



# Police (Property) Act 1997

## 1997 CHAPTER 30

An Act to make further provision with respect to property in the possession of the police. [19th March 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Power of police authority to retain unclaimed property**

(1) Section 2 of the Police (Property) Act 1897 (regulations with respect to unclaimed property in possession of police) is amended as follows.

(2) After subsection (2) there is inserted—

“(2A) The regulations may also provide that where, in the case of property other than money—

- (a) the property has remained in the possession of the police for a year,
- (b) the police would under the regulations have power to sell the property,
- (c) in the opinion of the relevant authority, the property can be used for police purposes, and
- (d) the relevant authority determine, in such manner as may be prescribed by the regulations, that the property is to be retained by the authority,

the relevant authority is to become the owner of the property on the making of the determination or at such later time as the regulations may specify.

(2B) In subsection (2A) above “the relevant authority” means—

- (a) in relation to a police area in England and Wales listed in Schedule 1 to the Police Act 1996 or the City of London police area, the police authority (within the meaning of that Act);
- (b) in relation to the metropolitan police district, the Receiver for the Metropolitan Police District;

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*Status: This is the original version (as it was originally enacted).*

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(c) in relation to Northern Ireland, the Police Authority for Northern Ireland.”

(3) After subsection (4) there is inserted—

“(4A) The regulations may also provide for the publication of determinations falling within subsection (2A)(d) above.”

(4) For subsection (6) there is substituted—

“(6) In relation to England and Wales, the power to make regulations under this section is exercisable by statutory instrument; and a statutory instrument made in the exercise of that power is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In relation to Northern Ireland, the power to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and regulations made in the exercise of that power are subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall have effect accordingly.”

## **2 Disposal of property used, or intended for use, for purposes of crime: England and Wales**

(1) Section 43 of the Powers of Criminal Courts Act 1973 (power to deprive offender of property used, or intended for use, for purposes of crime) is amended as follows.

(2) In subsection (5)—

- (a) for “section 2(1)” there is substituted “section 2”,
- (b) after “shall” there is inserted “subject to subsection (6) below”, and
- (c) after “regulations for disposal” there is inserted “(including disposal by vesting in the relevant authority)”.

(3) After that subsection there is inserted—

“(6) The regulations may not provide for the vesting in the relevant authority of property in relation to which an order has been made under section 43A of this Act.

(7) Nothing in subsection (2A)(a) or (3) of section 2 of the Police (Property) Act 1897 limits the power to make regulations under that section by virtue of subsection (5) above.

(8) In subsections (5) and (6) above “relevant authority” has the meaning given by section 2(2B) of the Police (Property) Act 1897.”

## **3 Disposal of property used, or intended for use, for purposes of crime: Northern Ireland**

(1) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offender of property used, or intended for use, for purposes of crime) is amended as follows.

(2) In paragraph (8)—

- (a) for “section 2(1)” there is substituted “section 2”,
- (b) after “may” there is inserted “subject to paragraph (8A)”, and
- (c) after “provision for disposal” there is inserted “(including disposal by vesting in the Police Authority for Northern Ireland)”.

(3) After that paragraph there is inserted—

“(8A) The regulations may not provide for the vesting in the Police Authority for Northern Ireland of property in relation to which an order has been made under Article 12.

(8B) Nothing in subsection (2A)(a) or (3) of section 2 of the Police (Property) Act 1897 limits the power to make regulations under that section by virtue of paragraph (8).”

#### **4 Further amendments of Police (Property) Act 1897: Northern Ireland**

- (1) In section 1(1) of the Police (Property) Act 1897 (power of court to make orders in respect of property which has come into the possession of the police in connection with a criminal charge), for “with any criminal charge” there is substituted “with their investigation of a suspected offence”.
- (2) Section 3(2) of that Act (which modified references to the Secretary of State in the application of the Act to Northern Ireland and is spent) is hereby repealed.

#### **5 Repeal of s. 9 of Constabulary (Ireland) Act 1874**

Section 9 of the Constabulary (Ireland) Act 1874 (which makes provision as to unclaimed money and goods found or stolen) is hereby repealed.

#### **6 Property in possession etc. of person taken into police custody in Scotland**

- (1) The Civic Government (Scotland) Act 1982 is amended as follows.
- (2) In section 80 (application of Part VII of that Act), for paragraph (b) of subsection (2) there is substituted—
  - “(b) property which the prosecutor determines is or may be required as a production in criminal proceedings or which he determines is or may be required for any other purpose relating to such proceedings;”.
- (3) In section 83 (provision as to certain property in possession of person taken into police custody)—
  - (a) for “the property”, where those words first occur, there is substituted “property to which this Part of this Act applies”; and
  - (b) at the end there is added “(the property being regarded, for the purposes of those provisions, as being found by the constable arresting or detaining the person so taken)”.
- (4) After Part VII there is inserted the following Part—

## “PART VIIA

### PROPERTY IN UNLAWFUL POSSESSION OF PERSONS TAKEN INTO POLICE CUSTODY AND CERTAIN OTHER PROPERTY TO WHICH PART VII DOES NOT APPLY

#### **86A Application of Part VIIA to property**

- (1) Subject to subsection (2) below, this Part of this Act applies to property to which, by virtue only of paragraph (a) or (b) of section 80(2) of this Act, Part VII of this Act does not apply.
- (2) This Part of this Act does not apply to property—
  - (a) possession of which has passed to the prosecutor and is for the time being retained by him or, in accordance with arrangements made by him, by some person other than the chief constable or himself; or
  - (b) in respect of which a suspended forfeiture order or a restraint order has been—
    - (i) made and not recalled; or
    - (ii) applied for and not refused.
- (3) In subsection (2) above, “suspended forfeiture order” and “restraint order” shall be construed in accordance with, respectively, sections 21(2) and 28(1) of the Proceeds of Crime (Scotland) Act 1995.

#### **86B Certification by prosecutor**

The prosecutor may certify that, notwithstanding any determination under section 80(2)(b) of this Act, property to which this Part of this Act applies is not, or is no longer, required as a production in criminal proceedings or for any other purpose relating to such proceedings (property which he has so certified being, in the following provisions of this Part, referred to as “relevant” property).

#### **86C Claims by owner etc. prior to disposal**

- (1) The owner, or the person having right to possession, of any property to which this Part of this Act applies and which is in the possession of the chief constable, or of another person under arrangements made by the chief constable, may at any time prior to its disposal under section 86E of this Act claim that property in accordance with such procedure as the chief constable may direct.
- (2) The chief constable shall consider any claims to property made under subsection (1) above and, on being satisfied that the property is relevant property and that the claimant is the owner of it or has a right to possession of it, shall deliver it, or arrange for its delivery, to the claimant on such conditions (if any) as the chief constable thinks fit, as for example, but without prejudice to the generality of this subsection, for payment of such reasonable charges (including any reasonable expenses incurred in relation to the property by or on behalf of the chief constable) as the chief constable may determine.

### **86D Duty of care etc**

Subject to the proviso to section 17(3)(b) of the Police (Scotland) Act 1967 (duty to comply with instructions received from prosecutor), the chief constable shall make such arrangements as he considers appropriate for the care and custody of property to which this Part of this Act applies; and if he has reason to believe that the person taken into police custody is not the owner or the person having right to possession of it, shall take reasonable steps to ascertain the identity of the owner or of the person with that right and to notify him of the procedures directed under section 86C(1) of this Act.

### **86E Disposal of relevant property**

- (1) If relevant property cannot, in the opinion of the chief constable, safely be kept he may dispose of it or arrange for its disposal in such manner as he thinks fit.
- (2) The chief constable may sell relevant property or, if in his opinion it would be impracticable to sell it, may dispose of it (or make arrangements for its disposal) otherwise as he thinks fit; but subject to subsection (1) above he shall not do so—
  - (a) before the expiry of a period of two months after the date on which the property was found in the possession or in the charge of the person taken into police custody; or
  - (b) if it would be inconvenient to keep the property until the expiry of that period, before the expiry of such shorter period as is reasonable in all the circumstances.
- (3) Sections 71, 72 and 77(1) of this Act shall apply to a disposal under this section as they apply to a disposal under section 68 of this Act.

### **86F Retention of relevant property by police authority**

- (1) Where a chief constable has power under section 86E(2) of this Act to sell or otherwise dispose of property and that property (not being money) has remained—
  - (a) for any continuous period of twelve months in his possession; or
  - (b) for part of any such period in his possession and for the rest of it in the possession of the prosecutor,the police authority may, if they are of the opinion that the property can be used for police purposes, determine that the property is to be retained by the authority; and the property shall vest in them on the making of the determination.
- (2) A determination under subsection (1) above shall be recorded in writing; and that record shall include the date on which the determination is made.
- (3) Any person who, immediately before the date on which a determination under subsection (1) above is made, owns the property in question, shall be entitled within one year after that date to recover possession of it as owner.
- (4) In subsection (1) above, “police authority” has the meaning assigned to it by section 2(1), as read with section 19(9)(a), of the Police (Scotland) Act 1967;

and “the police authority” means the police authority for the area for which the chief constable’s force is maintained.

### **86G Appeals**

- (1) A claimant under section 86C(2) of this Act may appeal to the sheriff against any decision of the chief constable made under that section as respects the claim.
- (2) The previous owner of any property disposed of for value under section 86E of this Act may appeal to the sheriff against any decision of the chief constable made under section 72 of this Act as applied by subsection (3) of section 86E.
- (3) Subsections (3) to (5) of section 76 of this Act shall apply to an appeal under this section as they apply to an appeal under section 76.

### **86H Crown application of Part VIIA**

- (1) Subject to subsection (2) below, this Part of this Act binds the Crown.
- (2) Rights which the Crown has in lost or abandoned property shall be capable of being extinguished in accordance with the provisions of section 71 (as applied by section 86E(3)) or 86F(1) of this Act; but nothing in this Part of this Act otherwise affects the Crown’s right of ownership in such property.

### **86I Further financial provision**

Subsection (2) of section 77 of this Act shall apply in respect of functions under this Part of this Act as that subsection applies in respect of functions under Part VI of this Act.

### **86J References in this Part to “chief constable”**

In this Part of this Act, “chief constable” means the chief constable for the police area in which the person taken into custody, within the meaning of section 80 of this Act, is so taken; and includes a constable acting under the direction of the chief constable for the purposes of this Part of this Act.

- (5) In section 131 (provisions of that Act which apply to the Crown), for “Parts VI and VII” there is substituted “Parts VI to VIIA”.

## **7 Short title, commencement and extent**

- (1) This Act may be cited as the Police (Property) Act 1997.
- (2) This Act shall come into force at the end of the period of two months beginning with the day on which it is passed.
- (3) In this Act—
  - (a) section 1 extends to England, Wales and Northern Ireland only,
  - (b) section 2 extends to England and Wales only,
  - (c) sections 3 to 5 extend to Northern Ireland only, and
  - (d) section 6 extends to Scotland only.