



Psychoactive Substances Act 2016

2016 CHAPTER 2

Retention and disposal of items

49 Retention of seized items

- (1) This section applies to any item seized under section 43.
- (2) The item may be retained so long as is necessary in all the circumstances and in particular—
 - (a) for use as evidence at a trial for an offence under this Act, or
 - (b) for forensic examination or for investigation in connection with an offence under this Act.
- (3) No item may be retained for either of the purposes mentioned in subsection (2) if a photograph or a copy would be sufficient for that purpose.

50 Power of police, etc to dispose of seized psychoactive substances

- (1) This section applies if—
 - (a) a police or customs officer has seized an item found during the course of a search under section 36, 37 or 38,
 - (b) the search was carried out in a place to which the officer lawfully had access without a warrant (whether issued under this Act or under any other enactment),
 - (c) the officer reasonably believes that the item—
 - (i) is a psychoactive substance which, if it had not been seized, was likely to be consumed by an individual for its psychoactive effects, but
 - (ii) is not evidence of any offence under this Act, and
 - (d) the officer has no reason to believe that, at the time of the seizure, the item was being used for the purposes of, or in connection with, an exempted activity carried on by a person entitled to the item.
- (2) The officer may dispose of the item in whatever way the officer thinks is suitable.

- (3) For the purposes of this section—
- (a) an activity is an “exempted activity” in relation to a person if the carrying on of the activity by that person would not be an offence under this Act by virtue of section 11;
 - (b) the persons “entitled” to an item are—
 - (i) the person from whom it was seized;
 - (ii) (if different) any person to whom it belongs.
- (4) In this section “enactment” includes—
- (a) an enactment contained in subordinate legislation;
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
 - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

51 Forfeiture of seized items by court on application

- (1) A relevant enforcement officer may apply to the appropriate court for the forfeiture of an item retained under section 49.
- (2) Where an application for the forfeiture of an item is made under this section, the item is to be retained while proceedings on the application are in progress.
- (3) If the court is satisfied that—
- (a) the item is a psychoactive substance which, if it had not been seized, was likely to be consumed by an individual for its psychoactive effects, and
 - (b) at the time of its seizure, the item was not being used for the purposes of, or in connection with, an exempted activity (see subsection (12)) carried on by a person entitled to the item,
- the court must order the forfeiture of the item.
- (4) If the item is not a psychoactive substance, the court may order the forfeiture of the item if satisfied that it has been used in the commission of an offence under this Act.
- (5) Where an order for forfeiture of an item is made under subsection (3) or (4), the item may be disposed of in whatever way the officer who applied for the order, or another relevant enforcement officer acting on behalf of the same person as that officer, thinks is suitable.
- (6) But the item may not be disposed of under subsection (5)—
- (a) before the end of the period within which an appeal under section 52 may be made against the order, or
 - (b) if such an appeal is made, before it is determined or otherwise dealt with.
- (7) If either subsection (8) or (9) applies in relation to an item, the court must order the item to be returned to a person entitled to it.

(For provision enabling an application for an order under this subsection to be made, see section 53.)

- (8) This subsection applies in relation to an item if the court is not satisfied that the item—

- (a) is a psychoactive substance, or
 - (b) has been used in the commission of an offence under this Act.
- (9) This subsection applies in relation to an item if—
- (a) the item is a psychoactive substance, and
 - (b) the court is satisfied that—
 - (i) if the item had not been seized, it was not likely to be consumed by any individual for its psychoactive effects, or
 - (ii) at the time of its seizure, the item was being used for the purposes of, or in connection with, an exempted activity carried on by a person entitled to the item.
- (10) Where an order for the return of an item is made under subsection (7), the item may nevertheless be retained—
- (a) until the end of the period within which an appeal under section 52 may be made against the order, or
 - (b) if such an appeal is made, until the time when it is determined or otherwise dealt with.

But if it is decided before the end of the period mentioned in paragraph (a) that there is to be no appeal, the item must be returned as soon as possible after that decision is made.

- (11) In this section “the appropriate court” means—
- (a) in relation to England and Wales—
 - (i) where the person in respect of whom the application is made is an individual who is under the age of 18, a youth court, and
 - (ii) in any other case, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland—
 - (i) where the person in respect of whom the application is made is an individual who is under the age of 18, a youth court, and
 - (ii) in any other case, a court of summary jurisdiction.
- (12) For the purposes of this section—
- (a) an activity is an “exempted activity” in relation to a person if the carrying on of the activity by that person would not be an offence under this Act by virtue of section 11;
 - (b) the persons “entitled” to an item are—
 - (i) the person from whom it was seized;
 - (ii) (if different) any person to whom it belongs.

52 Appeal against decision under section 51

- (1) Where an order has been made under section 51, each of the following persons may appeal against the order—
- (a) any party to the proceedings in which the order was made;
 - (b) any other person entitled to the item to which the order relates.
- (2) Where—
- (a) a relevant enforcement officer brings an appeal under this section, and

- (b) no person entitled to the item in question was a party to the original proceedings,
the officer must make reasonable efforts to give notice of the appeal to every person who the officer thinks is or may be entitled to the item.
- (3) An appeal under this section is to—
- (a) the Crown Court, in England and Wales;
 - (b) the Sheriff Appeal Court, in Scotland;
 - (c) a county court, in Northern Ireland.
- (4) An appeal under this section against an order must be made before the end of the period of 28 days starting with the date of the order.
- (5) Subject to subsections (6) and (7), the court hearing the appeal may make any order the court thinks appropriate.
- (6) If an appeal against an order for the return of an item is allowed—
- (a) the court must order the item to be forfeited, and
 - (b) subsections (5) and (6) of section 51 apply with the necessary adaptations.
- (7) If an appeal against an order forfeiting an item is allowed—
- (a) the court must order the item to be returned to a person entitled to it, and
 - (b) subsection (10) of section 51 applies with the necessary adaptations.
- (8) The persons “entitled” to an item for the purposes of this section are—
- (a) the person from whom it was seized;
 - (b) (if different) any person to whom it belongs.

53 Return of item to person entitled to it, or disposal if return impracticable

- (1) Where the retention of an item has been, but is no longer, authorised under this Act—
- (a) the item must be returned to a person entitled to it (but see subsection (4));
 - (b) the appropriate court must, if asked to do so by a person entitled to the item, order it to be returned to that person.
- (2) A person who claims to be entitled to an item retained under this Act may apply to the appropriate court for an order under subsection (1)(b) or section 51(7) (as appropriate).
- (3) Where—
- (a) a court makes an order under this Act requiring an item to be returned to a particular person, and
 - (b) reasonable efforts have been made, without success, to find that person, or it is for some other reason impracticable to return the item to that person,
- the order has effect as if it required the item to be returned to any person entitled to it.
- (4) Where—
- (a) an item is required by a provision of this Act, or an order made under this Act, to be returned to a person entitled to it, and
 - (b) reasonable efforts have been made, without success, to find a person entitled to the item, or it is for some other reason impracticable to return the item to a person entitled to it,

a relevant enforcement officer may dispose of the item in whatever way the officer thinks is suitable.

- (5) In this section “the appropriate court” means—
- (a) in relation to England and Wales—
 - (i) where the person making the application is an individual who is under the age of 18, a youth court, and
 - (ii) in any other case, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland—
 - (i) where the person making the application is an individual who is under the age of 18, a youth court, and
 - (ii) in any other case, a court of summary jurisdiction.
- (6) The persons “entitled” to an item for the purposes of this section are—
- (a) the person from whom it was seized;
 - (b) (if different) any person to whom it belongs.

54 Forfeiture by court following conviction

- (1) This section applies where a person is convicted of—
- (a) an offence under any of sections 4 to 9 and 26, or
 - (b) an ancillary offence (see subsection (11)).
- (2) In this section “the court” means—
- (a) the court by or before which the person is convicted of the offence, except where paragraph (b) or (c) applies;
 - (b) if the person is committed to the Crown Court to be dealt with for that offence, the Crown Court;
 - (c) if the person is remitted to the High Court of Justiciary to be dealt with for that offence, the High Court of Justiciary.
- (3) The court must make an order for the forfeiture of any psychoactive substance in respect of which the offence was committed.
- (4) The court may also make an order for the forfeiture of any other item that was used in the commission of the offence.
- (5) An order under subsection (3) or (4) is referred to in this section as a “forfeiture order”.
- (6) Before making a forfeiture order under subsection (4) in relation to any item, the court must give an opportunity to make representations to any person (in addition to the convicted person) who claims to be the owner of the item or otherwise to have an interest in it.
- (7) A forfeiture order may not be made so as to come into force at any time before there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.
- (8) Where the court makes a forfeiture order, it may also make such other provision as it considers to be necessary for giving effect to the forfeiture.

- (9) That provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of the item.
- (10) Provision made by virtue of this section may be varied at any time by the court that made it.
- (11) In this section “ancillary offence” means—
- (a) an offence of attempting or conspiring to commit an offence under any of sections 4 to 9 and 26;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence under any of sections 4 to 9 and 26;
 - (c) an offence of inciting a person to commit an offence under any of sections 4 to 9 and 26;
 - (d) an offence of aiding, abetting, counselling or procuring the commission of an offence under any of sections 4 to 9 and 26.