



Home Office

**Report for 2016-2017 of the Appointed
Person for England and Wales under
Sections 47I and 291 of the Proceeds
of Crime Act 2002 and Article 17H
of the Proceeds of Crime Act 2002
(External Requests and Orders)
Order 2005**

July 2018

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England and Wales under Sections 47I and 291 of the
Proceeds of Crime Act 2002 and Article 17H of the
Proceeds of Crime Act 2002 (External Requests and
Orders) Order 2005**

Presented to Parliament pursuant to section 291(5) of the
Proceeds of Crime Act 2002 and Article 17H of the Proceeds of
Crime Act 2002 (External Requests and Orders) Order 2005

July 2018



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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,
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The Appointed Person

This is my final report as the Appointed Person appointed by the Secretary of State, pursuant to sections 47I(1) and 290(8)(a) of the Proceeds of Crime Act 2002 ('the Act') and article 17H(1) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 ('the Order'). It covers the year ended 31 March 2017.

The Appointed Person is independent of government and by virtue of sections 290(9) and 47H(5) of the Act and article 17G(5) of the Order 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 of the exercise, without prior judicial authority, of the powers to search for cash conferred by section 289 of the Act. In June 2015 the role was extended to the oversight, in prescribed circumstances, of the exercise of the new powers to seize and search for realisable property conferred by sections 47C, 47D, 47E, and 47F of that Act.¹ In November 2015 the role was further extended to cover the oversight of the circumstances and manner in which broadly equivalent powers of search and seizure in respect of external requests and orders were exercised without prior judicial authority.^{2,3}

Sections 47I and 291 of the Act and article 17H of the Order provide 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*' these provisions '*are being exercised*' in cases where prior judicial approval for the seizure or search was not obtained and either nothing was seized or anything that was seized was not detained for more than 48 hours. The report may also set out any recommendations the Appointed Person considers appropriate.

¹ Policing and Crime Act 2009 (Commencement No.10 and Transitional Provision and Savings) Order 2015 article 2(1), 2(2)(a)

² Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015 articles 1 and 11

³ Section 447(1) of the Act provides that 'An external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request.' Section 447(2) provides that 'An external order is an order which--

(a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and

(b) is for the recovery of specified property or a specified sum of money.'

Statutory Provisions Overview⁴

Sections 289 to 303 of the Act make provision for the recovery of cash in civil proceedings.

Section 289 of the Act empowers officers of Revenue and Customs, immigration officers,⁵ accredited financial investigators and constables, in prescribed circumstances, to search property, vehicles and persons for cash.⁶ The powers may also be exercised by officers of the National Crime Agency (“the NCA”) who are either designated to have the powers and privileges of a constable or are accredited financial investigators.⁷ Cash is widely defined in the section.

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 justice of the peace 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,⁸ as being equivalent to that rank. In relation to accredited financial investigators it means an accredited financial investigator who falls within a description specified in an order made by the Secretary of State. There is, however, no express provision as to the designation of the senior officer where a search is carried out by an NCA officer who can exercise powers.

The section provides that where any search is carried out without 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.⁹

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.

⁴ Unless the context otherwise requires, statutory references are to the law in force on 31 March 2017

⁵ Section 24 of the UK Borders Act 2007 provides that Chapter 3 of Part 5 POCA (recovery of cash in summary proceedings) applies to an immigration officer as it applies in relation to a constable

⁶ The power was extended to the search of vehicles by the commencement of section 63 of the Policing and Crime Act 2009 on 1 June 2015

⁷ Designated by the Director General of the NCA under section 10(1)(a) of the Crime and Courts Act 2013

⁸ UK Borders Act 2007 section 24(2)(c)

⁹ Code of Practice issued under section 292 of the Proceeds of Crime Act 2002 Recovery of Cash: Search Powers paragraph 54

Sections 47A to 47S of the Act make provision for the search and seizure of realisable property as defined in section 83 of the Act.

Section 47C provides for the seizure of property whilst sections 47D, 47E and 47F confer powers to search premises, people and vehicles in closely defined circumstances for such property. These powers are exercisable by an officer of Revenue and Customs, an immigration officer, an accredited financial investigator or a constable.¹⁰ The powers may also be exercised by officers of the NCA designated to have the powers and privileges of a constable.¹¹

Section 47G provides that appropriate prior approval must be obtained for any such seizure or search unless it is impracticable to do so. Appropriate approval can be given only by a justice of the peace 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 as equivalent to that rank. In relation to accredited financial investigators it means an accredited financial investigator who falls within a description specified in an order made by the Secretary of State whilst in relation to NCA officers it means the Director General or any other NCA officer authorised by the Director General for this purpose.

The section provides that where any property is seized without prior judicial approval or any search is carried out and either no property is seized or any property 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 47S, provides that the report must be made as soon as practicable and in all cases within 14 days of the search.

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 under these sections.¹²

Articles 17A to 17S of the Order largely mirror the provisions of sections 47A to 47S of the Act in respect of the search and seizure of realisable property connected to an external request.

Article 17C makes provision for the seizure of such property whilst articles 17D, 17E and 17F confer powers to search premises, people and vehicles in closely defined

¹⁰ Section 47A of the Act

¹¹ Designated by the Director General of the NCA under section 10(1)(a) of the Crime and Courts Act 2013

¹² The Code of Practice issued under section 47S of the Proceeds of Crime Act 2002 Search, Seizure and Detention of Property (England and Wales) came into operation on 1 March 2016

circumstances for such property. These powers are exercisable by those, except immigration officers, empowered to exercise the powers in sections 47C to 47F of the Act.

Article 17G provides that appropriate prior approval must be obtained for any such seizure or search unless it is impracticable to do so. Appropriate approval can be given only by a justice of the peace or, if that is not practicable, by a senior officer. The meaning of senior officer for this purpose is the same as in section 47G of the Act.

The article provides that where any property is seized without the prior judicial approval or any search is carried out and either no property is seized or any property 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 47S of the Act and applied to the exercise of these powers by article 17S of the Order, provides that the report must be made as soon as practicable and in all cases within 14 days of the search.

Articles 17K, 17L and 17M 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.

Circumstances and manner in which powers exercised

During the year I received only two reports. Both related to exercise by officers of Revenue and Customs of their powers under section 289 of the Act. I am satisfied that in each case the powers were exercised in an appropriate manner, that it was not practicable to obtain prior judicial approval and the officers complied with the provisions of the Code of Practice.

Other considerations

The absence of an express provision as to the designation of the senior officer in relation to searches under section 289 of the Act carried out by NCA officers, who are either designated to have the powers and privileges of a constable or are accredited financial investigators, is undesirable and could restrict the use by them of their powers when it has not been practicable to obtain the prior approval of a justice of the peace. Such provision is made in respect of the exercise by NCA officers of their powers under sections 47C to 47F of the Act and under articles 17C to 17F of the Order.

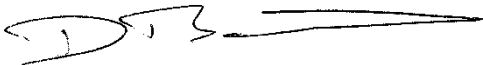
Home Office Immigration Enforcement have again advised me that it continues to be the case that their immigration officers do not exercise the powers under sections 47C to 47F or the equivalent Scottish and Northern Irish provisions or under section 289 of the Act and that they rely instead on other statutory powers available to them. Consequently no action was taken during the year to remind their officers of their duty, in prescribed circumstances, to make a report to the Appointed Person. As I have noted immigration officers are not empowered to exercise the powers in articles 17C to 17F of the Order.

In previous reports I have opined that the low number of reports to the Appointed Person should not be regarded as unusual. That remains my view. I am satisfied that all departments and agencies whose officers are empowered to exercise the relevant powers, other than Home Office Immigration Enforcement, have taken adequate action to secure that their officers are aware of their duty, in prescribed circumstances, to make a written report to the Appointed Person.

Recommendations

I recommend that:

1. Home Office review the legal position in relation to the designation of the senior officer in relation to searches under section 289 of the Act carried out by NCA officers who can exercise these powers; and
2. Consideration be given to whether there is a continuing need for immigration officers to be empowered to exercise the powers in sections 47C to 47F and 289 of the Act.



Douglas Bain CBE TD Advocate

Belfast 29 June 2017

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