

Status: Point in time view as at 01/12/2007.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Orders and warrants: common provisions is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART III

[^{F1}INVESTIGATION OF REVENUE AND CUSTOMS OFFENCES]

[^{F1}Orders and warrants: common provisions

Textual Amendments

F1 Ss. 23A-23P and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 3, 14](#); [S.I. 2007/3166](#), [art. 3](#)

23F Procedure where documents etc removed

- (1) This section applies where—
 - (a) a document is removed under a production order;
 - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) An officer who removes any document or thing shall, if requested to do so by a person mentioned in subsection (3) below, provide that person with a record of what that officer removed.
- (3) The persons referred to in subsection (2) above are—
 - (a) in the case of a document removed under a production order, a haver;
 - (b) in the case of a document or thing removed under a Revenue and Customs warrant—
 - (i) a person who is the occupier of any premises from which the document or thing was removed; or
 - (ii) a person who had possession or control of the document or thing before it was removed.

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- (4) The officer must provide the record within a reasonable time of the request for it.

23G Access to and copies of documents etc removed

- (1) This section applies where—
- (a) a document is removed under a production order;
 - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) A person mentioned in subsection (3) below may apply to the officer in overall charge of the investigation to which the order or warrant relates—
- (a) for access to the document or thing; or
 - (b) for a copy or photograph of it.
- (3) The persons referred to in subsection (2) above are—
- (a) in the case of a document removed under a production order—
 - (i) a haver; or
 - (ii) a person acting on behalf of the haver;
 - (b) in the case of a document or thing removed under a Revenue and Customs warrant, a person who had possession or control of the document or thing before it was removed.
- (4) Unless subsection (5) below applies, the officer in overall charge of the investigation shall—
- (a) in a case to which subsection (2)(a) above applies, allow the applicant supervised access to the document or thing; or
 - (b) in a case to which subsection (2)(b) above applies—
 - (i) allow the applicant supervised access to the document or thing for the purposes of photographing or copying it; or
 - (ii) photograph or copy the document or thing (or cause it to be so photographed or copied) and provide the applicant with such a photograph or copy within a reasonable time.
- (5) The officer in overall charge need not comply with subsection (4) above where that officer has reasonable grounds for believing that to do so would prejudice—
- (a) the investigation;
 - (b) the investigation of a Revenue and Customs offence other than the offence for the purposes of the investigation of which the document or thing was removed; or
 - (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b) above.
- (6) In subsection (4) above, “supervised access” means access under the supervision of an officer approved by the officer in overall charge of the investigation.

23H Failure to comply with requirements of section 23F and 23G

- (1) This section applies where—
- (a) a document is removed under a production order;
 - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) Subject to subsection (3) below, a person who claims that—

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- (a) an officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
 - (b) an officer in overall charge of an investigation has failed to comply with the requirements of section 23G(4) of this Act,
- may apply to the sheriff for an order under subsection (4) below.
- (3) An application under subsection (2) above—
- (a) relating to a failure mentioned in subsection (2)(a) above, may be made only by a person who is entitled to make a request under section 23F(2) of this Act;
 - (b) relating to a failure mentioned in subsection (2)(b) above, may be made only by—
 - (i) a haver;
 - (ii) a person acting on behalf of a haver but only where that person applied under section 23G(2) of this Act;
 - (iii) a person who had possession or control of the document or thing before it was removed under a Revenue and Customs warrant.
- (4) The sheriff may, if satisfied that—
- (a) the officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
 - (b) the officer in overall charge of the investigation has failed to comply with the requirements of section 23G(4) of this Act,
- order the officer or, as the case may be, the officer in overall charge of the investigation to comply with the requirements within such time and in such manner as the sheriff specifies in the order.

23J Confidentiality

- (1) Neither a production order nor a Revenue and Customs warrant authorises the seizure, removal or copying of any documents or other things subject to legal privilege.
- (2) Subsection (1) above does not apply where the document or thing is held for the purposes of furthering a criminal purpose.
- (3) In this section—

“documents or other things subject to legal privilege” means—

 - (a) communications between a professional legal adviser and the adviser's client; or
 - (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

23K Meaning of “document” etc

- (1) In sections 23B to 23J of this Act, references to a “document” include—
 - (a) any thing in which information of any description is recorded; and
 - (b) any part of such a thing.
- (2) Where a production order or a Revenue and Customs warrant applies to a document in electronic or magnetic form, the order or, as the case may be, the warrant requires the

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person having possession or control of the document to deliver or, as the case may be, give access to the information in a form which is visible and legible and, if the officer executing the order or warrant wishes to remove it, in a form which can be removed.]

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