section applies if an appropriate officer seizes property under section 47C.
- (2) The property may be detained initially for a period of 48 hours.
- (3) The period of 48 hours is to be calculated in accordance with section 47H(7).

47K Further detention pending making of restraint order

- (1) This section applies if—
 - (a) property is detained under section 47J, and
 - (b) no restraint order is in force in respect of the property.
- (2) If within the period mentioned in section 47J an application is made for a restraint order which includes provision under section 41A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against that decision.
- (4) In subsection (2) the reference to the period mentioned in section 47J includes that period as extended by any order under section 47M.

47L Further detention pending variation of restraint order

- (1) This section applies if—
 - (a) property is detained under section 47J,
 - (b) a restraint order is in force in respect of the property, and
 - (c) the order does not include provision under section 41A authorising the detention of the property.
- (2) If within the period mentioned in section 47J an application is made for the order to be varied so as to include provision under section 41A authorising

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detention of the property, the property may be detained until the application is determined or otherwise disposed of.

- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
- (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against that decision.

47M Further detention in other cases

- (1) This section applies if—
- (a) property is detained under section 47J,
 - (b) no restraint order is in force in respect of the property, and
 - (c) no application has been made for a restraint order which includes provision under section 41A authorising detention of the property.
- (2) A magistrates' court may by order extend the period for which the property or any part of it may be detained under section 47J if satisfied that—
- (a) any of the conditions in section 47B is met (reading references in that section to the officer as references to the court),
 - (b) the property or part is realisable property other than exempt property (within the meaning of section 47C(4)), and
 - (c) there are reasonable grounds for suspecting that—
 - (i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or
 - (ii) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.
- (3) An application for an order may be made by—
- (a) the Commissioners for Her Majesty's Revenue and Customs,
 - (b) a constable,
 - (c) an accredited financial investigator, or
 - (d) the prosecutor.
- (4) If the property was seized in reliance on the first or second condition in section 47B, “the prosecutor” means a person who is to have conduct of any proceedings for the offence.
- (5) An order under this section must provide for notice to be given to persons affected by it.
- (6) In this section “part” includes portion.

47N Discharge, variation and lapse of detention order

- (1) An order under section 47M may be discharged or varied.
- (2) An application for variation or discharge of the order may be made by—
- (a) a person mentioned in section 47M(3), or
 - (b) any person affected by the order.

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- (3) On an application under this section the court must discharge the order if—
- (a) the order was made on the ground that the first or second condition in section 47B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,
 - (b) the order was made on the ground that the third or fourth condition in section 47B was met but proceedings for the offence mentioned in that condition have now been concluded,
 - (c) the order was made on the ground that the fifth, sixth or seventh condition in section 47B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.
- (4) An order made under section 47M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 41A).

47O Appeals

- (1) If on an application for an order under section 47M the magistrates' court decides not to make an order, a person mentioned in subsection (3) of that section may appeal to the Crown Court against the decision.
- (2) If an application is made under section 47N in relation to an order the following persons may appeal to the Crown Court in respect of the magistrates' court's decision on the application—
 - (a) a person mentioned in section 47M(3), or
 - (b) any person affected by the order.

47P Detention of property pending section 47O appeal

- (1) This section applies where—
 - (a) an application for an order under section 47M is made within the period mentioned in section 47J, and
 - (b) the application is refused.
- (2) This section also applies where—
 - (a) an order is made under section 47M extending the period for which property may be detained under section 47J, and
 - (b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.
- (3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

47Q Hearsay evidence in detention order proceedings

- (1) Evidence must not be excluded in detention order proceedings on the ground that it is hearsay (of whatever degree).

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (2) Sections 2 to 4 of the Civil Evidence Act 1995 apply in relation to detention order proceedings as those sections apply in relation to civil proceedings.
- (3) Detention order proceedings are proceedings—
 - (a) for an order under section 47M;
 - (b) for the discharge or variation of such an order;
 - (c) on an appeal under section 47O.
- (4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.
- (5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

47R Release of property

- (1) This section applies in relation to property which—
 - (a) has been seized by an appropriate officer under section 47C, and
 - (b) is detained under or by virtue of any of sections 47J to 47M and 47P.
- (2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.
- (3) The detention condition is met for so long as—
 - (a) any of the conditions in section 47B is met, and
 - (b) there are reasonable grounds for the suspicion mentioned in section 47C(1).
- (4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 47J to 47M and 47P.
- (5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.

Code of practice about search and seizure and detention of property

47S Codes of practice

- (1) The Secretary of State must make a code of practice in connection with—
 - (a) the carrying out by appropriate officers of the functions conferred by sections 47C to 47H,
 - (b) the carrying out by senior officers of their functions under section 47G, and
 - (c) the detention of property under or by virtue of sections 41A, 44A and 47J to 47P.
- (2) Where the Secretary of State proposes to issue a code of practice the Secretary of State must—
 - (a) publish a draft,
 - (b) consider any representations made about the draft,

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Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (c) if the Secretary of State thinks appropriate, modify the draft in the light of any such representations.
- (3) The Secretary of State must lay a draft of the code before Parliament.
- (4) When the Secretary of State has laid a draft of the code before Parliament the Secretary of State may bring it into operation by order.
- (5) The Secretary of State may revise the whole or any part of the code 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 person to comply with a provision of the code does not of itself make the person 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.”
- (3) Omit section 45 (seizure).
- (4) In section 69 (powers of court and receiver)—
- (a) in subsection (1) after paragraph (b) insert—
- “(c) the powers conferred on appropriate officers by sections 47C to 47L;
- (d) the powers conferred on senior officers by section 47G.”
- (b) at the end of the heading insert “ etc. ”.

VALID FROM 22/11/2014

56 Search and seizure of property: Scotland

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) After section 127 insert—

“Search and seizure powers

127A Sections 127B to 127R: meaning of “appropriate officer”

In sections 127B to 127R “appropriate officer” means—

- (a) an officer of Revenue and Customs, or
- (b) a constable.

127B Conditions for exercise of powers

- (1) An appropriate officer may exercise the power conferred by section 127C if satisfied that any of the following conditions is met.
- (2) The first condition is that—
- (a) a criminal investigation has been started in Scotland with regard to an indictable offence,

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Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (b) a person has been arrested for the offence,
 - (c) proceedings for the offence have not yet been started against the person in Scotland,
 - (d) there is reasonable cause to believe that the person has benefited from conduct constituting the offence, and
 - (e) a restraint order is not in force in respect of any realisable property.
- (3) The second condition is that—
- (a) a criminal investigation has been started in Scotland with regard to an indictable offence,
 - (b) a person has been arrested for the offence,
 - (c) proceedings for the offence have not yet been started against the person in Scotland, and
 - (d) a restraint order is in force in respect of any realisable property.
- (4) The third condition is that—
- (a) proceedings for an indictable offence have been started in Scotland and have not been concluded,
 - (b) there is reasonable cause to believe that the accused has benefited from conduct constituting the offence, and
 - (c) a restraint order is not in force in respect of any realisable property.
- (5) The fourth condition is that—
- (a) proceedings for an indictable offence have been started in Scotland and have not been concluded, and
 - (b) a restraint order is in force in respect of any realisable property.
- (6) The fifth condition is that—
- (a) an application by the prosecutor has been made under section 104, 105, 111 or 112 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the accused has benefited from criminal conduct.
- (7) The sixth condition is that—
- (a) an application by the prosecutor has been made under section 106 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the accused's benefit exceeds the relevant amount (as defined in that section).
- (8) The seventh condition is that—
- (a) an application by the prosecutor has been made under section 107 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (9) The third or fourth condition is not met if the officer believes that—
 - (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed.
- (10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—
 - (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor does not intend to proceed.
- (11) In relation to the first or second condition references in sections 127C to 127R to the accused are to the person mentioned in that condition.
- (12) In relation to the first or second condition section 144(8) has effect as if proceedings for the offence had been started against the accused when the investigation was started.

127C Power to seize property

- (1) On being satisfied as mentioned in section 127B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—
 - (a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the accused, or
 - (b) the value of the property may otherwise be diminished as a result of conduct by the accused or any other person.
- (2) But the officer may not seize—
 - (a) cash, or
 - (b) exempt property.
- (3) “Cash” has the same meaning as in section 289.
- (4) “Exempt property” means—
 - (a) such tools, books, vehicles and other items of equipment as are necessary to the accused for use personally in the accused's employment, business or vocation;
 - (b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the accused and the accused's family.
- (5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the accused are to be read as references to the recipient of that gift.

Section 127B(11) is subject to this subsection.

- (6) The power conferred by this section—
 - (a) may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and
 - (b) is exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct

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Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).

- (7) “Relevant offence” means—
- (a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 127B is met, the offence mentioned in that condition,
 - (b) in a case where the officer is satisfied that any of the other conditions in section 127B is met, the offence (or any of the offences) concerned.

127D Search power: premises

- (1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—
- (a) the officer has reasonable grounds for suspecting may be found there, and
 - (b) if found there, the officer intends to seize under section 127C.
- (2) The power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (3) “Premises” has the meaning given by section 23 of the Police and Criminal Evidence Act 1984.

127E Search power: people

- (1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 127C.
- (2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—
- (a) to permit a search of any article with the person,
 - (b) to permit a search of the person.
- (3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.
- (4) A power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (5) 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).

127F Search power: vehicles

- (1) The powers specified in subsection (4) are exercisable if—

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 127C, and
 - (b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.
- (2) The powers are exercisable only if the vehicle is—
- (a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
 - (b) in any other place to which at that time people have ready access but which is not a dwelling.
- (3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—
- (a) that the person does not reside in the dwelling, and
 - (b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.
- (4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 127C, require the person to—
- (a) permit entry to the vehicle,
 - (b) permit a search of the vehicle.
- (5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.
- (6) A power conferred by this section may be exercised only with the appropriate approval under section 127G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

127G “Appropriate approval”

- (1) This section has effect for the purposes of sections 127C, 127D, 127E and 127F.
- (2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of the sheriff or (if that is not practicable in any case) the approval of a senior officer.
- (3) A senior officer means—
 - (a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
 - (b) in relation to the exercise of a power by a constable, a senior police officer.
- (4) A senior police officer means a police officer of at least the rank of inspector.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

127H Exercise of powers without judicial approval

- (1) An appropriate officer must give a written report to the appointed person in any case where—
 - (a) the officer seizes property under section 127C without the approval of the sheriff, and
 - (b) any of the property seized is not detained for more than 48 hours.
- (2) An appropriate officer must also give a written report to the appointed person in any case where—
 - (a) the officer exercises any of the powers conferred by sections 127D, 127E and 127F without the approval of the sheriff, and
 - (b) no property is seized under section 127C.
- (3) A report under this section must give particulars of the circumstances which led the officer to believe that—
 - (a) the powers were exercisable, and
 - (b) it was not practicable to obtain the approval of the sheriff.
- (4) The appointed person means a person appointed for the purposes of this subsection by the Scottish Ministers.
- (5) The appointed person must not be a person employed under or for the purposes of the Scottish Administration; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Scottish Ministers.
- (6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).
- (7) In calculating a period of 48 hours in accordance with this subsection, no account is to 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 Scotland, 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 power is exercised.

127I Report by appointed person on exercise of powers

- (1) As soon as possible after the end of each financial year, the person appointed under section 127H(4) must prepare a report for that year.
- (2) “Financial year” means—
 - (a) the period beginning with the day on which section 56 of the Policing and Crime Act 2009 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.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 127C, 127D, 127E and 127F are being exercised in cases where the officer who exercised them is required to give a report under section 127H.
- (4) The report may make any recommendations the appointed person considers appropriate.
- (5) The appointed person must send a copy of the report to the Scottish Ministers.
- (6) The Scottish Ministers must—
 - (a) publish any report received under subsection (5), and
 - (b) lay a copy before the Scottish Parliament.
- (7) Before acting under subsection (6) the Scottish Ministers must exclude from the report any matter which the Scottish Ministers think is likely to prejudice any criminal investigation or criminal proceedings.
- (8) If the Scottish Ministers exclude any matter from the report they must comply with subsection (6) in relation to the whole of the report as soon as they think that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

127J Initial detention of seized property

- (1) This section applies if an appropriate officer seizes property under section 127C.
- (2) The property may be detained initially for a period of 48 hours.
- (3) The period of 48 hours is to be calculated in accordance with section 127H(7).

127K Further detention pending making of restraint order

- (1) This section applies if—
 - (a) property is detained under section 127J, and
 - (b) no restraint order is in force in respect of the property.
- (2) If within the period mentioned in section 127J an application is made for a restraint order which includes provision under section 120A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against (or review of)—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against (or review of) that decision.
- (4) In subsection (2) the reference to the period mentioned in section 127J includes that period as extended by any order under section 127M.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

127L Further detention pending variation of restraint order

- (1) This section applies if—
 - (a) property is detained under section 127J,
 - (b) a restraint order is in force in respect of the property, and
 - (c) the order does not include provision under section 120A authorising the detention of the property.
- (2) If within the period mentioned in section 127J an application is made for the order to be varied so as to include provision under section 120A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against (or review of)—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against (or review of) that decision.

127M Further detention in other cases

- (1) This section applies if—
 - (a) property is detained under section 127J,
 - (b) no restraint order is in force in respect of the property, and
 - (c) no application has been made for a restraint order which includes provision under section 120A authorising detention of the property.
- (2) The sheriff may by order extend the period for which the property or any part of it may be detained under section 127J if satisfied that—
 - (a) any of the conditions in section 127B is met (reading references in that section to the officer as references to the sheriff),
 - (b) the property or part is realisable property other than exempt property (within the meaning of section 127C(4)), and
 - (c) there are reasonable grounds for suspecting that—
 - (i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the accused, or
 - (ii) the value of the property may otherwise be diminished as a result of conduct by the accused or any other person.
- (3) An application for an order may be made by—
 - (a) the Commissioners for Her Majesty's Revenue and Customs,
 - (b) a constable, or
 - (c) the prosecutor.
- (4) If the property was seized in reliance on the first or second condition in section 127B, “the prosecutor” means a person who is to have conduct of any proceedings for the offence.
- (5) An order under this section must provide for notice to be given to persons affected by it.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (6) In this section “part” includes portion.

127N Discharge, variation and lapse of detention order

- (1) An order under section 127M may be discharged or varied.
- (2) An application for variation or discharge of the order may be made by—
 - (a) a person mentioned in section 127M(3), or
 - (b) any person affected by the order.
- (3) On an application under this section the sheriff must discharge the order if—
 - (a) the order was made on the ground that the first or second condition in section 127B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,
 - (b) the order was made on the ground that the third or fourth condition in section 127B was met but proceedings for the offence mentioned in that condition have now been concluded,
 - (c) the order was made on the ground that the fifth, sixth or seventh condition in section 127B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.
- (4) An order made under section 127M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 120A).

127O Appeals

- (1) If on an application for an order under section 127M the sheriff decides not to make an order, a person mentioned in subsection (3) of that section may appeal to the Court of Session against the decision.
- (2) If an application is made under section 127N in relation to an order the following persons may appeal to the Court of Session in respect of the sheriff's decision on the application—
 - (a) a person mentioned in section 127M(3), or
 - (b) any person affected by the order.
- (3) An appeal under this section must be made before the end of the period of 21 days starting with the day on which the order was made.
- (4) On an appeal under this section the Court of Session may—
 - (a) make or (as the case may be) discharge the order, or
 - (b) vary the order.

127P Detention of property pending section 127O appeal

- (1) This section applies where—
 - (a) an application for an order under section 127M is made within the period mentioned in section 127J, and
 - (b) the application is refused.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (2) This section also applies where—
 - (a) an order is made under section 127M extending the period for which property may be detained under section 127J, and
 - (b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.
- (3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

127Q Release of property

- (1) This section applies in relation to property which—
 - (a) has been seized by an appropriate officer under section 127C, and
 - (b) is detained under or by virtue of any of sections 127J to 127M and 127P.
- (2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.
- (3) The detention condition is met for so long as—
 - (a) any of the conditions in section 127B is met, and
 - (b) there are reasonable grounds for the suspicion mentioned in section 127C(1).
- (4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 127J to 127M and 127P.
- (5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.

Guidance about search and seizure and detention of property

127R Guidance by Lord Advocate

- (1) The Lord Advocate may issue guidance in connection with—
 - (a) the carrying out by appropriate officers of the functions conferred by sections 127C to 127H,
 - (b) the carrying out by senior officers of their functions under section 127G, and
 - (c) the detention of property under or by virtue of sections 120A, 122A and 127J to 127P.
- (2) The Lord Advocate must publish any guidance issued under this section.”
- (3) Omit section 126 (seizure).
- (4) In section 132 (powers of court and administrator)—
 - (a) in subsection (1) after paragraph (b) insert—
 - “(c) the powers conferred on appropriate officers by sections 127C to 127L;

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (d) the powers conferred on senior officers by section 127G.”
 (b) at the end of the heading insert “ etc ”.

VALID FROM 22/11/2014

57 Search and seizure of property: Northern Ireland

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
 (2) After section 195 insert—

“Search and seizure powers

195A Sections 195B to 195S: meaning of “appropriate officer”

- (1) In sections 195B to 195S “appropriate officer” means—
- (a) an officer of Revenue and Customs,
 - (b) a constable, or
 - (c) an accredited financial investigator.
- (2) In subsection (1)(c) the reference to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State under section 453.

195B Conditions for exercise of powers

- (1) An appropriate officer may exercise the power conferred by section 195C if satisfied that any of the following conditions is met.
- (2) The first condition is that—
- (a) a criminal investigation has been started in Northern Ireland with regard to an indictable offence,
 - (b) a person has been arrested for the offence,
 - (c) proceedings for the offence have not yet been started against the person in Northern Ireland,
 - (d) there is reasonable cause to believe that the person has benefited from conduct constituting the offence, and
 - (e) a restraint order is not in force in respect of any realisable property.
- (3) The second condition is that—
- (a) a criminal investigation has been started in Northern Ireland with regard to an indictable offence,
 - (b) a person has been arrested for the offence,
 - (c) proceedings for the offence have not yet been started against the person in Northern Ireland, and
 - (d) a restraint order is in force in respect of any realisable property.
- (4) The third condition is that—

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (a) proceedings for an indictable offence have been started in Northern Ireland and have not been concluded,
 - (b) there is reasonable cause to believe that the defendant has benefited from conduct constituting the offence, and
 - (c) a restraint order is not in force in respect of any realisable property.
- (5) The fourth condition is that—
- (a) proceedings for an indictable offence have been started in Northern Ireland and have not been concluded, and
 - (b) a restraint order is in force in respect of any realisable property.
- (6) The fifth condition is that—
- (a) an application by the prosecutor has been made under section 169, 170, 177 or 178 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the defendant has benefited from criminal conduct.
- (7) The sixth condition is that—
- (a) an application by the prosecutor has been made under section 171 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).
- (8) The seventh condition is that—
- (a) an application by the prosecutor has been made under section 172 and not concluded, or the officer believes that such an application is to be made, and
 - (b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).
- (9) The third or fourth condition is not met if the officer believes that—
- (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed.
- (10) If an application mentioned in the fifth, sixth or seventh condition has been made the condition is not met if the officer believes that—
- (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor does not intend to proceed.
- (11) In relation to the first or second condition references in sections 195C to 195S to the defendant are to the person mentioned in that condition.
- (12) In relation to the first or second condition section 225(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

195C Power to seize property

- (1) On being satisfied as mentioned in section 195B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that—
 - (a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or
 - (b) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.
- (2) But the officer may not seize—
 - (a) cash, or
 - (b) exempt property.
- (3) “Cash” has the same meaning as in section 289.
- (4) “Exempt property” means—
 - (a) such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally in the defendant's employment, business or vocation;
 - (b) such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family.
- (5) In relation to realisable property which is free property held by the recipient of a tainted gift, references in subsection (4) to the defendant are to be read as references to the recipient of that gift.
 Section 195B(11) is subject to this subsection.
- (6) The power conferred by this section—
 - (a) may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, and
 - (b) is exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).
- (7) “Relevant offence” means—
 - (a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 195B is met, the offence mentioned in that condition,
 - (b) in a case where the officer is satisfied that any of the other conditions in section 195B is met, the offence (or any of the offences) concerned.

195D Search power: premises

- (1) If an appropriate officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which—

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- (a) the officer has reasonable grounds for suspecting may be found there, and
 - (b) if found there, the officer intends to seize under section 195C.
- (2) The power conferred by this section may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (3) “Premises” has the meaning given by Article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

195E Search power: people

- (1) An appropriate officer may exercise the following powers if the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 195C.
- (2) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under that section, require the person—
 - (a) to permit a search of any article with the person,
 - (b) to permit a search of the person.
- (3) An officer exercising a power under subsection (2) may detain the person for so long as is necessary for its exercise.
- (4) A power conferred by this section may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (5) 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).

195F Search power: vehicles

- (1) The powers specified in subsection (4) are exercisable if—
 - (a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 195C, and
 - (b) it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle.
- (2) The powers are exercisable only if the vehicle is—
 - (a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
 - (b) in any other place to which at that time people have ready access but which is not a dwelling.
- (3) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under subsection (4) only if the officer has reasonable grounds for believing—
 - (a) that the person does not reside in the dwelling, and

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- (b) that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.
- (4) The officer may, so far as the officer thinks it necessary or expedient for the purpose of seizing the property under section 195C, require the person to—
 - (a) permit entry to the vehicle,
 - (b) permit a search of the vehicle.
- (5) An officer exercising a power under subsection (4) may detain the vehicle for so long as is necessary for its exercise.
- (6) A power conferred by this section may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

195G “Appropriate approval”

- (1) This section has effect for the purposes of sections 195C, 195D, 195E and 195F.
- (2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a lay magistrate or (if that is not practicable in any case) the approval of a senior officer.
- (3) A senior officer means—
 - (a) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
 - (b) in relation to the exercise of a power by a constable, a senior police officer,
 - (c) in relation to the exercise of a power by an accredited financial investigator, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State under section 453.
- (4) A senior police officer means a police officer of at least the rank of inspector.

195H Exercise of powers without judicial approval

- (1) An appropriate officer must give a written report to the appointed person in any case where—
 - (a) the officer seizes property under section 195C without the approval of a lay magistrate, and
 - (b) any of the property seized is not detained for more than 48 hours.
- (2) An appropriate officer must also give a written report to the appointed person in any case where—
 - (a) the officer exercises any of the powers conferred by sections 195D, 195E and 195F without the approval of a lay magistrate, and
 - (b) no property is seized under section 195C.

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- (3) A report under this section must give particulars of the circumstances which led the officer to believe that—
 - (a) the powers were exercisable, and
 - (b) it was not practicable to obtain the approval of a lay magistrate.
 - (4) The appointed person means a person appointed for the purposes of this subsection by the [^{F1}Department of Justice].
 - (5) The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the [^{F2}Department of Justice].
- [^{F3}(5A) “Government department” includes a Northern Ireland department.]
- (6) The period of 48 hours mentioned in subsection (1)(b) is to be calculated in accordance with subsection (7).
 - (7) In calculating a period of 48 hours in accordance with this subsection, no account is to be taken of—
 - (a) any Saturday or Sunday,
 - (b) Christmas Day,
 - (c) Good Friday, or
 - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.

195I Report by appointed person on exercise of powers

- (1) As soon as possible after the end of each financial year, the person appointed under section 195H(4) must prepare a report for that year.
 - (2) “Financial year” means—
 - (a) the period beginning with the day on which section 57 of the Policing and Crime Act 2009 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.
 - (3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by sections 195C, 195D, 195E and 195F are being exercised in cases where the officer who exercised them is required to give a report under section 195H.
 - (4) The report may make any recommendations the appointed person considers appropriate.
 - (5) The appointed person must send a copy of the report to the [^{F4}Department of Justice].
 - (6) The [^{F5}Department of Justice] must—
 - (a) publish any report received under subsection (5), and
 - (b) lay a copy before [^{F6}the Northern Ireland Assembly].
- [^{F7}(6A) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6)(b) in relation to the laying of a copy of a

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report as it applies in relation to the laying of a statutory document under an enactment.]

- (7) Before acting under subsection (6) the [F⁸Department of Justice] must exclude from the report any matter which the [F⁸Department of Justice] thinks is likely to prejudice any criminal investigation or criminal proceedings.
- (8) If the [F⁸Department of Justice] excludes any matter from the report the [F⁸Department of Justice] must comply with subsection (6) in relation to the whole of the report as soon as the [F⁸Department of Justice] thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

195J Initial detention of seized property

- (1) This section applies if an appropriate officer seizes property under section 195C.
- (2) The property may be detained initially for a period of 48 hours.
- (3) The period of 48 hours is to be calculated in accordance with section 195H(7).

195K Further detention pending making of restraint order

- (1) This section applies if—
 - (a) property is detained under section 195J, and
 - (b) no restraint order is in force in respect of the property.
- (2) If within the period mentioned in section 195J an application is made for a restraint order which includes provision under section 190A authorising detention of the property, the property may be detained until the application is determined or otherwise disposed of.
- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against that decision.
- (4) In subsection (2) the reference to the period mentioned in section 195J includes that period as extended by any order under section 195M.

195L Further detention pending variation of restraint order

- (1) This section applies if—
 - (a) property is detained under section 195J,
 - (b) a restraint order is in force in respect of the property, and
 - (c) the order does not include provision under section 190A authorising the detention of the property.
- (2) If within the period mentioned in section 195J an application is made for the order to be varied so as to include provision under section 190A authorising

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detention of the property, the property may be detained until the application is determined or otherwise disposed of.

- (3) If such an application is made within that period and the application is refused, the property may be detained until there is no further possibility of an appeal against—
- (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against that decision.

195M Further detention in other cases

- (1) This section applies if—
- (a) property is detained under section 195J,
 - (b) no restraint order is in force in respect of the property, and
 - (c) no application has been made for a restraint order which includes provision under section 190A authorising detention of the property.
- (2) A magistrates' court may by order extend the period for which the property or any part of it may be detained under section 195J if satisfied that—
- (a) any of the conditions in section 195B is met (reading references in that section to the officer as references to the court),
 - (b) the property or part is realisable property other than exempt property (within the meaning of section 195C(4)), and
 - (c) there are reasonable grounds for suspecting that—
 - (i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or
 - (ii) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.
- (3) An application for an order may be made by—
- (a) the Commissioners for Her Majesty's Revenue and Customs,
 - (b) a constable,
 - (c) an accredited financial investigator, or
 - (d) the prosecutor.
- (4) If the property was seized in reliance on the first or second condition in section 195B, “the prosecutor” means a person who is to have conduct of any proceedings for the offence.
- (5) An order under this section must provide for notice to be given to persons affected by it.
- (6) In this section “part” includes portion.

195N Discharge, variation and lapse of detention order

- (1) An order under section 195N may be discharged or varied.
- (2) An application for variation or discharge of the order may be made by—
- (a) a person mentioned in section 195M(3), or
 - (b) any person affected by the order.

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- (3) On an application under this section the court must discharge the order if—
 - (a) the order was made on the ground that the first or second condition in section 195B was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time,
 - (b) the order was made on the ground that the third or fourth condition in section 195B was met but proceedings for the offence mentioned in that condition have now been concluded,
 - (c) the order was made on the ground that the fifth, sixth or seventh condition in section 195B was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time.
- (4) An order made under section 195M lapses if a restraint order is made in respect of the property to which it relates (but provision authorising detention of the property may have been included in the restraint order by virtue of section 190A).

195O Appeals

- (1) If on an application for an order under section 195M the court decides not to make one, a person mentioned in subsection (3) of that section may appeal to the county court against the decision.
- (2) If an application is made under section 195N in relation to an order the following persons may appeal to the county court in respect of the magistrates' court's decision on the application—
 - (a) a person mentioned in section 195M(3), or
 - (b) any person affected by the order.

195P Detention of property pending section 195O appeal

- (1) This section applies where—
 - (a) an application for an order under section 195M is made within the period mentioned in section 195J, and
 - (b) the application is refused.
- (2) This section also applies where—
 - (a) an order is made under section 195M extending the period for which property may be detained under section 195J, and
 - (b) the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order.
- (3) The property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be).

195Q Hearsay evidence in detention order proceedings

- (1) Evidence must not be excluded in detention order proceedings on the ground that it is hearsay (of whatever degree).

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- (2) Articles 4 and 5 of the Civil Evidence (Northern Ireland) Order 1997 apply in relation to detention order proceedings as those articles apply in relation to civil proceedings.
- (3) Detention order proceedings are proceedings—
 - (a) for an order under section 195M;
 - (b) for the discharge or variation of such an order;
 - (c) on an appeal under section 195O.
- (4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.
- (5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

195R Release of property

- (1) This section applies in relation to property which—
 - (a) has been seized by an appropriate officer under section 195C, and
 - (b) is detained under or by virtue of any of sections 195J to 195M and 195P.
- (2) The property must be released if at any time an appropriate officer decides that the detention condition is no longer met.
- (3) The detention condition is met for so long as—
 - (a) any of the conditions in section 195B is met, and
 - (b) there are reasonable grounds for the suspicion mentioned in section 195C(1).
- (4) Nothing in this section requires property to be released if there is a power to detain it otherwise than under or by virtue of sections 195J to 195M and 195P.
- (5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.

Code of practice about search and seizure and detention of property

195S Codes of practice^[F9]: Secretary of State

- (1) The Secretary of State must make a code of practice in connection with—
 - (a) the carrying out by ^[F10]officers of Revenue and Customs] of the functions conferred by section 195C to 195H,
 - (b) the carrying out by senior officers of their functions under section 195G, and
 - (c) the detention of property ^[F11]by officers of Revenue and Customs and members of staff of SOCA] under or by virtue of sections 190A, 193A and 195J to 195P.

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[^{F12}(1A) In subsection (1) senior officers means officers of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a police officer of at least the rank of inspector.]

- (2) Where the Secretary of State proposes to issue a code of practice the Secretary of State must—
 - (a) publish a draft,
 - (b) consider any representations made about the draft,
 - (c) if the Secretary of State thinks appropriate, modify the draft in the light of any such representations.
- (3) The Secretary of State must lay a draft of the code before Parliament.
- (4) When the Secretary of State has laid a draft of the code before Parliament the Secretary of State may bring it into operation by order.
- (5) The Secretary of State may revise the whole or any part of the code 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 person to comply with a provision of the code does not of itself make the person 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.

Codes of practice: Department of Justice

- (1) The Department of Justice must make a code of practice in connection with —
 - (a) the carrying out by constables and accredited financial investigators of the functions conferred by sections 195C to 195H,
 - (b) the carrying out by senior officers of their functions under section 195G, and
 - (c) the detention of property by—
 - (i) constables,
 - (ii) accredited financial investigators, and
 - (iii) members of staff of the relevant director (within the meaning of section 352(5A)(b)),
 under or by virtue of sections 190A, 193A and 195J to 195P.
- (2) In subsection (1)(b) senior officers means—
 - (a) police officers of at least the rank of inspector,
 - (b) accredited financial investigators who fall within a description specified in an order made for this purpose by the Secretary of State under section 453.
- (3) Where the Department of Justice proposes to issue a code of practice the Department of Justice must—
 - (a) publish a draft,

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- (b) consider any representations made about the draft,
 - (c) if the Department of Justice thinks appropriate, modify the draft in the light of any such representations.
- (4) The Department of Justice must lay a draft of the code before the Northern Ireland Assembly.
- (5) When the Department of Justice has laid a draft of the code before the Assembly the Department of Justice may bring it into operation by order.
- (6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.
- (7) The Department of Justice may revise the whole or any part of the code and issue the code as revised; and subsections (3) to (6) apply to such a revised code as they apply to the original code.
- (8) A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.
- (9) 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.”]
- (3) Omit section 194 (seizure).
- (4) In section 217 (powers of court and receiver)—
- (a) in subsection (1) after paragraph (b) insert—
 - “(c) the powers conferred on appropriate officers by sections 195C to 195L;
 - (d) the powers conferred on senior officers by section 195G.”
 - (b) at the end of the heading insert “ etc ”.
- [^{F14}(5) In section 459 (orders and regulations)—
- (a) in subsection (7A) after “section” (the second time it appears) insert “195T(5),”,
 - (b) in subsection (7B) after “section” insert “195T(5),]

Textual Amendments

- F1** Words in s. 57 substituted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **18(2)(a)** (with arts. 24-28)
- F2** Words in s. 57 substituted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **18(2)(b)** (with arts. 24-28)
- F3** Words in s. 57 inserted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **18(2)(c)** (with arts. 24-28)
- F4** Words in s. 57 substituted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **18(2)(d)** (with arts. 24-28)
- F5** Words in s. 57 substituted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **18(2)(e)** (with arts. 24-28)
- F6** Words in s. 57 substituted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **18(2)(f)** (with arts. 24-28)

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- F7** Words in s. 57 substituted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(g)** (with arts. 24-28)
- F8** Words in s. 57 substituted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(h)** (with arts. 24-28)
- F9** Words in s. 57 inserted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(i)** (with arts. 24-28)
- F10** Words in s. 57 substituted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(j)** (with arts. 24-28)
- F11** Words in s. 57 inserted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(k)** (with arts. 24-28)
- F12** Words in s. 57 inserted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(l)** (with arts. 24-28)
- F13** Words in s. 57 inserted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(m)** (with arts. 24-28)
- F14** S. 57(5) inserted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **18(2)(n)** (with arts. 24-28)

VALID FROM 01/06/2015

58 Power to sell seized personal property: England and Wales

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) After section 67 insert—

“67A Seized personal property

- (1) This section applies to personal property which is held by a person and which—
 - (a) has been seized by an appropriate officer under a relevant seizure power, or
 - (b) has been produced to an appropriate officer in compliance with a production order under section 345.
- (2) This section applies if the following conditions are satisfied—
 - (a) a confiscation order is made against the person by whom the property is held;
 - (b) a receiver has not been appointed under section 50 in relation to the property;
 - (c) any period allowed under section 11 for payment of the amount ordered to be paid under the confiscation order has ended.
- (3) In such a case a magistrates' court may by order authorise an appropriate officer to realise the property.
- (4) In this section “appropriate officer” and “relevant seizure power” have the same meaning as in section 41A.

67B Costs of storage and realisation

- (1) This section applies if a magistrates' court makes an order under section 67A.

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- (2) The court may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—
 - (a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
 - (b) realising the property.
- (3) If the court makes a determination under this section the appropriate officer is entitled to payment of the amount under section 55(4).
- (4) A determination under this section may be made on the same occasion as the section 67A order or on any later occasion; and more than one determination may be made in relation to any case.
- (5) In this section “appropriate officer” has the same meaning as in section 41A.

67C Sections 67A and 67B: appeals

- (1) If a magistrates' court decides not to make an order under section 67A, an appropriate officer may appeal to the Crown Court.
- (2) If a magistrates' court makes an order under section 67A, a person affected by the order may appeal to the Crown Court.
- (3) But the person mentioned in section 67A(2)(a) may not appeal.
- (4) An appropriate officer may appeal to the Crown Court against—
 - (a) a determination made by a magistrates' court under section 67B;
 - (b) a decision by a magistrates' court not to make a determination under that section.
- (5) In this section “appropriate officer” has the same meaning as in section 41A.

67D Proceeds of realisation

- (1) This section applies to sums which—
 - (a) are in the hands of an appropriate officer, and
 - (b) are the proceeds of the realisation of property under section 67A.
- (2) The sums must be applied as follows—
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
 - (b) second, they must be applied in making any payments directed by the magistrates' court or the Crown Court;
 - (c) third, they must be paid to the appropriate designated officer on account of the amount payable under the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—
 - (a) among such persons who held (or hold) interests in the property represented by the proceeds as the magistrates' court or the Crown Court directs, and

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- (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to it.
- (5) If the magistrates' court has made a direction under subsection (2)(b) or (3) in respect of the proceeds of realisation of any property, the Crown Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa.
- (6) In this section—
- “appropriate officer” has the same meaning as in section 41A;
- “appropriate designated officer” means the designated officer for the magistrates' court which, by virtue of section 35, is responsible for enforcing the confiscation order as if it were a fine.”
- (3) Accordingly, at the end of the cross-heading immediately above that section insert “ and personal property ”.
- (4) In section 55(3)(b) (payment of sums received by designated officer under section 54 or otherwise: insolvency practitioners' expenses) after “section 54(2)(a)” insert “ or 67D(2)(a) ”.
- (5) In section 55(4) (payment of sums received by designated officer under section 54)—
- (a) after “section 54” insert “ or 67D ”,
- (b) in paragraph (b) for “the receiver” substitute “ any receiver ”, and
- (c) after paragraph (b) insert—
- “(c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 67B.”

VALID FROM 01/06/2015

59 Power to sell seized personal property: Scotland

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) After section 131 insert—

“Seized personal property

131A Seized personal property

- (1) This section applies to moveable property which is held by a person and which—
- (a) has been seized by an appropriate officer under a relevant seizure power, or
- (b) has been produced to an appropriate officer in compliance with a production order under section 380.
- (2) This section applies if the following conditions are satisfied—

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- (a) a confiscation order is made against the person by whom the property is held;
 - (b) an administrator has not been appointed under section 128 in relation to the property;
 - (c) any period allowed under section 116 for payment of the amount ordered to be paid under the confiscation order has ended.
- (3) In such a case the sheriff may by order authorise an appropriate officer to realise the property.
- (4) In this section “appropriate officer” and “relevant seizure power” have the same meaning as in section 120A.

131B Costs of storage and realisation

- (1) This section applies if the sheriff makes an order under section 131A.
- (2) The sheriff may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—
 - (a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
 - (b) realising the property.
- (3) If the sheriff makes a determination under this section the appropriate officer is entitled to payment of the amount under section 131(5A).
- (4) A determination under this section may be made on the same occasion as the section 131A order or on any later occasion; and more than one determination may be made in relation to any case.
- (5) In this section “appropriate officer” has the same meaning as in section 120A.

131C Sections 131A and 131B: appeals

- (1) If a sheriff decides not to make an order under section 131A, an appropriate officer may appeal to the Court of Session.
- (2) If a sheriff makes an order under section 131A, a person affected by the order may appeal to the Court of Session.
- (3) But the person mentioned in section 131A(2)(a) may not appeal.
- (4) An appropriate officer may appeal to the Court of Session against—
 - (a) a determination made by a sheriff under section 131B;
 - (b) a decision by a sheriff not to make a determination under that section.
- (5) An appeal under this section must be made before the end of the period of 21 days starting with the day on which the decision or (as the case may be) the order was made.
- (6) On an appeal under this section the Court of Session may—
 - (a) confirm, quash or vary the decision or (as the case may be) the order, or

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(b) make such order as Court of Session believes is appropriate.

(7) In this section “appropriate officer” has the same meaning as in section 120A.

131D Proceeds of realisation

(1) This section applies to sums which—

- (a) are in the hands of an appropriate officer, and
- (b) are the proceeds of the realisation of property under section 131A.

(2) The sums must be applied as follows—

- (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
- (b) second, they must be applied in making any payments directed by the sheriff;
- (c) third, they must be paid to the appropriate clerk of court on account of the amount payable under the confiscation order.

(3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—

- (a) among such persons who held (or hold) interests in the property represented by the proceeds as the sheriff directs, and
- (b) in such proportions as the sheriff directs.

(4) Before making a direction under subsection (3) the sheriff must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to the sheriff.

(5) In this section—

- (a) “appropriate officer” has the same meaning as in section 120A;
- (b) “appropriate clerk of court” means the sheriff clerk of the sheriff court responsible for enforcing the confiscation order under section 211 of the Procedure Act as applied by section 118(1).”

(3) In section 131 (sums received by clerk of court)—

- (a) in subsection (3)(b) after “section 130(3)(a)” insert “ or 131D(2)(a) ”,
- (b) in subsection (5) after “130” insert “ or 131D ”, and
- (c) after subsection (5) insert—

“(5A) If the clerk of court received the sums from an appropriate officer under section 130 or 131D, the clerk of court must next apply them in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 131B.”

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

VALID FROM 01/03/2016

60 Power to sell seized personal property: Northern Ireland

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) After section 215 insert—

“215A Seized personal property

- (1) This section applies to personal property which is held by a person and which—
 - (a) has been seized by an appropriate officer under a relevant seizure power, or
 - (b) has been produced to an appropriate officer in compliance with a production order under section 345.
- (2) This section applies if the following conditions are satisfied—
 - (a) a confiscation order is made against the person by whom the property is held;
 - (b) a receiver has not been appointed under section 198 in relation to the property;
 - (c) any period allowed under section 161 for payment of the amount ordered to be paid under the confiscation order has ended.
- (3) In such a case a magistrates' court may by order authorise an appropriate officer to realise the property.
- (4) In this section “appropriate officer” and “relevant seizure power” have the same meaning as in section 190A.

215B Costs of storage and realisation

- (1) This section applies if a magistrates' court makes an order under section 215A.
- (2) The court may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in—
 - (a) storing or insuring the property since it was seized or produced as mentioned in subsection (1) of that section;
 - (b) realising the property.
- (3) If the court makes a determination under this section the appropriate officer is entitled to payment of the amount under section 203(4).
- (4) A determination under this section may be made on the same occasion as the section 215A order or on any later occasion; and more than one determination may be made in relation to any case.
- (5) In this section “appropriate officer” has the same meaning as in section 190A.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

215C Sections 215A and 215B: appeals

- (1) If a magistrates' court decides not to make an order under section 215A, an appropriate officer may appeal to a county court.
- (2) If a magistrates' court makes an order under section 215A, a person affected by the order may appeal to a county court.
- (3) But the person mentioned in section 215A(2)(a) may not appeal.
- (4) An appropriate officer may appeal to a county court against—
 - (a) a determination made by a magistrates' court under section 215B;
 - (b) a decision by a magistrates' court not to make a determination under that section.
- (5) In this section “appropriate officer” has the same meaning as in section 190A.

215D Proceeds of realisation

- (1) This section applies to sums which—
 - (a) are in the hands of an appropriate officer, and
 - (b) are the proceeds of the realisation of property under section 215A.
- (2) The sums must be applied as follows—
 - (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 432;
 - (b) second, they must be applied in making any payments directed by the magistrates' court or Crown Court;
 - (c) third, they must be paid to the appropriate chief clerk on account of the amount payable under the confiscation order.
- (3) If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them—
 - (a) among such persons who held (or hold) interests in the property represented by the proceeds as the magistrates' court or Crown Court directs, and
 - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to it.
- (5) If the magistrates' court has made a direction under subsection (2)(b) or (3) in respect of the proceeds of realisation of any property, the Crown Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa.
- (6) In this section—

“appropriate officer” has the same meaning as in section 190A,
and

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Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

“appropriate chief clerk” has the same meaning as in section 202(7).”

- (3) Accordingly, at the end of the cross-heading immediately above that section insert “and personal property”.
- (4) In section 203(3)(b) (payment of sums received by chief clerk under section 202 or otherwise: insolvency practitioners' expenses) after “section 202(2)(a)” insert “or 215D(2)(a)”.
- (5) In section 203(4) (payment of sums received by chief clerk under section 202)—
 - (a) after “section 202” insert “or 215D”,
 - (b) in paragraph (b) for “the receiver” substitute “any receiver”, and
 - (c) after paragraph (b) insert—
 - “(c) third, in payment to an appropriate officer of any amount to which the officer is entitled by virtue of section 215B.”

61 Payment of compensation

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 72 (serious default in England and Wales) in subsection (9)—
 - (a) after paragraph (b) insert—
 - “(ba) if the person in default was a member of staff of SOCA, the compensation is payable by SOCA;”, and
 - (b) after paragraph (e) insert—
 - “(f) if the person in default was an accredited financial investigator and none of paragraphs (a) to (e) apply, the compensation is payable in accordance with paragraph (a), (c) or (e) of section 302(7A) (as the case may require).”
- (3) In section 139 (serious default in Scotland) after paragraph (c) of subsection (9) insert—
 - “(ca) if the person in default was a member of staff of SOCA, the compensation is payable by SOCA;”.
- (4) Subsection (9) of section 220 (serious default in Northern Ireland) is amended as follows.
- (5) In paragraph (b), for “a member of the Director of Public Prosecutions for Northern Ireland” substitute “a member of the Public Prosecution Service for Northern Ireland”.
- (6) After paragraph (b) insert—
 - “(ba) if the person in default was a member of staff of SOCA, the compensation is payable by SOCA;”.
- (7) After paragraph (e) insert—
 - “(f) if the person in default was an accredited financial investigator and none of paragraphs (a) to (e) apply, the compensation is payable in accordance with paragraph (b), (d) or (e) of section 302(7A) (as the case may require).”

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Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

Commencement Information

I2 S. 61 in force at 25.1.2010 by S.I. 2009/3096, art. 3(g)

Civil recovery

62 Limitation

- (1) In the following provisions for “twelve years” substitute “ 20 years ”
- (a) sections 27A(2) and 27B(2) of the Limitation Act 1980 (c. 58) (civil recovery of property obtained through unlawful conduct etc),
 - (b) sections 19B(2) and 19C(2) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (equivalent provisions for Scotland), and
 - (c) Articles 72A(2) and 72B(2) of the Limitation (Northern Ireland) Order 1989 (S.I. 1339 (N.I. 11)) (equivalent provisions for Northern Ireland).
- (2) The amendments made by this section—
- (a) apply to causes of action which accrued before, as well as to causes of action which accrue after, the commencement of this section, but
 - (b) do not apply to causes of action barred by the provisions mentioned in subsection (1) before the commencement of this section.

Commencement Information

I3 S. 62 in force at 25.1.2010 by S.I. 2009/3096, art. 3(h)

VALID FROM 01/06/2015

63 Power to search vehicles

- (1) Section 289 of the Proceeds of Crime Act 2002 (c. 29) (searches) is amended as set out in subsections (2) to (4).
- (2) After subsection (1) insert—
- “(1A) The powers specified in subsection (1D) are exercisable if—
- (a) a customs officer, a constable or an accredited financial investigator has reasonable grounds for suspecting that there is cash falling within subsection (1E) in a vehicle, and
 - (b) it appears to the officer, constable or investigator that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle.
- (1B) The powers are exercisable only if the vehicle is—
- (a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or

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- (b) in any other place to which at that time people have ready access but which is not a dwelling.
- (1C) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the customs officer, constable or accredited financial investigator may exercise the powers under subsection (1D) only if the officer, constable or investigator has reasonable grounds for believing—
 - (a) that the suspect does not reside in the dwelling, and
 - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.
- (1D) The customs officer, constable or accredited financial investigator may, so far as the officer, constable or investigator thinks it necessary or expedient, require the suspect to—
 - (a) permit entry to the vehicle,
 - (b) permit a search of the vehicle.
- (1E) Cash falls within this subsection if—
 - (a) it is recoverable property or is intended by any person for use in unlawful conduct, and
 - (b) the amount of it is not less than the minimum amount.”
- (3) In subsection (4) for the words from “exercising” to the end substitute “may—
 - (a) in exercising powers by virtue of subsection (1D), detain the vehicle for so long as is necessary for their exercise,
 - (b) in exercising powers by virtue of subsection (3)(b), detain the suspect for so long as is necessary for their exercise.”
- (4) In subsection (5)(c) for the words from “premises” to the end substitute “the following—
 - (i) premises in England, Wales or Northern Ireland (in the case of subsection (1)),
 - (ii) vehicles and suspects in England, Wales or Northern Ireland (in the case of subsections (1D) and (4)(a)),
 - (iii) suspects in England, Wales or Northern Ireland (in the case of subsections (2), (3) and (4)(b)).”

64 Detention of seized cash

- (1) In section 295(2)(a) of the Proceeds of Crime Act 2002 (c. 29) (period for which court may authorise further detention of seized cash) for “three months” substitute “ six months ”.
- (2) The amendment made by subsection (1) applies in relation to cash seized before or after the commencement of this section.

Commencement Information

I4 S. 64 in force at 25.1.2010 by S.I. 2009/3096, art. 3(i)

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

VALID FROM 22/11/2014

65 Forfeiture of detained cash

- (1) After section 297 of the Proceeds of Crime Act 2002 insert—

“Forfeiture without court order

297A Forfeiture notice

- (1) Subsection (2) applies while any cash is detained in pursuance of an order under section 295(2) made by a magistrates' court in England and Wales or Northern Ireland.
- (2) A senior officer may give a notice for the purpose of forfeiting 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) The Secretary of State must make regulations about how a notice is to be given.
- (4) The regulations may provide—
 - (a) for a notice to be given to such person or persons, and in such manner, as may be prescribed;
 - (b) for a notice to be given by publication in such manner as may be prescribed;
 - (c) for circumstances in which, and the time at which, a notice is to be treated as having been given.
- (5) The regulations must ensure that where a notice is given it is, if possible, given to every person to whom notice of an order under section 295(2) in respect of the cash has been given.
- (6) A senior officer means—
 - (a) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
 - (b) a senior police officer, or
 - (c) an accredited financial investigator.
- (7) A senior police officer means a police officer of at least the rank of inspector.
- (8) A notice under this section is referred to in this Chapter as a forfeiture notice.

297B Content

- (1) A forfeiture notice must—
 - (a) state the amount of cash in respect of which it is given,
 - (b) state when and where the cash was seized,

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- (c) confirm that the senior officer is satisfied as mentioned in section 297A(2),
 - (d) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and
 - (e) explain that the cash will be forfeited unless an objection is received at that address within the period for objecting.
- (2) The period for objecting must be at least 30 days starting with the day after the notice is given.

297C Effect

- (1) This section applies if a forfeiture notice is given in respect of any cash.
- (2) The cash is to be detained until—
 - (a) the cash is forfeited under this section,
 - (b) the notice lapses under this section, or
 - (c) the cash is released under a power conferred by this Chapter.
- (3) If no objection is made within the period for objecting, and the notice has not lapsed, the cash is forfeited (subject to section 297E).
- (4) If an objection is made within the period for objecting, the notice lapses.
- (5) If an application is made for the forfeiture of the whole or any part of the cash under section 298, the notice lapses.
- (6) If the cash or any part of it is released under a power conferred by this Chapter, the notice lapses or (as the case may be) lapses in relation to that part.
- (7) An objection may be made by anyone, whether a recipient of the notice or not.
- (8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.
- (9) An objection does not prevent forfeiture of the cash under section 298.
- (10) Nothing in this section affects the validity of an order under section 295(2).

297D Detention following lapse of notice

- (1) This section applies if—
 - (a) a forfeiture notice is given in respect of any cash,
 - (b) the notice lapses under section 297C(4), and
 - (c) the period for which detention of the cash was authorised under section 295(2) has expired.
- (2) The cash may be detained for a further period of up to 48 hours (calculated in accordance with section 295(1B)).
- (3) But if within that period the Commissioners for Her Majesty's Revenue and Customs, a constable or an accredited financial investigator decides that

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neither of the applications mentioned in subsection (4) ought to be made, the cash must be released.

- (4) The applications are—
- (a) an application for a further order under section 295(2);
 - (b) an application for forfeiture of the cash under section 298.
- (5) “ If within that period an application is made for a further order under section 295(2) the cash may be detained until the application is determined or otherwise disposed of. ”

297E Application to set aside forfeiture

- (1) This section applies if any cash is forfeited in pursuance of a forfeiture notice.
- (2) A person aggrieved by the forfeiture may apply to a magistrates' court in England and Wales or Northern Ireland for an order setting aside the forfeiture of the cash or any part of it.
- (3) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended.
- (4) But the court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—
 - (a) failed to object to the forfeiture within the period for objecting, and
 - (b) failed to make an application within the 30-day period.
- (5) On an application under this section the court must consider whether the cash to which the application relates could be forfeited under section 298 (ignoring the forfeiture mentioned in subsection (1) above).
- (6) If the court is satisfied that the cash to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that cash or part.
- (7) Where the court sets aside the forfeiture of any cash—
 - (a) it must order the release of that cash, and
 - (b) that cash is to be treated as never having been forfeited.

297F Release of cash subject to forfeiture notice

- (1) This section applies while any cash is detained under section 297C or 297D.
- (2) A magistrates' court 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 is not satisfied, on an application by the person from whom the cash was seized, that the cash to be released—
 - (a) is recoverable property, or
 - (b) is intended by any person for use in unlawful conduct.
- (4) An officer of Revenue and Customs, constable or accredited financial investigator may release the cash or any part of it if satisfied that the detention of the cash to be released is no longer justified.

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Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

297G Application of forfeited cash

- (1) Cash forfeited in pursuance of a forfeiture notice, and any accrued interest on it, is to be paid into the Consolidated Fund.
- (2) But it is not to be paid in—
 - (a) before the end of the period within which an application under section 297E may be made (ignoring the possibility of an application by virtue of section 297E(4)), or
 - (b) if an application is made within that period, before the application is determined or otherwise disposed of.”
- (2) In section 298(1) of that Act (forfeiture by court order) after “section 295” insert “ , 297C or 297D ”.
- (3) In section 299(4) of that Act (appeal against forfeiture order: release of cash) for “order the release of the cash” substitute “ order the release of the whole or any part of the cash ”.
- (4) In section 297A(1) of that Act (inserted by subsection (1) above) the reference to an order includes an order made before the commencement of this section.

VALID FROM 22/11/2014

Detained cash investigations

66 Transfer of jurisdiction to Crown Court

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 343 (judges)—
 - (a) in subsection (2) for “or a money laundering investigation” substitute “ , a money laundering investigation or a detained cash investigation ”, and
 - (b) in subsection (3) omit “or a detained cash investigation”.
- (3) In section 344 (courts)—
 - (a) in paragraph (a) for “or a money laundering investigation” substitute “ , a money laundering investigation or a detained cash investigation ”, and
 - (b) in paragraph (b) omit “or a detained cash investigation”.
- (4) In section 350 (government departments), in subsection (5)—
 - (a) in paragraph (a) for “or a money laundering investigation” substitute “ , a money laundering investigation or a detained cash investigation ”, and
 - (b) in paragraph (b) omit “or a detained cash investigation”.
- (5) In section 351 (supplementary provisions in connection with production orders and orders to grant entry), in subsection (8) omit “or a detained cash investigation”.
- (6) In section 355 (further provisions: confiscation and money laundering), in subsection (1)(a) for “or a money laundering investigation” substitute “ , a money laundering investigation or a detained cash investigation ”.

Status: Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5. (See end of Document for details)

- (7) In section 356 (further provisions: civil recovery and detained cash)—
- (a) in the title omit “and detained cash”,
 - (b) in subsection (1) omit “or detained cash investigations”,
 - (c) in subsection (10) for “if the appropriate person has reasonable” substitute “if an appropriate officer has reasonable”, and
 - (d) omit subsections (11) and (12).

Status:

Point in time view as at 12/03/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Policing and Crime Act 2009, Part 5.