



# Policing and Crime Act 2009

## 2009 CHAPTER 26

### PART 5

#### PROCEEDS OF CRIME

##### *Civil recovery*

#### 62 Limitation

- (1) In the following provisions for “twelve years” substitute “ 20 years ”
  - (a) sections 27A(2) and 27B(2) of the Limitation Act 1980 (c. 58) (civil recovery of property obtained through unlawful conduct etc),
  - (b) sections 19B(2) and 19C(2) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (equivalent provisions for Scotland), and
  - (c) Articles 72A(2) and 72B(2) of the Limitation (Northern Ireland) Order 1989 (S.I. 1339 (N.I. 11)) (equivalent provisions for Northern Ireland).
- (2) The amendments made by this section—
  - (a) apply to causes of action which accrued before, as well as to causes of action which accrue after, the commencement of this section, but
  - (b) do not apply to causes of action barred by the provisions mentioned in subsection (1) before the commencement of this section.

#### Commencement Information

II S. 62 in force at 25.1.2010 by S.I. 2009/3096, art. 3(h)

#### 63 Power to search vehicles

- (1) Section 289 of the Proceeds of Crime Act 2002 (c. 29) (searches) is amended as set out in subsections (2) to (4).

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*Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, Cross Heading: Civil recovery. (See end of Document for details)*

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(2) After subsection (1) insert—

“(1A) The powers specified in subsection (1D) are exercisable if—

- (a) a customs officer, a constable or an accredited financial investigator has reasonable grounds for suspecting that there is cash falling within subsection (1E) in a vehicle, and
- (b) it appears to the officer, constable or investigator that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle.

(1B) The powers are exercisable only if the vehicle is—

- (a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
- (b) in any other place to which at that time people have ready access but which is not a dwelling.

(1C) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the customs officer, constable or accredited financial investigator may exercise the powers under subsection (1D) only if the officer, constable or investigator has reasonable grounds for believing—

- (a) that the suspect does not reside in the dwelling, and
- (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(1D) The customs officer, constable or accredited financial investigator may, so far as the officer, constable or investigator thinks it necessary or expedient, require the suspect to—

- (a) permit entry to the vehicle,
- (b) permit a search of the vehicle.

(1E) Cash falls within this subsection if—

- (a) it is recoverable property or is intended by any person for use in unlawful conduct, and
- (b) the amount of it is not less than the minimum amount.”

(3) In subsection (4) for the words from “exercising” to the end substitute “may—

- (a) in exercising powers by virtue of subsection (1D), detain the vehicle for so long as is necessary for their exercise,
- (b) in exercising powers by virtue of subsection (3)(b), detain the suspect for so long as is necessary for their exercise.”

(4) In subsection (5)(c) for the words from “premises” to the end substitute “the following

- (i) premises in England, Wales or Northern Ireland (in the case of subsection (1)),
- (ii) vehicles and suspects in England, Wales or Northern Ireland (in the case of subsections (1D) and (4)(a)),
- (iii) suspects in England, Wales or Northern Ireland (in the case of subsections (2), (3) and (4)(b)).”

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**Commencement Information**

- I2** S. 63 in force at 1.3.2016 in so far as not already in force by S.I. 2016/147, **art. 3(d)**
- I3** S. 63(1)-(3) in force at 1.6.2015 for E.W.S. by S.I. 2015/983, **art. 2(2)(b)**
- I4** S. 63(4) in force at 1.6.2015 for specified purposes for E.W.S. by S.I. 2015/983, **art. 2(2)(b)**

**64 Detention of seized cash**

- (1) In section 295(2)(a) of the Proceeds of Crime Act 2002 (c. 29) (period for which court may authorise further detention of seized cash) for “three months” substitute “ six months ”.
- (2) The amendment made by subsection (1) applies in relation to cash seized before or after the commencement of this section.

**Commencement Information**

- I5** S. 64 in force at 25.1.2010 by S.I. 2009/3096, **art. 3(i)**

**65 Forfeiture of detained cash**

- (1) After section 297 of the Proceeds of Crime Act 2002 insert—

*“Forfeiture without court order*

**297A Forfeiture notice**

- (1) Subsection (2) applies while any cash is detained in pursuance of an order under section 295(2) made by a magistrates' court in England and Wales or Northern Ireland.
- (2) A senior officer may give a notice for the purpose of forfeiting the cash or any part of it if satisfied that the cash or part—
  - (a) is recoverable property, or
  - (b) is intended by any person for use in unlawful conduct.
- (3) The Secretary of State must make regulations about how a notice is to be given.
- (4) The regulations may provide—
  - (a) for a notice to be given to such person or persons, and in such manner, as may be prescribed;
  - (b) for a notice to be given by publication in such manner as may be prescribed;
  - (c) for circumstances in which, and the time at which, a notice is to be treated as having been given.
- (5) The regulations must ensure that where a notice is given it is, if possible, given to every person to whom notice of an order under section 295(2) in respect of the cash has been given.

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- (6) A senior officer means—
- (a) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer,
  - (b) a senior police officer, or
  - (c) an accredited financial investigator.
- (7) A senior police officer means a police officer of at least the rank of inspector.
- (8) A notice under this section is referred to in this Chapter as a forfeiture notice.

### **297B Content**

- (1) A forfeiture notice must—
- (a) state the amount of cash in respect of which it is given,
  - (b) state when and where the cash was seized,
  - (c) confirm that the senior officer is satisfied as mentioned in section 297A(2),
  - (d) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and
  - (e) explain that the cash will be forfeited unless an objection is received at that address within the period for objecting.
- (2) The period for objecting must be at least 30 days starting with the day after the notice is given.

### **297C Effect**

- (1) This section applies if a forfeiture notice is given in respect of any cash.
- (2) The cash is to be detained until—
- (a) the cash is forfeited under this section,
  - (b) the notice lapses under this section, or
  - (c) the cash is released under a power conferred by this Chapter.
- (3) If no objection is made within the period for objecting, and the notice has not lapsed, the cash is forfeited (subject to section 297E).
- (4) If an objection is made within the period for objecting, the notice lapses.
- (5) If an application is made for the forfeiture of the whole or any part of the cash under section 298, the notice lapses.
- (6) If the cash or any part of it is released under a power conferred by this Chapter, the notice lapses or (as the case may be) lapses in relation to that part.
- (7) An objection may be made by anyone, whether a recipient of the notice or not.
- (8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.
- (9) An objection does not prevent forfeiture of the cash under section 298.
- (10) Nothing in this section affects the validity of an order under section 295(2).

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### **297D Detention following lapse of notice**

- (1) This section applies if—
  - (a) a forfeiture notice is given in respect of any cash,
  - (b) the notice lapses under section 297C(4), and
  - (c) the period for which detention of the cash was authorised under section 295(2) has expired.
- (2) The cash may be detained for a further period of up to 48 hours (calculated in accordance with section 295(1B)).
- (3) But if within that period the Commissioners for Her Majesty's Revenue and Customs, a constable or an accredited financial investigator decides that neither of the applications mentioned in subsection (4) ought to be made, the cash must be released.
- (4) The applications are—
  - (a) an application for a further order under section 295(2);
  - (b) an application for forfeiture of the cash under section 298.
- (5) “ If within that period an application is made for a further order under section 295(2) the cash may be detained until the application is determined or otherwise disposed of. ”

### **297E Application to set aside forfeiture**

- (1) This section applies if any cash is forfeited in pursuance of a forfeiture notice.
- (2) A person aggrieved by the forfeiture may apply to a magistrates' court in England and Wales or Northern Ireland for an order setting aside the forfeiture of the cash or any part of it.
- (3) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended.
- (4) But the court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—
  - (a) failed to object to the forfeiture within the period for objecting, and
  - (b) failed to make an application within the 30-day period.
- (5) On an application under this section the court must consider whether the cash to which the application relates could be forfeited under section 298 (ignoring the forfeiture mentioned in subsection (1) above).
- (6) If the court is satisfied that the cash to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that cash or part.
- (7) Where the court sets aside the forfeiture of any cash—
  - (a) it must order the release of that cash, and
  - (b) that cash is to be treated as never having been forfeited.

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### **297F Release of cash subject to forfeiture notice**

- (1) This section applies while any cash is detained under section 297C or 297D.
- (2) A magistrates' court may direct the release of the whole or any part of the cash if the following condition is met.
- (3) The condition is that the court is not satisfied, on an application by the person from whom the cash was seized, that the cash to be released—
  - (a) is recoverable property, or
  - (b) is intended by any person for use in unlawful conduct.
- (4) An officer of Revenue and Customs, constable or accredited financial investigator may release the cash or any part of it if satisfied that the detention of the cash to be released is no longer justified.

### **297G Application of forfeited cash**

- (1) Cash forfeited in pursuance of a forfeiture notice, and any accrued interest on it, is to be paid into the Consolidated Fund.
- (2) But it is not to be paid in—
  - (a) before the end of the period within which an application under section 297E may be made (ignoring the possibility of an application by virtue of section 297E(4)), or
  - (b) if an application is made within that period, before the application is determined or otherwise disposed of.”
- (2) In section 298(1) of that Act (forfeiture by court order) after “section 295” insert “, 297C or 297D ”.
- (3) In section 299(4) of that Act (appeal against forfeiture order: release of cash) for “order the release of the cash” substitute “ order the release of the whole or any part of the cash ”.
- (4) In section 297A(1) of that Act (inserted by subsection (1) above) the reference to an order includes an order made before the commencement of this section.

#### **Commencement Information**

- I6** S. 65(1) in force at 22.11.2014 for specified purposes by S.I. 2014/3101, art. 3
- I7** S. 65(1) in force at 1.6.2015 for specified purposes by S.I. 2015/983, art. 2(2)(c)
- I8** S. 65(1) in force at 1.3.2016 in so far as not already in force by S.I. 2016/147, art. 3(e)
- I9** S. 65(2)-(4) in force at 1.6.2015 by S.I. 2015/983, art. 2(2)(c)

**Changes to legislation:**

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