



# Psychoactive Substances Act 2016

## 2016 CHAPTER 2

### *Powers of entry, search and seizure*

#### **36 Power to stop and search persons**

- (1) This section applies where a police or customs officer has reasonable grounds to suspect that a person has committed, or is likely to commit, an offence under any of sections 4 to 9 or section 26.
- (2) The officer may—
  - (a) search the person for relevant evidence, and
  - (b) stop and detain the person for the purposes of the search.
- (3) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access).
- (4) In this Act—

“police or customs officer” means—

  - (a) a constable,
  - (b) a general customs official, or
  - (c) a designated NCA officer authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a police or customs officer under this Act;

“relevant evidence” means evidence that an offence has been committed under any of sections 4 to 9 or section 26.

#### **37 Power to enter and search vehicles**

- (1) This section applies where—
  - (a) a police or customs officer has reasonable grounds to suspect that there is relevant evidence in a vehicle, and
  - (b) the vehicle is not a dwelling.
- (2) The officer may at any time—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) enter the vehicle and search it for relevant evidence;
  - (b) stop and detain the vehicle for the purposes of entering and searching it.
- (3) Where—
- (a) a police or customs officer has stopped a vehicle under this section, and
  - (b) the officer considers that it would be impracticable to search the vehicle in the place where it has stopped,
- the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be searched.
- (4) A police or customs officer may require—
- (a) any person travelling in a vehicle, or
  - (b) the registered keeper of a vehicle,
- to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.
- (5) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access).
- (6) In this section “vehicle” does not include any vessel or aircraft.
- (7) For provision conferring additional powers to enter and search vehicles, see section 39.

### **38 Power to board and search vessels or aircraft**

- (1) This section applies where—
- (a) a police or customs officer has reasonable grounds to believe that there is relevant evidence in or on any vessel or aircraft, and
  - (b) the vessel or aircraft is not a dwelling.
- (2) The officer may at any time—
- (a) board the vessel or aircraft, and
  - (b) search it for relevant evidence.
- (3) For the purposes of exercising the power conferred by subsection (2), the officer may require a vessel or aircraft—
- (a) to stop, or
  - (b) to do anything else that will facilitate the boarding of that or any other vessel or aircraft.
- (4) A police or customs officer who has boarded a vessel or aircraft may, for the purposes of disembarking from the vessel or aircraft, require that or any other vessel or aircraft—
- (a) to stop, or
  - (b) to do anything else that will enable the officer to disembark from the vessel or aircraft.
- (5) A police or customs officer may require any person on board a vessel or aircraft to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

- (6) For provision conferring additional powers to enter and search vessels and aircraft, see section 39.

### **39 Power to enter and search premises**

- (1) Where a justice is satisfied that the requirements in subsection (4) are met in relation to any premises, the justice may issue a warrant (a “search warrant”) authorising a relevant enforcement officer—
- (a) to enter the premises, and
  - (b) to search them for relevant evidence.
- (2) A search warrant may be issued only on the application of—
- (a) a relevant enforcement officer, in England and Wales or Northern Ireland;
  - (b) a relevant enforcement officer or a procurator fiscal, in Scotland.
- (3) A search warrant may be either—
- (a) a warrant that relates only to premises specified in the warrant (a “specific-premises warrant”), or
  - (b) in the case of a warrant issued in England and Wales or Northern Ireland, a warrant that relates to any premises occupied or controlled by a person specified in the warrant (an “all-premises warrant”).
- (4) The requirements of this subsection are met in relation to premises if there are reasonable grounds to suspect that—
- (a) there are items on the premises that are relevant evidence, and
  - (b) in a case where the premises are specified in the application, any of the conditions in subsection (5) is met.
- (5) The conditions referred to in subsection (4)(b) are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that it is not practicable to communicate with any person entitled to grant access to the items;
  - (c) that entry to the premises is unlikely to be granted unless a warrant is produced;
  - (d) that the purpose of entry may be frustrated or seriously prejudiced unless a relevant enforcement officer arriving at the premises can secure immediate entry to them.
- (6) In this Act “relevant enforcement officer” means—
- (a) a police or customs officer (see section 36(4)), or
  - (b) an officer of a local authority.

### **40 Further provision about search warrants**

- (1) An application for a search warrant may be made without notice being given to persons who might be affected by the warrant.
- (2) The application must be supported—
- (a) in England and Wales, by an information in writing;
  - (b) in Scotland, by evidence on oath;

- (c) in Northern Ireland, by a complaint on oath.
- (3) A person applying for a search warrant must answer on oath any question that the justice hearing the application asks the person.  
In the case of an application made by a procurator fiscal, that requirement may be met by a relevant enforcement officer.
- (4) A search warrant may be executed by any relevant enforcement officer.
- (5) A search warrant may authorise persons to accompany any relevant enforcement officer who is executing it.
- (6) A person authorised under subsection (5) to accompany a relevant enforcement officer may exercise any power conferred by sections 39 to 45 which the officer may exercise as a result of the warrant.  
But the person may exercise such a power only in the company of, and under the supervision of, a relevant enforcement officer.
- (7) Schedule 3 contains further provision about—
  - (a) applications for search warrants made in England and Wales or Northern Ireland, and
  - (b) search warrants issued in England and Wales or Northern Ireland.
- (8) An entry on or search of premises under a search warrant issued in England and Wales or Northern Ireland is unlawful unless it complies with the provisions of Part 3 of that Schedule (execution of search warrants).

#### **41 Powers of examination, etc**

- (1) This section applies where a relevant enforcement officer is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises.
- (2) The officer may examine anything that is in or on the premises.
- (3) The officer may carry out any measurement or test of anything which the officer has power under this section to examine.
- (4) The power conferred by subsection (3) includes power to take a sample from any live plant.
- (5) For the purpose of exercising—
  - (a) a power of search conferred by section 37, 38 or 39, or
  - (b) any power conferred by this section,
 the officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.
- (6) The officer may require any person in or on the premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of—
  - (a) a power of search conferred by section 37, 38 or 39, or
  - (b) any power conferred by this section.
- (7) Nothing in this section confers any power to search a person.

## **42 Power to require production of documents, etc**

- (1) This section applies where a relevant enforcement officer is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises.
- (2) The officer may require any person in or on the premises to produce any document or record that is in the person's possession or control.
- (3) A reference in this section to the production of a document includes a reference to the production of—
  - (a) a hard copy of information recorded otherwise than in hard copy form, or
  - (b) information in a form from which a hard copy can be readily obtained.
- (4) For the purposes of this section—
  - (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to hard copy have a corresponding meaning);
  - (b) information can be read only if—
    - (i) it can be read with the naked eye, or
    - (ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

## **43 Powers of seizure, etc**

- (1) A police or customs officer who is exercising the power of search conferred by section 36 may seize and detain anything found in the course of the search.
- (2) This subsection applies where a relevant enforcement officer—
  - (a) is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises, or
  - (b) is otherwise lawfully on premises.
- (3) Where subsection (2) applies, the officer may—
  - (a) seize and detain or remove any item found on the premises;
  - (b) take copies of or extracts from any document or record found on the premises.
- (4) A relevant enforcement officer to whom any document or record has been produced in accordance with a requirement imposed under section 42 may—
  - (a) seize and detain or remove that document or record;
  - (b) take copies of or extracts from that document or record.

In this subsection “document” includes anything falling within paragraph (a) or (b) of section 42(3).
- (5) The powers under this section may only be exercised—
  - (a) for the purposes of determining whether an offence under any of sections 4 to 9 or section 26 has been committed, or
  - (b) in relation to an item which a relevant enforcement officer reasonably believes to be—
    - (i) relevant evidence, or
    - (ii) a psychoactive substance (whether or not it is relevant evidence).

- (6) Nothing in this section confers power on a relevant enforcement officer to seize an item which is an excluded item (see section 44).

#### **44 Excluded items**

- (1) This section defines what is meant by “excluded items” for the purposes of section 43.
- (2) In England and Wales “excluded items” means—
- (a) items subject to legal privilege, within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
  - (b) excluded material, within the meaning of that Act (see section 11 of that Act);
  - (c) special procedure material, within the meaning of that Act (see section 14 of that Act).
- (3) In Scotland “excluded items” means items in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
- (4) In Northern Ireland “excluded items” means—
- (a) items subject to legal privilege, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 12 of that Order);
  - (b) excluded material, within the meaning of that Order (see Article 13 of that Order);
  - (c) special procedure material, within the meaning of that Order (see Article 16 of that Order).

#### **45 Further provision about seizure under section 43**

- (1) Where—
- (a) any items which a relevant enforcement officer wishes to seize and remove are in a container, and
  - (b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose,
- any power to seize and remove the items conferred by section 43 includes power to seize and remove the container.
- (2) If a container is seized under this section, reasonable efforts must be made to return it to—
- (a) the person from whom it was seized, or
  - (b) (if different) a person to whom it belongs.
- (3) Subsection (2) does not apply—
- (a) if the container appears to be of negligible value,
  - (b) if it is not practicable for the container to be returned, or
  - (c) while the container is or may be needed for use as evidence at a trial for an offence.
- (4) If, in the opinion of a relevant enforcement officer, it is not for the time being practicable for the officer to seize and remove any item, the officer may require—
- (a) the person from whom the item is being seized, or

(b) where the officer is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises, any person in or on the premises, to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it.

#### **46 Notices and records in relation to seized items**

- (1) This section applies where a relevant enforcement officer, or a person accompanying a relevant enforcement officer, seizes any item under section 43.
- (2) When the item is seized, the officer must make reasonable efforts to give written notice to each of the following persons—
  - (a) in the case of an item seized from a person, the person from whom the item was seized;
  - (b) in the case of an item seized from premises, any person who appears to the officer to be the occupier of the premises or otherwise to be in charge of the premises;
  - (c) if the officer thinks that the item may belong to any person not falling within paragraph (a) or (b), that other person.

A person falling within any of paragraphs (a) to (c) is referred to in this section as an “affected person”.

- (3) If—
  - (a) the item is seized from premises, and
  - (b) at the time of the seizure it is not reasonably practicable to give a notice to any affected person,the officer must leave a copy of the notice in a prominent place on the premises.
- (4) The notice must—
  - (a) state what has been seized and the reason for its seizure;
  - (b) specify any offence which the officer believes has been committed;
  - (c) explain the effect of sections 49 to 51 and 53.
- (5) The officer must make a record of what has been seized.
- (6) If a person who appears to a relevant enforcement officer to be an affected person asks for a copy of that record, the officer must, within a reasonable time, provide a copy of that record to that person.

#### **47 Powers of entry, search and seizure: supplementary provision**

- (1) A relevant enforcement officer may use reasonable force, if necessary, for the purpose of exercising any power conferred by sections 36 to 45.
- (2) A person authorised under section 40(5) to accompany a relevant enforcement officer may use reasonable force, if necessary, for the purpose of exercising any power conferred by sections 39 to 45.
- (3) The powers conferred on a relevant enforcement officer by any of sections 36 to 45 do not affect any powers exercisable by the officer apart from that section.

**48 Offences in relation to enforcement officers**

- (1) A person commits an offence if, without reasonable excuse, the person intentionally obstructs a relevant enforcement officer in the performance of any of the officer's functions under sections 36 to 45.
- (2) A person commits an offence if—
  - (a) the person fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by a relevant enforcement officer in the exercise of any power conferred by sections 37 to 45, or
  - (b) the person prevents any other person from complying with any such requirement or direction.
- (3) In this section any reference to a relevant enforcement officer includes a reference to a person authorised under section 40(5) to accompany a relevant enforcement officer.
- (4) A person who is guilty of an offence under this section is liable—
  - (a) on summary conviction in England and Wales, to either or both of the following—
    - (i) imprisonment for a term not exceeding 51 weeks (or 6 months, if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);
    - (ii) a fine;
  - (b) on summary conviction in Scotland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 12 months;
    - (ii) a fine not exceeding level 5 on the standard scale;
  - (c) on summary conviction in Northern Ireland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 6 months;
    - (ii) a fine not exceeding level 5 on the standard scale.