



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 4

#### CONFISCATION: NORTHERN IRELAND

#### *[<sup>F1</sup>Search and seizure powers*

#### Textual Amendments

- F1** Ss. 195A-195T and cross-headings inserted (22.11.2014 for the insertion of ss. 195S(1)-(5), 195T(1)-(7) for specified purposes, 1.3.2016 in so far as not already in force) by [Policing and Crime Act 2009](#) (c. 26), [ss. 57\(2\)](#), 116(1) (as amended by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012](#) (S.I. 2012/2595), [arts. 1\(2\)](#), 18(2)(m) (with arts. 24-28); S.I. 2014/3101, [art. 3](#); S.I. 2016/147, [art. 3\(b\)](#))

#### **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,
    - <sup>F2</sup>(aa) [ an immigration officer, or]
  - (b) a constable, <sup>F3</sup>...
    - <sup>F4</sup>(ba) [ an SFO officer, 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.

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#### Textual Amendments

- F2** S. 195A(1)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), **ss. 55(4)(c)**, 61(2) (with [Sch. 21 para. 40](#)); [S.I. 2014/3098](#), art. 2(b)
- F3** Word in s. 195A(1)(b) omitted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), **Sch. 1 para. 7(a)**; [S.I. 2021/724](#), reg. 3(b)
- F4** S. 195A(1)(ba) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), **Sch. 1 para. 7(b)**; [S.I. 2021/724](#), reg. 3(b)

### 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—
  - (a) a criminal investigation has been started in Northern Ireland with regard to an indictable offence,
  - (b) [<sup>F5</sup>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 [<sup>F6</sup>are reasonable grounds to suspect] 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) [<sup>F7</sup>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

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- (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 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.

#### Textual Amendments

- F5** S. 195B(2)(b) omitted (26.10.2023 for specified purposes) by virtue of [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 38\(a\)](#)
- F6** Words in s. 195B(2)(d) substituted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 35\(1\)](#), 88(3)(a); [S.R. 2015/190](#), reg. 3(1)(i)
- F7** S. 195B(3)(b) omitted (26.10.2023 for specified purposes) by virtue of [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 38\(b\)](#)

### 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 [<sup>F8</sup>under subsection (1)] seize—
  - (a) cash, or

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- (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.
- [ On being satisfied as mentioned in section 195B(1) an appropriate officer may seize
- <sup>F9</sup>(5A) any free property if the officer has reasonable grounds for suspecting that it is a cryptoasset-related item.
- (5B) A “cryptoasset-related item” is an item of property that is, or that contains or gives access to information that is, likely to assist in the seizure under subsection (1) of any cryptoasset.
- (5C) The circumstances in which a cryptoasset is “seized” for the purposes of subsection (1) include circumstances in which it is transferred into a crypto wallet controlled by the appropriate officer.
- (5D) If an appropriate officer is lawfully on any premises, the officer may, for the purpose of—
- (a) determining whether any property is a cryptoasset-related item, or
  - (b) enabling or facilitating the seizure under subsection (1) of any cryptoasset,
- require any information which is stored in any electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form.
- (5E) But subsection (5D) does not authorise an appropriate officer to require a person to produce information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.
- (5F) Where an appropriate officer has seized a cryptoasset-related item under subsection (5A), they may use any information obtained from it for the purpose of—
- (a) identifying or gaining access to a crypto wallet, and
  - (b) by doing so, enabling or facilitating the seizure under subsection (1) of any cryptoassets.]

(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

<sup>F10</sup> [ where applicable, in accordance with subsection (6A) or (6B).]

(aa)

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[<sup>F11</sup>(6A) The power conferred by this section 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).

[ The power conferred by this section is exercisable by an immigration officer only if <sup>F12</sup>(6B) the officer has reasonable grounds for suspecting that conduct constituting the relevant offence—

- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- (b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.]

(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.

[<sup>F13</sup>(8) Relevant nationality enactment” means any enactment in—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.]

#### Textual Amendments

- F8** Words in s. 195C(2) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), **Sch. 8 para. 39(2)**
- F9** S. 195C(5A)-(5F) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), **Sch. 8 para. 39(3)**
- F10** S. 195C(6)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 25(2)(a)** (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)
- F11** S. 195C(6A) substituted (22.11.2014) for words by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 25(2)(b)** (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)
- F12** S. 195C(6B) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 25(3)** (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)
- F13** S. 195C(8) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 25(4)** (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)

#### 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.

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- (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—
  - (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,

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- (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,
    - <sup>F14</sup>(aa) [ in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer,]
    - <sup>F15</sup>(ba) [ in relation to the exercise of a power by an accredited financial investigator who is a member of staff of the Police Service of Northern Ireland, a senior police officer,]
    - <sup>F16</sup>(ab) [ in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,]
    - <sup>F17</sup>(ac) [ in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office,]
  - (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 [<sup>F18</sup>who does not fall within any of the preceding paragraphs], 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.

#### **Textual Amendments**

- F14** S. 195G(3)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 26](#) (with [Sch. 21 para. 40](#)); [S.I. 2014/3098](#), art. 2(e)
- F15** S. 195G(3)(ba) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 31\(3\)](#), 58(3)(6); [S.R. 2021/167](#), reg. 2(b)
- F16** S. 195G(3)(ab) inserted (1.6.2015) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 35\(2\)](#), 88(3)(a); [S.R. 2015/190](#), reg. 3(1)(i)
- F17** S. 195G(3)(ac) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), [Sch. 1 para. 8](#); [S.I. 2021/724](#), reg. 3(b)

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**F18** Words in s. 195G(3)(c) inserted (27.4.2017 for specified purposes, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 26](#); S.I. 2021/724, reg. 4(f)

## 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 [<sup>F19</sup>Department of Justice] .
- (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 [<sup>F20</sup>Department of Justice] .

[<sup>F21</sup>(5A) “Government department” includes a Northern Ireland department.]

- (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.

### Textual Amendments

**F19** Words in s. 195H(4) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by [2009 c. 26, s. 57\(2\)](#) (as amended by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), [arts. 1\(2\)](#), [18\(2\)\(a\)](#) (with [arts. 24-28](#)); S.I. 2014/3101, [art. 3](#); S.I. 2016/147, [art. 3\(b\)](#))



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- F20** Words in s. 195H(5) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, s. 57(2) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), 18(2)(b) (with arts. 24-28); S.I. 2014/3101, art. 3; S.I. 2016/147, art. 3(b))
- F21** S. 195H(5A) inserted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, s. 57(2) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), 18(2)(c) (with arts. 24-28); S.I. 2014/3101, art. 3; S.I. 2016/147, art. 3(b))

## 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 [F22Department of Justice] .
- (6) The [F23Department of Justice] must—
  - (a) publish any report received under subsection (5), and
  - (b) lay a copy before [F24the Northern Ireland Assembly] .

[ Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6)(b) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.]

- (7) Before acting under subsection (6) the [F26Department of Justice] must exclude from the report any matter which the [F26Department of Justice] thinks is likely to prejudice any criminal investigation or criminal proceedings.
- (8) If the [F26Department of Justice] excludes any matter from the report the [F26Department of Justice] must comply with subsection (6) in relation to the whole of the report as soon as the [F26Department of Justice] thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings.

### Textual Amendments

- F22** Words in s. 195I(5) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, s. 57(2) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), 18(2)(d) (with arts. 24-28); S.I. 2014/3101, art. 3; S.I. 2016/147, art. 3(b))

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- F23** Words in s. 195I(6) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, s. 57(2) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), 18(2)(e) (with arts. 24-28); S.I. 2014/3101, art. 3; S.I. 2016/147, art. 3(b))
- F24** Words in s. 195I(6)(b) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, s. 57(2) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), 18(2)(f) (with arts. 24-28); S.I. 2014/3101, art. 3; S.I. 2016/147, art. 3(b))
- F25** S. 195I(6A) inserted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, s. 57(2) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), 18(2)(g) (with arts. 24-28); S.I. 2014/3101, art. 3; S.I. 2016/147, art. 3(b))
- F26** Words in s. 195I(7)(8) substituted (22.11.2014 for specified purposes, 1.3.2016 in so far as not already in force) by 2009 c. 26, s. 57(2) (as amended by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), 18(2)(h) (with arts. 24-28); S.I. 2014/3101, art. 3; S.I. 2016/147, art. 3(b))

### **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.

[ Exempt property seized under section 195C(5A) may be detained under subsections <sup>F27</sup>(5) (2) and (3) only with the approval of a senior officer.

- (6) In subsection (5)—
 

“exempt property” has the meaning given in section 195C(4) (reading references there to the defendant as references to the person by whom the property is held);

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“senior officer” has the meaning given in section 195G(3) (and for this purpose, the powers under subsections (2) and (3) to detain property are to be treated as exercised by the appropriate officer who seized the property).]

#### Textual Amendments

**F27** S. 195K(5)(6) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 41](#)

### 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.

<sup>F28</sup> [ Exempt property seized under section 195C(5A) may be detained under subsections (4) (2) and (3) only with the approval of a senior officer.

- (5) In subsection (4)—

“exempt property” has the meaning given in section 195C(4) (reading references there to the defendant as references to the person by whom the property is held);

“senior officer” has the meaning given in section 195G(3) (and for this purpose, the powers under subsections (2) and (3) to detain property are to be treated as exercised by the appropriate officer who seized the property).]

#### Textual Amendments

**F28** S. 195L(4)(5) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 42](#)

### 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.

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- (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 <sup>F29</sup>(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.
- <sup>F30</sup>[ A magistrates' court may by order extend the period for which the property may be (2A) 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 is free property, and
  - (c) there are reasonable grounds for suspecting that the property is a cryptoasset-related item.
- (2B) An order under subsection (2A) may not be made in respect of exempt property unless the court is satisfied that the person applying for the order is working diligently and expeditiously—
- (a) to determine whether the property is a cryptoasset-related item, or
  - (b) if it has already been determined to be such an item, to seize any related cryptoassets under section 195C(1).
- (2C) An order under subsection (2A) may not extend the period for which the property may be detained beyond the period of—
- (a) six months beginning with the date of the order, or
  - (b) in the case of exempt property, 14 days beginning with that date.
- This does not prevent the period from being further extended by another order under this section.
- (2D) The period of 14 days referred to in subsection (2C)(b) is to be calculated in accordance with section 195H(7) (reading the reference there to 48 hours as a reference to 14 days).]
- (3) An application for an order may be made by—
- (a) the Commissioners for Her Majesty's Revenue and Customs,
    - <sup>F31</sup>(aa) [ an immigration officer;]
    - (b) a constable,
      - <sup>F32</sup>(ba) [ an SFO officer,]
    - (c) an accredited financial investigator, or
    - (d) the prosecutor.

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- (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—
  - [<sup>F33</sup>“exempt property” has the meaning given in section 195C(4) (reading references there to the defendant as references to the person by whom the property is held);]
  - “part” includes portion.

#### Textual Amendments

- F29** Words in s. 195M(2)(b) omitted (26.10.2023 for specified purposes) by virtue of [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 43\(2\)](#)
- F30** S. 195M(2A)-(2D) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 43\(3\)](#)
- F31** S. 195M(3)(aa) inserted (22.11.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 27](#) (with [Sch. 21 para. 40](#)); S.I. 2014/3098, art. 2(e)
- F32** S. 195M(3)(ba) inserted (27.4.2017 for specified purposes, 28.6.2021 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(1)(6), [Sch. 1 para. 9](#); S.I. 2021/724, reg. 3(b)
- F33** Words in s. 195M(6) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 43\(4\)](#)

#### 195N Discharge, variation and lapse of detention order

- (1) An order under section [<sup>F34</sup>195M] 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).

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### Textual Amendments

**F34** Word in s. 195N(1) substituted (5.5.2011) by [Justice Act \(Northern Ireland\) 2011 \(c. 24 \(N.I.\)\)](#), s. 111(1), Sch. 7 para. 11

## 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.

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## 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) [<sup>F35</sup>or (5A)].
  - (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.
- [ If a cryptoasset-related item which has been released is not claimed within the period <sup>F36</sup>(6) of a year beginning with the date on which it was released, the appropriate officer may—
- (a) retain the item and deal with it as they see fit,
  - (b) dispose of the item, or
  - (c) destroy the item.
- (7) The powers in subsection (6) may be exercised only—
    - (a) where the appropriate officer has taken reasonable steps to notify—
      - (i) the person from whom the item was seized, and
      - (ii) any other persons who the appropriate officer has reasonable grounds to believe have an interest in the item, that the item has been released, and
    - (b) with the approval of a senior officer.
  - (8) “Senior officer” in subsection (7)(b) has the meaning given in section 195G(3).
  - (9) Any proceeds of a disposal of the item are to be paid into the Consolidated Fund.]]

### Textual Amendments

**F35** Words in s. 195R(3)(b) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 40](#)

**F36** S. 195R(6)-(9) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(2)(b)(5)(a), [Sch. 8 para. 44](#)

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