



# Criminal Justice and Police Act 2001

## 2001 CHAPTER 16

### PART 2

#### POWERS OF SEIZURE

##### *Remedies and safeguards*

#### **59 Application to the appropriate judicial authority**

- (1) This section applies where anything has been seized in exercise, or purported exercise, of a relevant power of seizure.
- (2) Any person with a relevant interest in the seized property may apply to the appropriate judicial authority, on one or more of the grounds mentioned in subsection (3), for the return of the whole or a part of the seized property.
- (3) Those grounds are—
  - (a) that there was no power to make the seizure;
  - (b) that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 54(2);
  - (c) that the seized property is or contains any excluded material or special procedure material which—
    - (i) has been seized under a power to which section 55 applies;
    - (ii) is not comprised in property falling within section 55(2) or (3); and
    - (iii) is not property the retention of which is authorised by section 56;
  - (d) that the seized property is or contains something seized under section 50 or 51 which does not fall within section 53(3);and subsections (5) and (6) of section 55 shall apply for the purposes of paragraph (c) as they apply for the purposes of that section.
- (4) Subject to subsection (6), the appropriate judicial authority, on an application under subsection (2), shall—

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- (a) if satisfied as to any of the matters mentioned in subsection (3), order the return of so much of the seized property as is property in relation to which the authority is so satisfied; and
  - (b) to the extent that that authority is not so satisfied, dismiss the application.
- (5) The appropriate judicial authority—
- (a) on an application under subsection (2),
  - (b) on an application made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure, or
  - (c) on an application made—
    - (i) by a person with a relevant interest in anything seized under section 50 or 51, and
    - (ii) on the grounds that the requirements of section 53(2) have not been or are not being complied with,
 may give such directions as the authority thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.
- (6) On any application under this section, the appropriate judicial authority may authorise the retention of any property which—
- (a) has been seized in exercise, or purported exercise, of a relevant power of seizure, and
  - (b) would otherwise fall to be returned,
- if that authority is satisfied that the retention of the property is justified on grounds falling within subsection (7).
- (7) Those grounds are that (if the property were returned) it would immediately become appropriate—
- (a) to issue, on the application of the person who is in possession of the property at the time of the application under this section, a warrant in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or
  - (b) to make an order under—
    - (i) paragraph 4 of Schedule 1 to the 1984 Act,
    - (ii) paragraph 4 of Schedule 1 to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)),
    - (iii) section 20BA of the Taxes Management Act 1970 (c. 9), or
    - (iv) paragraph 5 of Schedule 5 to the Terrorism Act 2000 (c. 11),
 under which the property would fall to be delivered up or produced to the person mentioned in paragraph (a).
- (8) Where any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts (“part A” and “part B”) comprised in it such that—
- (a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in subsection (7) in relation to part A,
  - (b) it would (or would but for the facts mentioned in paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B, and
  - (c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question,

the facts mentioned in paragraph (a) shall not be taken into account by the appropriate judicial authority in deciding whether the retention of the property is justified on grounds falling within subsection (7).

- (9) If a person fails to comply with any order or direction made or given by a judge of the Crown Court in exercise of any jurisdiction under this section—
- (a) the authority may deal with him as if he had committed a contempt of the Crown Court; and
  - (b) any enactment relating to contempt of the Crown Court shall have effect in relation to the failure as if it were such a contempt.
- (10) The relevant powers of seizure for the purposes of this section are—
- (a) the powers of seizure conferred by sections 50 and 51;
  - (b) each of the powers of seizure specified in Parts 1 and 2 of Schedule 1; and
  - (c) any power of seizure (not falling within paragraph (a) or (b)) conferred on a constable by or under any enactment, including an enactment passed after this Act.
- (11) References in this section to a person with a relevant interest in seized property are references to—
- (a) the person from whom it was seized;
  - (b) any person with an interest in the property; or
  - (c) any person, not falling within paragraph (a) or (b), who had custody or control of the property immediately before the seizure.
- (12) For the purposes of subsection (11)(b), the persons who have an interest in seized property shall, in the case of property which is or contains an item subject to legal privilege, be taken to include the person in whose favour that privilege is conferred.

## **60 Cases where duty to secure arises**

- (1) Where property has been seized in exercise, or purported exercise, of any power of seizure conferred by section 50 or 51, a duty to secure arises under section 61 in relation to the seized property if—
- (a) a person entitled to do so makes an application under section 59 for the return of the property;
  - (b) in relation to England, Wales and Northern Ireland, at least one of the conditions set out in subsections (2) and (3) is satisfied;
  - (c) in relation to Scotland, the condition set out in subsection (2) is satisfied; and
  - (d) notice of the application is given to a relevant person.
- (2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 54(2).
- (3) The second condition is that—
- (a) the seized property was seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers specified in subsection (6); and
  - (b) the application—
    - (i) is made on the ground that the seized property is or contains something which does not fall within section 53(3); and

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(ii) states that the seized property is or contains special procedure material or excluded material.

(4) In relation to property seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers of seizure conferred by—

- (a) section 93I(5) of the Criminal Justice Act 1988 (c. 33),
- (b) section 56(5) of the Drug Trafficking Act 1994 (c. 37), or
- (c) Article 51(5) of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996 1299 (N.I. 6)),

the second condition is satisfied only if the application states that the seized property is or contains excluded material.

(5) In relation to property seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers of seizure specified in Part 3 of Schedule 1 but not by virtue of—

- (a) the power of seizure conferred by section 8(2) of the 1984 Act,
- (b) the power of seizure conferred by Article 10(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)),
- (c) either of the powers of seizure conferred by paragraphs 1 and 3 of Schedule 5 to the Terrorism Act 2000 (c. 11), or
- (d) either of the powers of seizure conferred by paragraphs 15 and 19 of Schedule 5 to that Act of 2000 so far as they are conferred by reference to paragraph 1 of that Schedule,

the second condition is satisfied only if the application states that the seized property is or contains excluded material or special procedure material consisting of documents or records other than documents.

(6) The powers mentioned in subsection (3) are—

- (a) the powers of seizure specified in Part 3 of Schedule 1;
- (b) the powers of seizure conferred by the provisions of Parts 2 and 3 of the 1984 Act (except section 8(2) of that Act);
- (c) the powers of seizure conferred by the provisions of Parts 3 and 4 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (except Article 10(2) of that Order);
- (d) the powers of seizure conferred by the provisions of paragraph 11 of Schedule 5 to the Terrorism Act 2000; and
- (e) the powers of seizure conferred by the provisions of paragraphs 15 and 19 of that Schedule so far as they are conferred by reference to paragraph 11 of that Schedule.

(7) In this section “a relevant person” means any one of the following—

- (a) the person who made the seizure;
- (b) the person for the time being having possession, in consequence of the seizure, of the seized property;
- (c) the person named for the purposes of subsection (1)(d) or (4)(d) of section 52 in any notice given under that section with respect to the seizure.

## **61 The duty to secure**

- (1) The duty to secure that arises under this section is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to secure that arrangements are in force that ensure that the seized property (without being returned) is not, at any time after the giving of the notice of the application under section 60(1), either—
  - (a) examined or copied, or
  - (b) put to any use to which its seizure would, apart from this subsection, entitle it to be put,except with the consent of the applicant or in accordance with the directions of the appropriate judicial authority.
- (2) Subsection (1) shall not have effect in relation to any time after the withdrawal of the application to which the notice relates.
- (3) Nothing in any arrangements for the purposes of this section shall be taken to prevent the giving of a notice under section 49 of the Regulation of Investigatory Powers Act 2000 (c. 23) (notices for the disclosure of material protected by encryption etc.) in respect of any information contained in the seized material; but subsection (1) of this section shall apply to anything disclosed for the purpose of complying with such a notice as it applies to the seized material in which the information in question is contained.
- (4) Subsection (9) of section 59 shall apply in relation to any jurisdiction conferred on the appropriate judicial authority by this section as it applies in relation to the jurisdiction conferred by that section.

## **62 Use of inextricably linked property**

- (1) This section applies to property, other than property which is for the time being required to be secured in pursuance of section 61, if—
  - (a) it has been seized under any power conferred by section 50 or 51 or specified in Part 1 or 2 of Schedule 1, and
  - (b) it is inextricably linked property.
- (2) Subject to subsection (3), it shall be the duty of the person for the time being having possession, in consequence of the seizure, of the inextricably linked property to ensure that arrangements are in force which secure that that property (without being returned) is not at any time, except with the consent of the person from whom it was seized, either—
  - (a) examined or copied, or
  - (b) put to any other use.
- (3) Subsection (2) does not require that arrangements under that subsection should prevent inextricably linked property from being put to any use falling within subsection (4).
- (4) A use falls within this subsection to the extent that it is use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.
- (5) Property is inextricably linked property for the purposes of this section if it falls within any of subsections (6) to (8).

- (6) Property falls within this subsection if—
- (a) it has been seized under a power conferred by section 50 or 51; and
  - (b) but for subsection (3)(c) of section 53, arrangements under subsection (2) of that section in relation to the property would be required to ensure the return of the property as mentioned in subsection (2)(c) of that section.
- (7) Property falls within this subsection if—
- (a) it has been seized under a power to which section 54 applies; and
  - (b) but for paragraph (b) of subsection (1) of that section, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that subsection.
- (8) Property falls within this subsection if—
- (a) it has been seized under a power of seizure to which section 55 applies; and
  - (b) but for paragraph (c) of subsection (1) of that section, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that subsection.