



# Criminal Justice and Police Act 2001

## 2001 CHAPTER 16

### PART 2

#### POWERS OF SEIZURE

##### *Return or retention of seized property*

#### **53 Examination and return of property seized under s. 50 or 51**

- (1) This section applies where anything has been seized under a power conferred by section 50 or 51.
- (2) It shall be the duty of the person for the time being in possession of the seized property in consequence of the exercise of that power to secure that there are arrangements in force which (subject to section 61) ensure—
  - (a) that an initial examination of the property is carried out as soon as reasonably practicable after the seizure;
  - (b) that that examination is confined to whatever is necessary for determining how much of the property falls within subsection (3);
  - (c) that anything which is found, on that examination, not to fall within subsection (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and
  - (d) that, until the initial examination of all the seized property has been completed and anything which does not fall within subsection (3) has been returned, the seized property is kept separate from anything seized under any other power.
- (3) The seized property falls within this subsection to the extent only—
  - (a) that it is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by section 54;
  - (b) that it is property the retention of which is authorised by section 56; or

- (c) that it is something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within paragraph (a) or (b).
- (4) In determining for the purposes of this section the earliest practicable time for the carrying out of an initial examination of the seized property, due regard shall be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he chooses) of being represented at the examination.
- (5) In this section, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.

#### **54 Obligation to return items subject to legal privilege**

- (1) If, at any time after a seizure of anything has been made in exercise of a power of seizure to which this section applies—
  - (a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—
    - (i) is an item subject to legal privilege, or
    - (ii) has such an item comprised in it,and
  - (b) in a case where the item is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2), it shall be the duty of that person to secure that the item is returned as soon as reasonably practicable after the seizure.
- (2) Property in which an item subject to legal privilege is comprised falls within this subsection if—
  - (a) the whole or a part of the rest of the property is property falling within subsection (3) or property the retention of which is authorised by section 56; and
  - (b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.
- (3) Property falls within this subsection to the extent that it is property for which the person seizing it had power to search when he made the seizure, but is not property which is required to be returned under this section or section 55.
- (4) This section applies—
  - (a) to the powers of seizure conferred by sections 50 and 51;
  - (b) to each of the powers of seizure specified in Parts 1 and 2 of Schedule 1; and
  - (c) to any power of seizure (not falling within paragraph (a) or (b)) conferred on a constable by or under any enactment, including an enactment passed after this Act.

## **55 Obligation to return excluded and special procedure material**

- (1) If, at any time after a seizure of anything has been made in exercise of a power to which this section applies—
- (a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—
    - (i) is excluded material or special procedure material, or
    - (ii) has any excluded material or any special procedure material comprised in it,
  - (b) its retention is not authorised by section 56, and
  - (c) in a case where the material is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2) or (3),

it shall be the duty of that person to secure that the item is returned as soon as reasonably practicable after the seizure.

- (2) Property in which any excluded material or special procedure material is comprised falls within this subsection if—
- (a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by this section or section 54; and
  - (b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.
- (3) Property in which any excluded material or special procedure material is comprised falls within this subsection if—
- (a) the whole or a part of the rest of the property is property the retention of which is authorised by section 56; and
  - (b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.
- (4) This section applies (subject to subsection (5)) to each of the powers of seizure specified in Part 3 of Schedule 1.
- (5) In its application to the powers of seizure conferred by—
- (a) section 93I(5) of the Criminal Justice Act 1988 (c. 33),
  - (b) section 56(5) of the Drug Trafficking Act 1994 (c. 37), and
  - (c) Article 51(5) of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996 1299 (N.I. 6)),

this section shall have effect with the omission of every reference to special procedure material.

- (6) In this section, except in its application to—
- (a) the power of seizure conferred by section 8(2) of the 1984 Act,
  - (b) the power of seizure conferred by Article 10(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)),

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- (c) each of the powers of seizure conferred by the provisions of paragraphs 1 and 3 of Schedule 5 to the Terrorism Act 2000 (c. 11), and
- (d) the power of seizure conferred by paragraphs 15 and 19 of Schedule 5 to that Act of 2000, so far only as the power in question is conferred by reference to paragraph 1 of that Schedule,
  - “special procedure material” means special procedure material consisting of documents or records other than documents.

## **56 Property seized by constables etc.**

- (1) The retention of—
  - (a) property seized on any premises by a constable who was lawfully on the premises,
  - (b) property seized on any premises by a relevant person who was on the premises accompanied by a constable, and
  - (c) property seized by a constable carrying out a lawful search of any person,
 is authorised by this section if the property falls within subsection (2) or (3).
- (2) Property falls within this subsection to the extent that there are reasonable grounds for believing—
  - (a) that it is property obtained in consequence of the commission of an offence; and
  - (b) that it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.
- (3) Property falls within this subsection to the extent that there are reasonable grounds for believing—
  - (a) that it is evidence in relation to any offence; and
  - (b) that it is necessary for it to be retained in order to prevent its being concealed, lost, altered or destroyed.
- (4) Nothing in this section authorises the retention (except in pursuance of section 54(2)) of anything at any time when its return is required by section 54.
- (5) In subsection (1)(b) the reference to a relevant person’s being on any premises accompanied by a constable is a reference only to a person who was so on the premises under the authority of—
  - (a) a warrant under section 448 of the Companies Act 1985 (c. 6) authorising him to exercise together with a constable the powers conferred by subsection (3) of that section;
  - (b) a warrant under Article 441 of the Companies (Northern Ireland) Order 1986 (S.I. 1986 1032 (N.I. 6)) authorising him to exercise together with a constable the powers conferred by paragraph (3) of that Article;
  - (c) a warrant under section 199 of the Financial Services Act 1986 (c. 60) authorising him to exercise together with a constable the powers conferred by subsection (3) of that section;
  - (d) a warrant under section 43 of the Banking Act 1987 (c. 22) authorising him to exercise together with a constable the powers conferred by subsection (2) of that section; or

- (e) a warrant under section 44A of the Insurance Companies Act 1982 (c. 50) authorising him to exercise together with a constable the powers conferred by subsection (3) of that section.

## **57 Retention of seized items**

- (1) This section has effect in relation to the following provisions (which are about the retention of items which have been seized and are referred to in this section as “the relevant provisions”)—
  - (a) section 22 of the 1984 Act;
  - (b) Article 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12));
  - (c) section 20CC(3) of the Taxes Management Act 1970 (c. 9);
  - (d) paragraph 4 of Schedule 9 to the Weights and Measures (Northern Ireland) Order 1981 (S.I. 1981 231 (N.I. 10));
  - (e) section 44A(6) of the Insurance Companies Act 1982;
  - (f) section 448(6) of the Companies Act 1985 (c. 6);
  - (g) paragraph 4 of Schedule 8 to the Weights and Measures Act 1985 (c. 72);
  - (h) section 199(5) of the Financial Services Act 1986;
  - (i) Article 441(6) of the Companies (Northern Ireland) Order 1986;
  - (j) section 43(4) of the Banking Act 1987;
  - (k) section 40(4) of the Human Fertilisation and Embryology Act 1990 (c. 37);
  - (l) section 5(4) of the Knives Act 1997 (c. 21);
  - (m) paragraph 7(2) of Schedule 9 to the Data Protection Act 1998 (c. 29);
  - (n) section 28(7) of the Competition Act 1998 (c. 41);
  - (o) section 176(8) of the Financial Services and Markets Act 2000 (c. 8);
  - (p) paragraph 7(2) of Schedule 3 to the Freedom of Information Act 2000 (c. 36).
- (2) The relevant provisions shall apply in relation to any property seized in exercise of a power conferred by section 50 or 51 as if the property had been seized under the power of seizure by reference to which the power under that section was exercised in relation to that property.
- (3) Nothing in any of sections 53 to 56 authorises the retention of any property at any time when its retention would not (apart from the provisions of this Part) be authorised by the relevant provisions.
- (4) Nothing in any of the relevant provisions authorises the retention of anything after an obligation to return it has arisen under this Part.

## **58 Person to whom seized property is to be returned**

- (1) Where—
  - (a) anything has been seized in exercise of any power of seizure, and
  - (b) there is an obligation under this Part for the whole or any part of the seized property to be returned,the obligation to return it shall (subject to the following provisions of this section) be an obligation to return it to the person from whom it was seized.
- (2) Where—

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- (a) any person is obliged under this Part to return anything that has been seized to the person from whom it was seized, and
  - (b) the person under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,
- his duty to return it shall, instead, be a duty to return it to that other person or, as the case may be, to the person appearing to him to have the best right to the thing in question.
- (3) Where different persons claim to be entitled to the return of anything that is required to be returned under this Part, that thing may be retained for as long as is reasonably necessary for the determination in accordance with subsection (2) of the person to whom it must be returned.
  - (4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure.
  - (5) References in this section to the occupier of any premises at the time of a seizure, in relation to a case in which—
    - (a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises, and
    - (b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,are references to that person.