



Home Office

Report for 2015-2016 of The Appointed Person for England and Wales under Sections 471 and 291 of the Proceeds of Crime Act 2002

February 2017

**Report for 2015-2016 of The Appointed Person for
England and Wales under Sections 47I and 291 of the
Proceeds of Crime Act 2002**

Presented to Parliament pursuant to section 291(5) of the
Proceeds of Crime Act 2002

February 2017



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Any enquiries regarding this publication should be sent to us at Home Office, Economic and Cyber Crime Unit, Strategic Centre for Organised Crime, 6th Floor, Peel Building, 2 Marsham Street, London SW1P 4DF.

Print ISBN 9781474136990

Web ISBN 9781474137003

ID 12121601 02/17

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

The Appointed Person

This is my fourth report as the Appointed Person appointed by the Secretary of State, pursuant to section 290(8)(b) of the Proceeds of Crime Act 2002 ('the Act') and my first in respect of my appointment under section 47I of that Act. It covers the year ended 31 March 2016.

The Appointed Person is independent of government and by virtue of sections 290(9) and 47H (4) of the Act must not be employed under or for the purposes of any government department.

The original role of the Appointed Person was to provide independent oversight, in prescribed circumstances, of the exercise of the powers to search for cash conferred by section 289 of the Act. On 1 March 2016, just one month before the end of the reporting year, the role was extended to the oversight, in prescribed circumstances, of the exercise of the new powers to search for and seize realisable property conferred by sections 47C, 47D, 47E and 47F of that Act. These sections were brought into effect by the commencement of section 55 of the Policing and Crime Act 2009.

Section 291 of the Act provides that as soon as practicable after 31 March each year the Appointed Person must make a report and send a copy of it to the Secretary of State who must arrange for it to be laid before Parliament. In that report the Appointed Person must '*give his opinion as to the circumstances and manner in which the powers conferred by section 289 are being exercised*' in cases where prior judicial approval for the search was not obtained and either no cash was seized or any cash that was seized was not detained for more than 48 hours. The report may also set out any recommendations the Appointed Person considers appropriate.

Section 47I of the Act mirrors section 291 in respect of the exercise of the powers conferred by sections 47C to 47F. It provides that as soon as practicable after 31 March each year the Appointed Person must make a report and send a copy of it to the Secretary of State who must arrange for it to be laid before Parliament. In that report the Appointed Person must '*give his opinion as to the circumstances and manner in which the powers conferred by sections 47C, 47D, 47E and 47F are being exercised*' in cases that must be reported to him under section 47H(1) and (2). The report may also set out any recommendations the Appointed Person considers appropriate.

Relevant Statutory Provisions

Sections 289 to 303 of the Act make provision for the recovery of cash in civil proceedings. These provisions, which have been revised extensively since coming into operation in 2002, were further amended during the year by the commencement of section 63 of the Policing and Crime Act 2009.

Section 289 of the Act empowers officers of Revenue and Customs, immigration officers, accredited financial investigators and constables, in prescribed circumstances, to search property and persons for cash. Cash is widely defined in the section. With the commencement of section 63 of the Policing and Crime Act 2009, the search power of constables, officers of Revenue and Customs, immigration officers and accredited financial investigators was extended to the search of vehicles.

Section 290 provides that appropriate prior approval must be obtained for any such search unless it is impracticable to do so. Appropriate approval can be given only by a magistrate or, if that is not practicable, by a senior officer. A senior officer for this purpose means a police officer not below the rank of inspector or an officer of a rank designated by the Commissioners of HM Revenue and Customs for their staff or by the Secretary of State in the case of immigration officers and accredited financial investigators.

The section provides that where any search is carried out without the prior judicial approval and either no cash is seized or any cash seized is not detained for more than 48 hours, a report must be made to the Appointed Person.

Any such report must be made in writing by the officer who carried out the search. It must set out the circumstances that led the officer to believe that the powers were exercisable and why it was not practicable to obtain prior judicial approval. The Code of Practice, made under section 292, provides that the report must be made as soon as practicable and in all cases within 14 days of the search.

Although not directly relevant to the role of the Appointed Person, it should be noted that section 294 provides for the seizure of cash found as a result of a search whilst section 295 makes provision for the detention of seized cash, by judicial order, for a period of up to six months. Further orders may be made extending the total period of detention up to a maximum of two years from the date of the first order. Accordingly, there is judicial oversight of the detention of any cash seized without prior judicial approval and held for more than 48 hours.

Section 298 makes provision for the judicial forfeiture of detained cash.

The 'Code of Practice: Recovery of Cash Search Powers' issued under section 292 of the Act replaced the previous Code on 1 March 2016.

Sections 47C makes provision for the seizure of realisable property whilst sections 47D, 47E and 47F confer powers to search premises, persons and vehicles in closely defined circumstances. Section 47H requires that where property is seized under section 47C without prior judicial approval but is not detained for more than 48 hours a written report must be given to the Appointed Person. It further provides that a report must be made to the Appointed Person where a search, without prior judicial approval, is conducted under sections 47D, 47E or 47F and either no property is seized under section 47C or any property that is seized is not detained for more than 48 hours. Such reports must set out the particulars of the circumstances which led the officer who conducted the search or made the seizure to believe that the powers were exercisable and why it was not practicable to obtain prior judicial approval.

Sections 47K, 47L and 47M provide for the detention of seized property for more than the initial 48 hours. Such further detention can take place only where judicial authority has been given or is pending.

Section 47S provides that the Secretary of State must make a code of practice in connection with the carrying out of the functions by these sections. The Code 'Search, Seizure and Detention of Property' was brought into operation on 1 March 2016 when these provisions were commenced.

Circumstances and manner in which sections 47C to 47F and 289 powers exercised

As the Appointed Person my remit in relation to cash is restricted to the circumstances and manner in which the section 289 search powers are exercised without prior judicial approval and either no cash is seized or any cash that is seized is not detained for more than 48 hours. Any such exercise of the powers should result in a report to the Appointed Person in accordance with section 290.

During the year I received no reports in respect of section 289 searches.

My role in relation to realisable property is restricted to the circumstances and manner in which the section 47C search powers and the seizure powers in sections 47D to 47F are exercised without prior judicial approval and either no property is seized or any property that is seized is not detained for more than 48 hours. Any such exercise of the powers should result in a report to the Appointed Person in accordance with section 47H.

During the one month that they were available these new powers were not exercised in circumstances which required the submission of a report to me.

Other considerations

As I observed in my previous reports the low number of reports in respect of searches for cash should not be regarded as unusual. I have received only two reports relating to section 289 searches in England and Wales since my appointment in 2012.

The two most obvious potential explanations for the low number of reports are either that officers conducting searches without prior judicial approval are unaware of their duty to submit a report or that very few searches are conducted in circumstances that should result in a report to the Appointed Officer.

I am satisfied that the former is not the reason for the low number of reports and that all agencies whose staff use the section 289 powers have taken appropriate action to ensure, insofar as reasonably practicable, that reports will be submitted when required by section 291.

HM Revenue and Customs have again been very active in ensuring that their officers are aware of all their powers and duties relevant to my role. In May 2015 an article was published in the HMRC Criminal Justice Procedure manual drawing attention to the new POCA provisions being commenced on 1 June. That article explained that the new provisions to search for and seize property were not being adopted by HMRC at that time; that the new POCA search power to search a vehicle for cash and the new cash search code of practice only applied to England and Wales and Scotland until further notice; and reminded officers of the existing provisions of section 289 and the requirement for a report to the Appointed Person in the appropriate circumstances. That article was also published in the June 2015 edition of the HMRC Continuous Professional Development (CPD) bulletin. The CPD bulletin, which provides details of legislative changes and other matters, is mandatory reading for HMRC criminal justice professionals.

An article entitled 'Searching for cash under POCA section 289 – Prior approval and reports to the Appointed Person' was included in March 2016 CPD bulletin. That article covered, in detail, the requirements for prior judicial approval and to report to the appointed person in the appropriate circumstances. It contained links to the Appointed Person's reports on the internet and to the December 2015 draft of the Code of Practice for Recovery of Cash: Search Powers for England and Wales, Scotland and Northern Ireland (the final version had not been published at the time).

A short feature in the June 2016 CPD bulletin highlighted the new Code of Practice issued under section 292 of the Act. It reminded HMRC officers of the provisions regarding prior judicial approval and reports to the Appointed Person and referred them to the March 2016 CPD bulletin article for further details.

I have been advised that HMRC are currently considering adopting the powers under sections 47C to 47F (and the equivalent provisions in the other jurisdictions). I have been assured that if these powers are adopted the provisions regarding prior judicial approval for both search and seizure of property and the need to submit a report to the Appointed Person in the appropriate circumstances will be included in the training and guidance.

I obtained information from police forces on the action taken to secure that reports were made to the Appointed Person when required. There was no uniform approach to the extent to which all constables should be made aware of their duty to submit a report in the circumstances prescribed in section 291. But all forces had officers dedicated to financial investigations and relied upon them to give guidance and advice to less specialist colleagues and to ensure that a report was submitted when required. I am satisfied that it is highly unlikely that non-specialist officers conducted any section 289 search as most were probably not aware of the existence of the provision. I am satisfied that the existence of trained financial investigators provides a satisfactory level of assurance that the police have complied with the reporting requirements of section 291.

In the one month between the commencement of new sections on the search, seizure and detention of realisable property and the end of the reporting year police forces had not yet decided on the appropriate training on these complex provisions.

In previous reports I noted that immigration officers in Border Force and Home Office Immigration Enforcement did not, in practice, exercise their powers under section 289 but relied instead on other powers available to them. That continues to be the case.

The National Crime Agency ('the NCA'), through the Proceeds of Crime Centre, has developed a pre-read package and test mechanism which all accredited financial investigators, including its own officers, will have to complete successfully before their accreditation is extended to the new powers in sections 47C to 47F. That package covers fully the requirement to submit a report to the Appointed Person in the specified circumstances. The NCA has determined that its officers are prohibited from exercising these powers until their accreditation is extended. NCA officers and other accredited financial investigators maintain their competence in respect of the circumstances in which a report must be submitted under section 291 through the recognised CPD activities and monitoring conducted by the Proceeds of Crime Centre. In addition, the NCA runs 'financial investigation community' awareness days, normally quarterly, at which the provisions of the various codes of practice are amongst the topics discussed.

I am satisfied that adequate measures have been put in place by all these organisations to secure, insofar as reasonably practicable, that reports to the Appointed Person under section 290(6) of the Act will be submitted when required and that appropriate action will be taken in relation to awareness of section 47H(1) and (2).

The new code of practice on cash searches represents a significant improvement for all those who have to conduct or are subject to a section 289 search. As I recommended in my 2013 – 2014 report it clarifies the requirements for reports to the Appointed Officer where a search is carried out by a number of officers and where multiple searches at different locations are carried out in connection with the same proceedings.

Recommendations

I make no recommendations this year.

Douglas Bain

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28 June 2016

ISBN 978-1-4741-3699-0



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