



Policing and Crime Act 2009

2009 CHAPTER 26

PART 5

PROCEEDS OF CRIME

Confiscation

57 Search and seizure of property: Northern Ireland

- (1) The [Proceeds of Crime Act 2002 \(c. 29\)](#) is amended as follows.
- (2) After section 195 insert—

“Search and seizure powers

195A Sections 195B to 195S: meaning of “appropriate officer”

- (1) In sections 195B to 195S “appropriate officer” means—
 - (a) an officer of Revenue and Customs,
 - (b) a constable, or
 - (c) an accredited financial investigator.
- (2) In subsection (1)(c) the reference to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State under section 453.

195B Conditions for exercise of powers

- (1) An appropriate officer may exercise the power conferred by section 195C if satisfied that any of the following conditions is met.
- (2) The first condition is that—

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- (a) a criminal investigation has been started in Northern Ireland 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 Northern Ireland,
 - (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 Northern Ireland 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 Northern Ireland, 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 Northern Ireland and have not been concluded,
 - (b) there is reasonable cause to believe that the defendant 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 Northern Ireland 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 169, 170, 177 or 178 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 defendant has benefited from criminal conduct.
- (7) The sixth condition is that—
- (a) an application by the prosecutor has been made under section 171 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 defendant'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 172 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

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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.
- (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 195C to 195S to the defendant are to the person mentioned in that condition.
- (12) In relation to the first or second condition section 225(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

195C Power to seize property

- (1) On being satisfied as mentioned in section 195B(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 defendant, or
 - (b) the value of the property may otherwise be diminished as a result of conduct by the defendant 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 defendant for use personally in the defendant’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 defendant and the defendant’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 defendant are to be read as references to the recipient of that gift.

Section 195B(11) is subject to this subsection.

- (6) The power conferred by this section—
 - (a) may be exercised only with the appropriate approval under section 195G 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—

- (a) in a case where the officer is satisfied that the first, second, third or fourth condition in section 195B 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 195B is met, the offence (or any of the offences) concerned.

195D 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 195C.
- (2) The power conferred by this section may be exercised only with the appropriate approval under section 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (3) “Premises” has the meaning given by Article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

195E 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 195C.
- (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 195G 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).

195F Search power: vehicles

- (1) The powers specified in subsection (4) are exercisable if—

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- (a) an appropriate officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 195C, 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—
 - (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 195C, 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 195G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

195G “Appropriate approval”

- (1) This section has effect for the purposes of sections 195C, 195D, 195E and 195F.
- (2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a lay magistrate 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,
 - (c) in relation to the exercise of a power by an accredited financial investigator, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State under section 453.

- (4) A senior police officer means a police officer of at least the rank of inspector.

195H 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 195C without the approval of a lay magistrate, and
 - (b) any of the property seized is not detained for more than 48 hours.
- (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 195D, 195E and 195F without the approval of a lay magistrate, and
 - (b) no property is seized under section 195C.
- (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 a lay magistrate.
- (4) The appointed person means a person appointed for the purposes of this subsection by the Secretary of State.
- (5) The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Secretary of State.
- (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, or
 - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.

195I 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 195H(4) must prepare a report for that year.
- (2) “Financial year” means—
- (a) the period beginning with the day on which section 57 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 195C, 195D, 195E and 195F are being exercised in cases where the officer who exercised them is required to give a report under section 195H.
- (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 Secretary of State.
- (6) The Secretary of State must—
 - (a) publish any report received under subsection (5), and
 - (b) lay a copy before Parliament.
- (7) Before acting under subsection (6) the Secretary of State must exclude from the report any matter which the Secretary of State thinks is likely to prejudice any criminal investigation or criminal proceedings.
- (8) If the Secretary of State excludes any matter from the report the Secretary of State must comply with subsection (6) in relation to the whole of the report as soon as the Secretary of State thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

195J Initial detention of seized property

- (1) This section applies if an appropriate officer seizes property under section 195C.
- (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 195H(7).

195K Further detention pending making of restraint order

- (1) This section applies if—
 - (a) property is detained under section 195J, and
 - (b) no restraint order is in force in respect of the property.
- (2) If within the period mentioned in section 195J an application is made for a restraint order which includes provision under section 190A 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—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against that decision.
- (4) In subsection (2) the reference to the period mentioned in section 195J includes that period as extended by any order under section 195M.

195L Further detention pending variation of restraint order

- (1) This section applies if—
 - (a) property is detained under section 195J,
 - (b) a restraint order is in force in respect of the property, and
 - (c) the order does not include provision under section 190A authorising the detention of the property.
- (2) If within the period mentioned in section 195J an application is made for the order to be varied so as to include provision under section 190A 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—
 - (a) the decision to refuse the application, or
 - (b) any decision made on an appeal against that decision.

195M Further detention in other cases

- (1) This section applies if—
 - (a) property is detained under section 195J,
 - (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 190A authorising detention of the property.
- (2) A magistrates' court may by order extend the period for which the property or any part of it may be detained under section 195J if satisfied that—
 - (a) any of the conditions in section 195B is met (reading references in that section to the officer as references to the court),
 - (b) the property or part is realisable property other than exempt property (within the meaning of section 195C(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 defendant, or
 - (ii) the value of the property may otherwise be diminished as a result of conduct by the defendant 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,
 - (c) an accredited financial investigator, or
 - (d) the prosecutor.
- (4) If the property was seized in reliance on the first or second condition in section 195B, "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.

195N Discharge, variation and lapse of detention order

- (1) An order under section 195N 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 195M(3), or
 - (b) any person affected by the order.
- (3) On an application under this section the court must discharge the order if—
 - (a) the order was made on the ground that the first or second condition in section 195B 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 195B 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 195B 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 195M 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 190A).

195O Appeals

- (1) If on an application for an order under section 195M the court decides not to make one, a person mentioned in subsection (3) of that section may appeal to the county court against the decision.
- (2) If an application is made under section 195N in relation to an order the following persons may appeal to the county court in respect of the magistrates’ court’s decision on the application—
 - (a) a person mentioned in section 195M(3), or
 - (b) any person affected by the order.

195P Detention of property pending section 195O appeal

- (1) This section applies where—
 - (a) an application for an order under section 195M is made within the period mentioned in section 195J, and
 - (b) the application is refused.
- (2) This section also applies where—
 - (a) an order is made under section 195M extending the period for which property may be detained under section 195J, 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).

195Q Hearsay evidence in detention order proceedings

- (1) Evidence must not be excluded in detention order proceedings on the ground that it is hearsay (of whatever degree).
- (2) Articles 4 and 5 of the Civil Evidence (Northern Ireland) Order 1997 apply in relation to detention order proceedings as those articles apply in relation to civil proceedings.
- (3) Detention order proceedings are proceedings—
 - (a) for an order under section 195M;
 - (b) for the discharge or variation of such an order;
 - (c) on an appeal under section 195O.
- (4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.
- (5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

195R Release of property

- (1) This section applies in relation to property which—
 - (a) has been seized by an appropriate officer under section 195C, and
 - (b) is detained under or by virtue of any of sections 195J to 195M and 195P.
- (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 195B is met, and
 - (b) there are reasonable grounds for the suspicion mentioned in section 195C(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 195J to 195M and 195P.
- (5) Nothing in this section affects the operation of any power or duty to release property that arises apart from this section.

Code of practice about search and seizure and detention of property

195S Codes of practice

- (1) The Secretary of State must make a code of practice in connection with—
 - (a) the carrying out by appropriate officers of the functions conferred by section 195C to 195H,
 - (b) the carrying out by senior officers of their functions under section 195G, and
 - (c) the detention of property under or by virtue of sections 190A, 193A and 195J to 195P.
 - (2) Where the Secretary of State proposes to issue a code of practice the Secretary of State must—
 - (a) publish a draft,
 - (b) consider any representations made about the draft,
 - (c) if the Secretary of State thinks appropriate, modify the draft in the light of any such representations.
 - (3) The Secretary of State must lay a draft of the code before Parliament.
 - (4) When the Secretary of State has laid a draft of the code before Parliament the Secretary of State may bring it into operation by order.
 - (5) The Secretary of State may revise the whole or any part of the code and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
 - (6) A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.
 - (7) The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.”
- (3) Omit section 194 (seizure).
- (4) In section 217 (powers of court and receiver)—
- (a) in subsection (1) after paragraph (b) insert—
 - “(c) the powers conferred on appropriate officers by sections 195C to 195L;
 - (d) the powers conferred on senior officers by section 195G.”
 - (b) at the end of the heading insert “etc”.