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**Report for 2012 - 2013 of the  
appointed person for England and  
Wales under section 291 of the  
Proceeds of Crime Act 2002**



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Presented to Parliament pursuant to section 291 (5) of the Proceeds of Crime Act 2002

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## **The Appointed Person**

On 3 March 2013 I was appointed by the Secretary of State, pursuant to section 290(8) (a) of the Proceeds of Crime Act 2002 ('the Act'), to be the Appointed Person for England and Wales. This is my report for the year ended 31 March 2013.

The Appointed Person is independent of the Government and by virtue of section 290(9) of the Act must not be employed under or for the purposes of any government department.

The role of the Appointed Person is to provide independent oversight of the use of certain powers to search for cash that can be exercised without prior judicial approval. Section 291 of the Act provides that as soon as practicable after 31 March each year the Appointed Person must make a report and send a copy of it to the Secretary of State who must arrange for it to be laid before Parliament. In that report the Appointed Person must 'give his opinion as to the circumstances and manner in which the powers conferred by section 289 are being exercised' in cases where prior judicial approval for the search was not obtained. The report may also set out any recommendations the Appointed Person considers appropriate.

## **Relevant Statutory Provisions**

In this section I outline the statutory provisions most relevant to my role as Appointed Person for England and Wales.

Sections 289 to 303 of the Act make provision for the recovery of cash in civil proceedings. Whilst these provisions have been revised extensively since coming into operation in 2002, no further amendments to them have been made during the reporting period. All references to the provisions are to them as they were in force throughout the reporting year.

Section 289 of the Act empowers officers of HM Revenue and Customs, immigration officers, accredited financial investigators and police officers, in prescribed circumstances, to search property and persons for cash. Cash is widely defined in the section.

Section 290 provides that appropriate prior approval must be obtained for any such search unless it is impracticable to obtain such approval before exercising the power. Appropriate approval can be given only by a justice of the peace or, if that is not practicable, by a senior officer. A senior officer for this purpose means a police officer not below the rank of inspector or an officer of a rank designated by the Commissioners of HM Revenue and Customs for their officers or by the Secretary of State in the case of immigration officers and accredited financial investigators.

The section provides that where any search is carried out without the prior approval of a justice of the peace, and either no cash is seized or any cash seized is not detained for more than 48 hours, a report must be made to the Appointed Person.

Any such report must be made in writing by the officer who carried out the search. It must set out the circumstances that led the officer to believe that the powers were exercisable and why it was not practicable to obtain prior approval from a justice of the peace. The Code of Practice, made under section 292, provides that the report must be made as soon as practicable and in all cases within 14 days of the search.

Although not directly relevant to the role of the Appointed Person, it should be noted that section 294 provides for the seizure of cash found as a result of a search whilst section 295 makes provision for the detention of seized cash, by order of a magistrates' court, for a period of up

to six months. Further orders may be made extending the total period of detention up to a maximum of two years from the date of the first order. Accordingly, there is judicial oversight of the detention of any cash seized without prior judicial approval and held for more than 48 hours.

Section 298 makes provision for the judicial forfeiture of detained cash.

## **Circumstances and manner in which section 289 powers exercised**

As the Appointed Person my remit is restricted to the circumstances and manner in which the section 289 search powers are executed without prior judicial approval. Any such exercise of the powers should result in a report to the Appointed Person in accordance with section 290. Under the Code of Practice such reports are to be sent to the Appointed Person care of the Home Office. I have been advised by the appropriate officials that during the year to 31 March 2013 only one report was received.

That report related to the search in May 2012, by officers of Revenue and Customs, of a male of Indian ethnic origin, at a railway station. The officers had reason to believe that the individual was a cash courier in relation to a previous significant cash seizure. The officers attempted to obtain prior judicial approval for their search of this individual but were apparently told that the justices of the peace were too busy. No cash was found. I am satisfied that the search of this individual without prior judicial approval was, in the circumstances set out in the report to me, a proper use of the powers.

However, I note that whilst the report was completed promptly by the searching officer it was not submitted to me until nearly a year after the search and then only when HMRC were asked to confirm the number of searches carried out in 2012 – 2013. That unacceptable delay was due to a communications failure within HMRC. I am satisfied that action has been taken to prevent a recurrence.

During the year the Proceeds of Crime Centre continued to provide an important support service for accredited financial investigators. I was pleased to learn of the plans to heighten the awareness of investigators both of the section 289 search powers and of the duty to submit reports in section 290 of the Act.

In the short period between my appointment and the end of the reporting year it was not possible for me to learn of the work in this area of immigration officers and police officers but I have no reason to doubt that they simply did not have occasion to exercise the powers in circumstances within my remit. I am aware that responsibility for immigration officers reverted to the Secretary of State on 1 April 2013. During the coming year I intend to discuss with the officials responsible for these officers and with senior police officers the actions being taken to remind their officers of their duty to submit reports in appropriate cases.

## **Recommendations**

I make no recommendations.

**Douglas Bain CBE TD Advocate**  
**Belfast**

**29 May 2013**





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