



Ivory Act 2018

2018 CHAPTER 30

Retention and disposal or return of items

29 Retention of seized items

- (1) An item seized under section 21 or 23 may be retained for as long as is necessary in all the circumstances and in particular—
 - (a) for use as evidence at a trial for a relevant offence, or
 - (b) for forensic examination or for investigation in connection with a relevant offence.
- (2) An item may not be retained for either of the purposes mentioned in subsection (1) if a photograph or a copy would be sufficient for that purpose.

30 Forfeiture of seized items by court on application

- (1) A police officer or an accredited civilian officer may apply to the appropriate court for the forfeiture of an item retained under section 29.
- (2) The item is to be retained while proceedings on such an application are in progress.
- (3) Where an application under this section is made in relation to an item, the court may order the item to be forfeited if satisfied—
 - (a) that a relevant offence has been committed in respect of it, or
 - (b) that it was used in the commission of a relevant offence.
- (4) If the court does not order the item to be forfeited, it must order the item to be returned to a person entitled to it.

(For provision enabling an application to be made for an order for the return of the item, see section 32(1)(b).)
- (5) Where an item is ordered to be forfeited under subsection (3), it may be disposed of in whatever way is thought appropriate by—
 - (a) the officer who made the application,

Status: This is the original version (as it was originally enacted).

- (b) another police officer or accredited civilian officer acting on behalf of the same person as that officer, or
 - (c) the Secretary of State.
- (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 31 may be made against the order, or
 - (b) if such an appeal is made, before it is determined or otherwise dealt with.
- (7) Where an order for the return of an item is made under subsection (4), the item may nevertheless be retained—
- (a) until the end of the period within which an appeal under section 31 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.

- (8) In this Act—
- “the appropriate court” means—
 - (a) in relation to England and Wales, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland, a court of summary jurisdiction;
 - “police officer” means—
 - (a) a constable;
 - (b) a designated NCA officer authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a constable under this Act.
- (9) 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.

31 Appeal against decision under section 30

- (1) Where an order has been made under section 30, each of the following persons may appeal against the order—
- (a) a 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 police officer or an accredited civilian 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 30 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 (7) of section 30 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.

32 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 (subject to section 30(3) and subsection (3) below) be returned to a person entitled to it;
 - (b) a person who claims to be entitled to the item may apply to the appropriate court for an order that the item be returned to that person.
- (2) 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.
- (3) 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 police or customs officer, or the Secretary of State, may dispose of the item in whatever way the officer or the Secretary of State thinks appropriate.
- (4) 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.

33 Forfeiture by court following conviction

- (1) This section applies where a person is convicted of—
 - (a) a relevant offence,
 - (b) an offence of attempting or conspiring to commit a relevant offence,
 - (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to a relevant offence,
 - (d) an offence of inciting a person to commit a relevant offence, or
 - (e) an offence of aiding, abetting, counselling or procuring the commission of a relevant offence.
- (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 the offence, the Crown Court;
 - (c) if the person is remitted to the High Court of Justiciary to be dealt with for the offence, the High Court of Justiciary.
- (3) The court may make an order for the forfeiture of—
 - (a) any ivory, or any item that is made of ivory or has ivory in it, in respect of which the offence was committed;
 - (b) any other item that was used in the commission of the offence.

An order under this subsection is referred to below as a “forfeiture order”.

- (4) Before making a forfeiture order under subsection (3)(b) 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.
- (5) A forfeiture order may not be made so as to come into force before the time when there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.
- (6) Where the court makes a forfeiture order, it may also make any other provision that it considers to be necessary for giving effect to the forfeiture.
- (7) That provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of the item.
- (8) Provision made by virtue of this section may be varied at any time by the court that made it.