



Home Office

# **Report for 2013 - 2014 of the Appointed Person for England and Wales under section 291 of the Proceeds of Crime Act 2002**

July 2014



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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**

This is my second report as the Appointed Person appointed by the Secretary of State, pursuant to section 290(8)(a) of the Proceeds of Crime Act 2002 ('the Act'). It covers the year ended 31 March 2014.

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 approval for the search was not obtained from a justice of the peace and either no cash was seized or any cash that was seized was not detained for more than 48 hours. The report may also set out any recommendations the Appointed Person considers appropriate.

## **Relevant Statutory Provisions**

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 in England and Wales throughout the reporting year.

Section 289 of the Act empowers officers of HM Revenue and Customs ('HMRC'), immigration officers, police officers and accredited financial investigators, 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 do so. 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 staff 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 prior judicial approval 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 judicial approval. 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**

During the year I received reports in respect of three searches. Two of these were carried out by accredited financial investigators employed by the Serious Fraud Office. The third search was carried out by an officer of HMRC. In all three cases the search was undertaken only after the appropriate senior officer had given approval. I am satisfied that in the circumstances set out in the reports it was not practicable to obtain prior judicial approval for the searches and that the searches were fully justified.

Under the Code of Practice any reports to the Appointed Officer are to be sent to an address in the Home Office. Officials there have confirmed that no other reports were received during the year to 31 March 2014.

### **Other considerations**

I was pleased to note the significant efforts of HMRC to ensure that their officers are aware of their powers and duties under sections 289 and 290. The relevant parts of the HMRC Enforcement Handbook have been revised and clarified. Further the relevant training courses and material now deal, in some detail, with sections 289 and 290.

Although individual front line police officers may have only limited knowledge of the provisions of sections 289 and 290 I am satisfied that there are a sufficient number of officers who are accredited financial investigators, are available to provide advice and to secure compliance with the statutory provisions.

The third category of persons who may exercise the section 289 search powers in England and Wales are immigration officers. Immigration officers are employed in operational roles within Home Office Immigration Enforcement and in Border Force, where they are known as Border Force Officers. I was surprised to learn that Home Office Immigration Enforcement management had, because the current Code of Practice does not apply to immigration officers, issued an instruction to their immigration officers forbidding them from exercising their statutory powers under Part 5 of the Act, including those in section 289, pending a revision of the Code. Although I have been told that this administrative prohibition has not had any adverse impact on police resources the possibility of cash that could have been seized being missed cannot be excluded. Border Force informed me that their immigration officers utilise other powers, available to them under the Customs and Excise Management Act 1979, to search for cash, and do not need to

rely on the section 289 powers in performing their duties. In these circumstances it is unsurprising that no section 290 reports were made by immigration officers.

During the year the Proceeds of Crime Centre continued its work to ensure that all accredited financial investigators are aware of the requirement, in prescribed circumstances, to submit a report to the Appointed Officer. I was pleased to have an opportunity to attend a meeting of the Financial Investigation Working Group in May 2013 and to speak to those present about my role and the importance of securing the submission of reports when they are required. In October 2013 I spoke on the same subject at the Operational Financial Investigation Workshop. That event was attended by investigators from a wide range of organisations throughout the United Kingdom in addition to police and HMRC officers.

In England and Wales it appears that some doubt exists as to what is required when a number of searches, which require to be reported under section 290, are carried out simultaneously at different locations as part of the same investigation or where a search is carried out by more than one officer. It has been represented to me that in the latter instance every officer who takes part in the search must submit an individual report. In the first instance it has been represented that it is sufficient for the officer in overall charge of the various searches to submit a single report. Whilst I find these representations surprising, the fact that they have been made indicates that there is some doubt in the minds of some of those involved in using the section 289 powers about what is required in these circumstances.

A consultation on a revised Code of Practice was concluded in August 2013 and I understand that it is planned to lay it before Parliament before the end of 2014.

## **Recommendations**

I recommend that consideration be given to whether the revised Code of Practice could be used to remove any uncertainty that exists concerning multiple searches and searches carried out by more than one officer.

I recommend that the new Code of Practice be brought into effect as soon as practicable so that administrative prohibition on immigration officers exercising their statutory powers can be rescinded.

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

**22nd July 2014**





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