



Criminal Justice and Police Act 2001

2001 CHAPTER 16

PART 2

POWERS OF SEIZURE

Construction of Part 2

63 Copies

- (1) Subject to subsection (3)—
- (a) in this Part, “seize” includes “take a copy of”, and cognate expressions shall be construed accordingly;
 - (b) this Part shall apply as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy; and
 - (c) for the purposes of this Part, except sections 50 and 51, the powers mentioned in subsection (2) (which are powers to obtain hard copies etc. of information which is stored in electronic form) shall be treated as powers of seizure, and references to seizure and to seized property shall be construed accordingly.
- (2) The powers mentioned in subsection (1)(c) are any powers which are conferred by—
- (a) section 19(4) or 20 of the 1984 Act;
 - (b) Article 21(4) or 22 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12));
 - (c) section 46(3) of the Firearms Act 1968 (c. 27);
 - (d) section 43(5)(aa) of the Gaming Act 1968 (c. 65);
 - (e) section 20C(3A) of the Taxes Management Act 1970 (c. 9);
 - (f) section 32(6)(b) of the Food Safety Act 1990 (c. 16);
 - (g) Article 34(6)(b) of the Food Safety (Northern Ireland) Order 1991 (S.I. 1991 762 (N.I. 7));
 - (h) section 28(2)(f) of the Competition Act 1998 (c. 41); or
 - (i) section 8(2)(c) of the Nuclear Safeguards Act 2000 (c. 5).

(3) Subsection (1) does not apply to section 50(6) or 57.

64 Meaning of “appropriate judicial authority”

- (1) Subject to subsection (2), in this Part “appropriate judicial authority” means—
- (a) in relation to England and Wales and Northern Ireland, a judge of the Crown Court;
 - (b) in relation to Scotland, a sheriff.
- (2) In this Part “appropriate judicial authority”, in relation to the seizure of items under any power mentioned in subsection (3) and in relation to items seized under any such power, means—
- (a) in relation to England and Wales and Northern Ireland, the High Court;
 - (b) in relation to Scotland, the Court of Session.
- (3) Those powers are—
- (a) the powers of seizure conferred by—
 - (i) section 448(3) of the Companies Act 1985 (c. 6);
 - (ii) Article 441(3) of the Companies (Northern Ireland) Order 1986 (S.I. 1986 1032 (N.I. 6)); and
 - (iii) section 28(2) of the Competition Act 1998; and
 - (b) any power of seizure conferred by section 50, so far as that power is exercisable by reference to any power mentioned in paragraph (a).

65 Meaning of “legal privilege”

- (1) Subject to the following provisions of this section, references in this Part to an item subject to legal privilege shall be construed—
- (a) for the purposes of the application of this Part to England and Wales, in accordance with section 10 of the 1984 Act (meaning of “legal privilege”);
 - (b) for the purposes of the application of this Part to Scotland, in accordance with section 33 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (interpretation); and
 - (c) for the purposes of the application of this Part to Northern Ireland, in accordance with Article 12 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (meaning of “legal privilege”).
- (2) In relation to property which has been seized in exercise, or purported exercise, of—
- (a) the power of seizure conferred by section 28(2) of the Competition Act 1998, or
 - (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,
- references in this Part to an item subject to legal privilege shall be read as references to a privileged communication within the meaning of section 30 of that Act.
- (3) In relation to property which has been seized in exercise, or purported exercise, of—
- (a) the power of seizure conferred by section 20C of the Taxes Management Act 1970 (c. 9), or
 - (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,

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references in this Part to an item subject to legal privilege shall be construed in accordance with section 20C(4A) of that Act.

- (4) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by section 448(3) of the Companies Act 1985 (c. 6) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of section 452(2) of that Act (privileged information).
- (5) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by Article 441(3) of the Companies (Northern Ireland) Order 1986 (S.I. 1986 1032 (N.I. 6)) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of Article 445(2) of that Order (privileged information).
- (6) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by sub-paragraph (2) of paragraph 3 of Schedule 2 to the Timeshare Act 1992 (c. 35) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of sub-paragraph (4) of that paragraph (privileged documents).
- (7) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by paragraph 1 of Schedule 9 to the Data Protection Act 1998 (c. 29) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of paragraph 9 of that Schedule (privileged communications).
- (8) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by paragraph 1 of Schedule 3 to the Freedom of Information Act 2000 (c. 36) shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of paragraph 9 of that Schedule (privileged communications).
- (9) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of so much of any power of seizure conferred by section 50 as is exercisable by reference to a power of seizure conferred by—
 - (a) section 448(3) of the Companies Act 1985,
 - (b) Article 441(3) of the Companies (Northern Ireland) Order 1986,
 - (c) paragraph 3(2) of Schedule 2 to the Timeshare Act 1992,
 - (d) paragraph 1 of Schedule 9 to the Data Protection Act 1998, or
 - (e) paragraph 1 of Schedule 3 to the Freedom of Information Act 2000,shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the item would have been taken for the purposes of this Part to be an item subject to legal privilege had it been seized under the power of seizure by reference to which the power conferred by section 50 was exercised.

66 General interpretation of Part 2

- (1) In this Part—
 - “appropriate judicial authority” has the meaning given by section 64;
 - “documents” includes information recorded in any form;

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“item subject to legal privilege” shall be construed in accordance with section 65;

“premises” includes any vehicle, stall or moveable structure (including an offshore installation) and any other place whatever, whether or not occupied as land;

“offshore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971 (c. 61);

“return”, in relation to seized property, shall be construed in accordance with section 58, and cognate expressions shall be construed accordingly;

“seize”, and cognate expressions, shall be construed in accordance with section 63(1) and subsection (5) below;

“seized property”, in relation to any exercise of a power of seizure, means (subject to subsection (5)) anything seized in exercise of that power; and

“vehicle” includes any vessel, aircraft or hovercraft.

- (2) In this Part references, in relation to a time when seized property is in any person’s possession in consequence of a seizure (“the relevant time”), to something for which the person making the seizure had power to search shall be construed—
- (a) where the seizure was made on the occasion of a search carried out on the authority of a warrant, as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant;
 - (b) where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by him to be, or appeared to him to be, of a particular description, as including—
 - (i) anything which at the relevant time is believed by the person in possession of the seized property, or (as the case may be) appears to him, to be of that description; and
 - (ii) anything which is in fact of that description;
 - (c) where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description, as including—
 - (i) anything which there are at the relevant time reasonable grounds for believing is of that description; and
 - (ii) anything which is in fact of that description;
 - (d) where the property was seized in the course of a search to which neither paragraph (b) nor paragraph (c) applies, as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under section 50 and 51; and
 - (e) where the property was seized on the occasion of a search authorised under section 82 of the Terrorism Act 2000 (c. 11) (seizure of items suspected to have been, or to be intended to be, used in commission of certain offences), as including anything—
 - (i) which is or has been, or is or was intended to be, used in the commission of an offence such as is mentioned in subsection (3)(a) or (b) of that section; or

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- (ii) which at the relevant time the person who is in possession of the seized property reasonably suspects is something falling within subparagraph (i).
- (3) For the purpose of determining in accordance with subsection (2), in relation to any time, whether or to what extent property seized on the occasion of a search authorised under section 9 of the Official Secrets Act 1911 (c. 28) (seizure of evidence of offences under that Act having been or being about to be committed) is something for which the person making the seizure had power to search, subsection (1) of that section shall be construed—
- (a) as if the reference in that subsection to evidence of an offence under that Act being about to be committed were a reference to evidence of such an offence having been, at the time of the seizure, about to be committed; and
 - (b) as if the reference in that subsection to reasonable ground for suspecting that such an offence is about to be committed were a reference to reasonable ground for suspecting that at the time of the seizure such an offence was about to be committed.
- (4) References in subsection (2) to a search include references to any activities authorised by virtue of any of the following—
- (a) section 28(1) of the Trade Descriptions Act 1968 (c. 29) (power to enter premises and to inspect and seize goods and documents);
 - (b) section 29(1) of the Fair Trading Act 1973 (c. 41) (power to enter premises and to inspect and seize goods and documents);
 - (c) paragraph 9 of the Schedule to the Prices Act 1974 (c. 24) (powers of entry and inspection);
 - (d) section 162(1) of the Consumer Credit Act 1974 (c. 39) (powers of entry and inspection);
 - (e) section 11(1) of the Estate Agents Act 1979 (c. 38) (powers of entry and inspection);
 - (f) Schedule 9 to the Weights and Measures (Northern Ireland) Order 1981 (S.I. 1981 231 (N.I. 10));
 - (g) section 79 of, or Schedule 8 to, the Weights and Measures Act 1985 (c. 72) (powers of entry and inspection etc.);
 - (h) section 29 of the Consumer Protection Act 1987 (c. 43) (powers of search etc.);
 - (i) Article 22 of the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987 2049 (N.I. 20));
 - (j) section 32(5) of the Food Safety Act 1990 (c. 16) (power to inspect records relating to a food business);
 - (k) paragraph 3 of the Schedule to the Property Misdescriptions Act 1991 (c. 29) (powers of seizure etc.);
 - (l) Article 33(6) of the Food Safety (Northern Ireland) Order 1991 (S.I. 1991 762 (N.I. 7));
 - (m) paragraph 3 of Schedule 2 to the Timeshare Act 1992 (c. 35) (powers of officers of enforcement authority).
- (5) References in this Part to a power of seizure include references to each of the powers to take possession of items under—
- (a) section 44A(3) of the Insurance Companies Act 1982 (c. 50);
 - (b) section 448(3) of the Companies Act 1985 (c. 6);

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- (c) section 199(3) of the Financial Services Act 1986 (c. 60);
- (d) Article 441(3) of the Companies (Northern Ireland) Order 1986 (S.I. 1986 1032 (N.I. 6));
- (e) section 43(2) of the Banking Act 1987 (c. 22);
- (f) section 2(5) of the Criminal Justice Act 1987 (c. 38);
- (g) section 40(2) of the Human Fertilisation and Embryology Act 1990 (c. 37);
- (h) section 28(2)(c) of the Competition Act 1998 (c. 41); and
- (i) section 176(5) of the Financial Services and Markets Act 2000 (c. 8);

and references in this Part to seizure and to seized property shall be construed accordingly.

- (6) In this Part, so far as it applies to England and Wales—
 - (a) references to excluded material shall be construed in accordance with section 11 of the 1984 Act (meaning of “excluded material”); and
 - (b) references to special procedure material shall be construed in accordance with section 14 of that Act (meaning of “special procedure material”).
- (7) In this Part, so far as it applies to Northern Ireland—
 - (a) references to excluded material shall be construed in accordance with Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (meaning of “excluded material”); and
 - (b) references to special procedure material shall be construed in accordance with Article 16 of that Order (meaning of “special procedure material”).
- (8) References in this Part to any item or material being comprised in other property include references to its being mixed with that other property.
- (9) In this Part “enactment” includes an enactment contained in Northern Ireland legislation.