

**REPORT FOR 2015 - 2016
OF
THE APPOINTED PERSON FOR NORTHERN IRELAND
UNDER
SECTIONS 195I AND 291 OF THE PROCEEDS OF CRIME ACT
2002**

The Appointed Person

This is my fourth report as the Appointed Person appointed pursuant to section 290(8)(b) of the Proceeds of Crime Act 2002 ('the Act') and my first in respect of my appointment under section 195H(4) of that Act. It covers the year ended 31 March 2016.

The Appointed Person is independent and by virtue of sections 290(9) and 195H(5) and (5A)) of the Act must not be employed under or for the purposes of any government department including any Northern Ireland department.

The original role of the Appointed Person was to provide independent oversight, in prescribed circumstances, of the exercise of the powers to search for cash conferred by section 289 of the Act. On 1 March 2016, just one month before the end of the reporting year, the role was extended to the oversight, in prescribed circumstances, of the exercise of the new powers to search for and seize realisable property conferred by sections 195C, 195D, 195E and 195F of that Act. These sections were brought into effect by the commencement of section 57 of the Policing and Crime Act 2009.

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 Department of Justice who must arrange for it to be laid before the Northern Ireland Assembly. 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 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.

Section 195I of the Act mirrors section 291 in respect of the exercise of the powers conferred by sections 195C to 195F. It 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 Department of Justice who must arrange for it to be laid before the Northern Ireland Assembly. In that report the Appointed Person must *'give his opinion as to the circumstances and manner in which the powers conferred by sections 195C, 195D, 195E and 195F are being exercised'* in cases that must be reported to him under section 195H(1) or (2). 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. These provisions, which have been revised extensively since coming into operation in 2002, were further amended during on 1 March 2016 by the commencement of section 63 of the Policing and Crime Act 2009.

Section 289 of the Act empowers officers of Revenue and Customs, immigration officers, accredited financial investigators and constables, in prescribed circumstances, to search property and persons for cash. Cash is widely defined in the section. With the commencement of section 63 of the Policing and Crime Act 2009, the search power of constables, officers of Revenue and Customs, immigration officers and accredited financial investigators was extended to the search of vehicles.

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 lay magistrate 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 Codes of Practice, made under sections 292 and 293A, provide 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 judicial order, 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.

There are two new Codes of Practice in relation to these provisions. The Code entitled 'Recovery of Cash: Search Powers (Northern Ireland)' was made by the Department of Justice under section 293A of the Act. It relates to the exercise of these powers in Northern Ireland by constables and accredited financial investigators. There is a separate Code of Practice, made by the Secretary of State under section 292, relating to the exercise of the powers in section 289 by officers of Revenue and Customs and immigration officers in Northern Ireland and in the other UK jurisdictions. Both Codes were commenced on 1 March 2016.

;

Sections 195C makes provision for the seizure of realisable property whilst sections 195D, 195E and 195F confer powers to search premises, persons and vehicles in closely defined circumstances. Section 195H requires that where property is seized under section 195C but is not detained for more than 48 hours a written report must be given to the Appointed Person. It further provides that a report must be made to the Appointed Person where a search, without prior judicial approval, is conducted under section 195D, 195E or 195F and no property is seized under section 195C or any property that is seized is not detained for more than 48 hours. Such reports must set out the particulars of the circumstances which led the officer who conducted the search or made the seizure to believe that the powers were exercisable and why it was not practicable to obtain prior judicial approval.

Sections 195K, 195L and 195M provide for the detention of property for more than the initial 48 hours. Such further detention can take place only where judicial authority has been given or is pending.

Section 195S provides that the Secretary of State may make a code of practice in connection with these exercise of the search and seizure powers. The code made under that provision entitled 'Search, Seizure and Detention of Property (Northern Ireland)' relates to the use of the sections 195C to 195F powers by officers of Revenue and Customs, the National Crime Agency, the Serious Fraud Office, the Director of Public Prosecution for Northern Ireland and by immigration officers. Another code, confusingly bearing the same title, has been made by the Department of Justice pursuant to section 195T. It relates to the use of these powers by constables and accredited financial investigators. Both these Codes were commenced on 1 March 2016.

Circumstances and manner in which sections 197C to 197F and 289 powers exercised

As the Appointed Person my remit in relation to cash is restricted to the circumstances and manner in which the section 289 search powers are exercised without prior judicial approval and either no cash is seized or any cash that is seized is not detained for more than 48 hours. Any such exercise of the powers should result in a report to the Appointed Person in accordance with section 290.

I received no reports in respect of a section 289 searches during the year.

My role in relation to realisable property is restricted to the circumstances and manner in which the section 195C search powers and the seizure powers in sections 195D to 195F are exercised without prior judicial approval and either no property is seized or any property that is seized is not detained for more than 48 hours. Any such exercise of the powers should result in a report to the Appointed Person in accordance with section 195H.

In the one month that they were available these new powers were not exercised in circumstances which required the submission of a report to me.

Other considerations

As I observed in my previous reports the low number of reports in respect of searches for cash should not be regarded as unusual. Only one report from Northern Ireland has been submitted since 2002.

In my last report I recommended that the PSNI should deliver appropriate training to officers on their powers and duties in respect of cash seizure. It is pleasing to note the substantial progress made. I have been told that since April 2015 *'training on all aspects of the Proceeds of Crime Act has been permanently incorporated into the Initial Detective Training Investigators course and the Senior Investigators course'* and that 60 officers have received this training. Further I have been told that *'since January 2016 this training has been permanently incorporated into PSNI Foundation Training for all new Probationer Officers'* and that 130 officers have received this training. In addition in July 2015 information on the legislation, its practical application and their responsibilities was issued to all officers. Bespoke training on the subject has been delivered to all members of the Economic Crime Unit and to a number of detectives from Reactive and Organised Crime. The Economic Crime Unit now has hub locations across Northern Ireland from which advice and guidance on all aspects of this subject can be provided to any officer within the area.

Although officers of Revenue and Customs did not exercise any of the relevant powers in circumstances requiring that a report be made to the Appointed Person, HMRC have again been very active in ensuring that their officers are aware of all their powers and duties relevant to my role. In May 2015 an article was published in the HMRC Criminal Justice Procedure manual drawing attention to the new POCA provisions. That article explained that the new provisions to search for and seize property were not being adopted by HMRC at that time; that the new POCA search power to search a vehicle for cash and the new cash search code of practice only applied to England and Wales and Scotland until further notice; and reminded officers of the existing provisions of section 289 and the requirement for a report to the Appointed Person in prescribed circumstances. That article was also published in the June 2015 edition of the HMRC Continuous Professional Development (CPD) bulletin. The CPD bulletin, which provides details of legislative changes and other matters, is mandatory reading for HMRC criminal justice professionals.

An article entitled 'Searching for cash under POCA section 289 – Prior approval and reports to the Appointed Person' was included in March 2016 CPD bulletin. That article covered, in detail, the requirements for prior judicial approval and to report to the Appointed Person in the prescribed circumstances. It contained links to the Appointed

Person's reports on the internet and to the December 2015 draft of the Code of Practice for Recovery of Cash: Search Powers for England and Wales, Scotland and Northern Ireland (the final version had not been published at the time).

A short feature in the June 2016 CPD bulletin reminded HMRC officers of the provisions regarding prior judicial approval and reports to the Appointed Person and referred them to the March 2016 CPD bulletin article for further details.

I have been advised that HMRC are currently considering adopting the powers under sections 195C to 195F (and the equivalent provisions in the other jurisdictions). I have been assured that if these powers are adopted the provisions regarding prior judicial approval for both search and seizure of property and the need to submit a report to the Appointed Person in the appropriate circumstances will be included in the training and guidance.

In previous reports I noted that immigration officers in Border Force and Home Office Immigration Enforcement did not, in practice, exercise their powers under section 289 but relied instead on other powers available to them. That continues to be the case.

The National Crime Agency ('the NCA'), through the Proceeds of Crime Centre, has developed a pre-read package and test mechanism which all accredited financial investigators, including its own officers, will have to complete successfully before their accreditation is extended to the new powers in sections 195C to 195F. That package covers fully the requirement to submit a report to the Appointed Person in the specified circumstances. The NCA has determined that its officers are prohibited from exercising these powers until their accreditation is extended. NCA officers and other accredited financial investigators maintain their competence in respect of the circumstances in which a report must be submitted under section 291 through the recognised CPD activities and monitoring conducted by the Proceeds of Crime Centre. In addition, the NCA runs 'financial investigation community' awareness days, normally quarterly, at which the provisions of the various codes of practice are amongst the topics discussed.

I am satisfied that adequate measures have been put in place by all these organisations to secure, insofar as reasonably practicable, that reports to the Appointed Person under section 290(6) of the Act will be submitted when required and that appropriate action will be taken in relation to awareness of section 195H(1) and (2).

The new Codes of Practice on cash searches represent a significant improvement for all those who have to exercise or are subject to these powers. Both use terminology appropriate to Northern Ireland and provide, for example, that reports to the Appointed Officer should be sent care of the Department of Justice at Stormont rather than to the Home Office in London. As I recommended in my 2013 – 2014 report both Codes clarify the requirements for reports to the Appointed Officer where a search is carried out by a number of officers and where multiple searches at different locations are carried out in connection with the same proceedings.

Recommendations

I make no recommendations this year.

Douglas Bain

Douglas Bain CBE TD Advocate

Belfast 28 June 2016