



# Obscene Publications Act 1959

1959 CHAPTER 66 7 and 8 Eliz 2

## 3 Powers of search and seizure.

- (1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that, in any premises in the petty sessions area for which he acts, or on any stall or vehicle in that area, being premises or a stall or vehicle specified in the information, obscene articles are, or are from time to time, kept for publication for gain, the justice may issue a warrant under his hand empowering any constable to enter (if need be by force) and search the premises, or to search the stall or vehicle . . .<sup>F1</sup> and to seize and remove any articles found therein or thereon which the constable has reason to believe to be obscene articles and to be kept for publication for gain.
- (2) A warrant under the foregoing subsection shall, if any obscene articles are seized under the warrant, also empower the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle which relate to a trade or business carried on at the premises or from the stall or vehicle.
- (3) [<sup>F2</sup>Subject to subsection (3A) of this section]any articles seized under subsection (1) of this section shall be brought before a justice of the peace acting for the same petty sessions area as the justice who issued the warrant, and the justice before whom the articles are brought may thereupon issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle to appear on a day specified in the summons before a magistrates' court for that petty sessions area to show cause why the articles or any of them should be forfeited; and if the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication for gain, the court shall order those articles to be forfeited: Provided that if the person summoned does not appear, the court shall not make an order unless service of the summons is proved. [<sup>F3</sup>Provided also that this subsection does not apply in relation to any article seized under subsection (1) of this section which is returned to the occupier of the premises or, as the case may be, to the user of the stall or vehicle in or on which it was found]

[<sup>F4</sup>(3A) Without prejudice to the duty of a court to make an order for the forfeiture of an article where section 1(4) of the <sup>M1</sup>Obscene Publications Act 1964 applies (orders made on conviction), in a case where by virtue of subsection (3A) of section 2 of this Act proceedings under the said section 2 for having an article for publication for gain could

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*Changes to legislation: There are currently no known outstanding effects for the Obscene Publications Act 1959, Section 3. (See end of Document for details)*

not be instituted except by or with the consent of the Director of Public Prosecutions, no order for the forfeiture of the article shall be made under this section unless the warrant under which the article was seized was issued on an information laid by or on behalf of the Director of Public Prosecutions].

- (4) In addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.
- (5) Where an order is made under this section for the forfeiture of any articles, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to [<sup>F5</sup>the Crown Court]; and no such order shall take effect until the expiration of [<sup>F6</sup>the period within which notice of appeal to the Crown Court may be given against the order,] or, if before the expiration thereof notice of appeal is duly given or application is made for the statement of a case for the opinion of the High Court, until the final determination or abandonment of the proceedings on the appeal or case.
- (6) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for the seizure of the articles was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why those articles should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.
- (7) For the purposes of this section the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.
- (8) The Obscene Publications Act, 1857, is hereby repealed, without prejudice, however, to the execution of any warrant issued thereunder before the commencement of this Act or to the taking of any proceedings in pursuance of a warrant so issued.

#### Textual Amendments

- F1** Words repealed by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119(2), **Sch. 7 Pt. I**
- F2** Words inserted by [Criminal Law Act 1977 \(c. 45\)](#), s. 53(5)
- F3** Words added by [Criminal Law Act 1977 \(c. 45\)](#), **Sch. 12**
- F4** [S. 3\(3A\)](#) inserted by [Criminal Law Act 1977 \(c. 45\)](#), s. 53(5)
- F5** Words substituted by [Courts Act 1971 \(c. 23\)](#), s. 56(2), **Sch. 9 Pt. I**
- F6** Words substituted by [Courts Act 1971 \(c. 23\)](#), **Sch. 8**, para. 37

#### Modifications etc. (not altering text)

- C1** [S. 3](#) amended by [Obscene Publications Act 1964 \(c. 74\)](#), s. 1(4)(5)
- C2** [S. 3](#) restricted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), s. 57(1), **Sch. 5 para. 8(4)**
- C3** [S. 3](#) restricted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 162(2), **Sch. 15 para. 4(3)**
- C4** [S. 3](#) excluded by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 162(2), **Sch. 15 para. 5(2)(b)**
- C5** [S. 3\(1\)](#) restricted by [Criminal Justice Act 1967 \(c. 80\)](#), s. 25
- C6** [S. 3\(1\)\(2\)](#): powers of seizure extended (*prosp.*) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), **Sch. 1 Pt. I para. 5**  
[S. 3\(1\)\(2\)](#) modified (*prosp.*) by 2001 c. 16, ss. 55, 68, 138(2), **Sch. 1 Pt. III para. 88** (with s. 57(3))
- C7** [S. 3\(1\)\(2\)](#) powers of seizure extended (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), ss. 50, 138(2), **Sch. 1 paras. 5** (with ss. 52-54, 68); S.I. 2003/708, art. 2(a); S.I. 2003/708, art. 2(a)

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- C8** S. 3(1)(2) modified (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 55, 138(2), **Sch. 1 paras. 88** (with ss. 57(3), 68); S.I. 2003/708, art. 2(a); S.I. 2003/708, art. 2(a)
- C9** S. 3(3) applied (*prosp.*) by 2001 c. 16, ss. 70, 138(2), **Sch. 2 Pt. I para. 10(2)(a)**
- C10** S. 3(3) applied (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), s. 138(2), **Sch. 2 para. 10(2)(a)**; S.I. 2003/708, art. 2(k)
- C11** The text of s. 3(8) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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**Marginal Citations**

- M1** 1964 c. 74.

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