



Home Office

Report for 2014-2015 of the Appointed Person for England and Wales under section 291 of the Proceeds of Crime Act 2002

September 2015

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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 third 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 2015.

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

There have been no amendments to the relevant statutory provisions during the year.

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 HMRC 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 no reports were received by me. I can offer no opinion on the circumstances and manner in which the section 289 search powers were exercised.

Other considerations

I was pleased to note the significant efforts again made by HMRC to ensure that their officers are aware of their powers and duties under sections 289 and 290. These sections are dealt with in the Foundation Programme undertaken by all criminal investigation officers. They are also covered in a number of other training courses undertaken by those officers most likely to exercise the section 289 search powers. Consideration is currently being given to the inclusion of the requirement to submit a report to the Appointed Officer in the annual Core Professional Development undertaken by officers. Arrangements have been put in place to draw the proposed new Code of Practice covering sections 289 and 290 to officers working in Scotland and England and Wales and to remind officers working in Northern Ireland that, meantime, the current Code of Practice will continue to apply in that jurisdiction.

In my report for 2013 – 2014 I noted that although under the Act immigration officers were entitled to use the section 289 search powers they did not, in practice, do so. Those in Border Force relied instead on powers available to them under the Customs and Excise Management Act 1979 whilst those in Home Office Immigration Enforcement had been instructed not to use their section 289 powers because the Code of Practice did not apply to them. The position has not changed. However, I was pleased to learn that the instruction to officers in Home Office Immigration Enforcement will be rescinded on the coming into force of the new Code of Practice. It is intended to inform officers of the relevant provisions in new guidance that will be published to coincide with the coming into force of the new Code.

The National Crime Agency has, through the Proceeds of Crime Centre, continued to deliver training on the relevant provisions to all accredited financial investigators in the police, HMRC and other agencies in England, Wales and Northern Ireland. This training is subject to National Occupational Standards and includes a pre-course examination, classroom assessment and submission of a Personal Development Portfolio. Only after all aspects have been completed to a satisfactory standard is a financial investigator accredited. Those that are successful are subject

to the Continuing Professional Development programme which requires them to provide evidence of their use of the powers available under the Act. The programme includes monthly activities reflecting developments in legislation, case law and best practice.

It is unrealistic to expect most front line police officers to have a full understanding of their powers and duties under sections 289 and 290 of the Act. However, accredited financial investigators are available within police forces to provide advice and assistance where necessary.

Last year I recommended that consideration be given to whether the proposed new Code of Practice could be used to remove any uncertainty that existed concerning multiple searches and searches carried out by more than one officer. I welcome the fact that the new Code, which came into force on 1 June 2015, addresses both of these issues.

Recommendations

This year I make no recommendations.

Douglas Bain

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23 June 2015**

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