



# Policing and Crime Act 2009

## 2009 CHAPTER 26

### PART 5

#### PROCEEDS OF CRIME

##### *Confiscation*

#### **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,
  - (b) a person has been arrested for the offence,
  - (c) proceedings for the offence have not yet been started against the person in Scotland,

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- (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).
- (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.

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- (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 constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979).
- (7) “Relevant offence” means—

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- (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—
  - (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—

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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 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.

#### **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.

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- (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.
- (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.

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- (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.

### **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

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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 (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.
- (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—



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- (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.
- (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).

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

#### **Commencement Information**

- I1** S. 56(1)(2) in force at 22.11.2014 for specified purposes by S.I. 2014/3101, **art. 3**
- I2** S. 56(1)(2) in force at 1.6.2015 in so far as not already in force by S.I. 2015/983, **art. 2(2)(a)**
- I3** S. 56(3)(4) in force at 1.6.2015 by S.I. 2015/983, **art. 2(2)(a)** (with art. 4(3)(4))

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