

**REPORT FOR 2014-2015
OF
THE APPOINTED PERSON FOR NORTHERN IRELAND
UNDER
SECTION 291 OF THE PROCEEDS OF CRIME ACT 2002**

The Appointed Person

This is my third report as the Appointed Person appointed by the Department of Justice pursuant to section 290(8)(c) of the Proceeds of Crime Act 2002 ('the Act'). It covers the year ended 31 March 2015.

The Appointed Person is independent of the Northern Ireland Executive and by virtue of section 290(9) of the Act must not be employed under or for the purposes of any department.

The role of the Appointed Person is to provide independent oversight of the use of certain powers to search for cash that can be exercised without prior judicial approval. Section 291 of the Act provides that as soon as practicable after 31 March each year the Appointed Person must make a report and send a copy of it to the Department of Justice who must arrange for it to be laid before the Northern Ireland Assembly.

In that report the Appointed Person must *'give his opinion as to the circumstances and manner in which the powers conferred by section 289 are being exercised'* in cases where prior approval for the search was not obtained from a justice of the peace and either no cash was seized or any cash that was seized was not detained for more than 48 hours. The report may also set out any recommendations the Appointed Person considers appropriate.

Relevant Statutory Provisions

Sections 289 to 303 of the Act make provision for the recovery of cash in civil proceedings. Whilst these provisions have been revised extensively since coming into operation in 2002, no further amendments to them have been made during the reporting period. All references to the provisions are to them as they were in force in Northern Ireland throughout the reporting year.

Section 289 of the Act empowers officers of HM Revenue and Customs ('HMRC'), immigration officers' constables, and accredited financial investigators, in prescribed circumstances, to search property and persons for cash. Cash is widely defined in the section.

Section 290 provides that appropriate prior approval must be obtained for any such search unless it is impracticable to do so. Appropriate approval can be given only by a justice of the peace or, if that is not practicable, by a senior officer. A senior officer in relation to constables means a police officer not below the rank of inspector, in relation to HMRC officers an officer of a rank designated by the Commissioners of HM Revenue and Customs, for immigration officers a civil servant not below the grade of Assistant Director and for accredited financial investigators an accredited financial investigator of a description specified by the Department of Justice.

The section provides that where any search is carried out without prior judicial approval and either no cash is seized or any cash seized is not detained for more than 48 hours, a report must be made to the Appointed Person.

Any such report must be made in writing by the officer who carried out the search. It must set out the circumstances that led the officer to believe that the powers were exercisable and why it was not practicable to obtain prior judicial approval. The Code of Practice, made under section 292, provides that the report must be made as soon as practicable and in all cases within 14 days of the search.

Although not directly relevant to the role of the Appointed Person, it should be noted that section 294 provides for the seizure of cash found as a result of a search whilst section 295 makes provision for the detention of seized cash, by order of a magistrates' court, for a period of up to six months. Further orders may be made extending the total period of detention up to a maximum of two years from the date of the first order. Accordingly, there is judicial oversight of the detention of any cash seized without prior judicial approval and held for more than 48 hours.

Section 298 makes provision for the judicial forfeiture of detained cash.

Circumstances and manner in which section 289 powers exercised

The PSNI submitted to me the first report from Northern Ireland since the Act was commenced. That report was in respect of a section 289 search carried out in February 2015. On the basis of the information given in that report I am satisfied that the use of the section 289 search power without prior judicial approval was fully justified and appropriate.

However, the report of that search did not reach me until nearly 11 weeks after the deadline for submission specified in the Code. I have been told that the failure to submit the report by the specified time was due to an administrative error and that action has been taken to prevent any repetition of the failure.

Under the Code of Practice any reports to the Appointed Person are to be sent to an address in the Home Office. Officials there have confirmed that no reports from Northern Ireland were received in respect of the year to 31 March 2015. The PSNI report referred to was, contrary to the provisions of the Code, sent directly to me.

Other considerations

I was pleased to note the significant efforts again made by HMRC to ensure that their officers are aware of their powers and duties under sections 289 and 290. These sections are dealt with in the Foundation Programme undertaken by all criminal investigation officers. They are also covered in a number of other training courses undertaken by those officers most likely to exercise the section 289 search powers. Consideration is currently being given to the inclusion of the requirement to submit a

report to the Appointed Person in the annual Core Professional Development undertaken by officers. New Codes of Practice, including a Code under section 292, have been brought into force in both Scotland and England and Wales. HMRC have reminded their officers that the old codes remain in force in Northern Ireland.

In my report for 2013 – 2014 I noted that although under the Act immigration officers were entitled to use the section 289 search powers they did not, in practice, do so. Those in Border Force relied instead on powers available to them under the Customs and Excise Management Act 1979 whilst those in Home Office Immigration Enforcement had been instructed not to use their section 289 powers because the old Code of Practice did not apply to them. Following the bringing into force of new section 292 Codes in both Scotland and England and Wales that restriction has been rescinded in Great Britain. It remains in place for Northern Ireland until a new section 292 Code is in force in this jurisdiction.

The National Crime Agency has, through the Proceeds of Crime Centre, continued to deliver training in the relevant provisions to all accredited financial investigators in Northern Ireland as well as those in England and Wales. That training is subject to National Occupational Standards and includes a pre-course examination, classroom assessment and submission of a Personal Development Portfolio. Only after all aspects have been completed to a satisfactory standard is a financial investigator accredited. Those that are accredited are subject to the Continuing Professional Development programme which requires them to provide evidence of their use of the powers available under the Act. The programme includes monthly activities reflecting developments in legislation, case law and best practice.

The PSNI approach to training its officers in their powers and duties under sections 289 and 290 compares unfavourably with that of the other agencies operating in Northern Ireland. In my 2012-13 report I welcomed the intention of the PSNI to consider the need to raise the awareness of its officers of the powers available to them under section 289 and their duties under section 290. No significant action followed. In spring 2014 I was told that a new two day training course had been developed but that no decision had yet been taken on when its delivery would commence. I have recently been told that due to *'the substantial change process ongoing within PSNI'* delivery of that course had still not started although it was expected to commence at an unspecified date during 2015-16. Before delivery can be commenced the course content will, of course, have to be revised to reflect the new section 292 Code of Practice. Whilst it is unrealistic to expect most front line PSNI officers to have a full understanding of their powers and duties under sections 289 and 290 of the Act it is very regrettable that, having identified a training need two years ago, no adequate training or information on these matters had been provided to PSNI officers by the end of the reporting year.

I was pleased to learn that the Department for Justice hoped shortly to commence public consultation on three new Northern Ireland specific Codes of Practice, including a section 292 Code, within the next few months and that it was hoped that they would be in force by the end of 2015. These new Codes, with terminology appropriate for

Northern Ireland, will represent a significant improvement both for those charged with using the section 289 powers and for those against whom these powers are used. In my last report I recommended that any new section 292 Code should clarify what is required when a number of searches, which require to be reported under section 290, are carried out simultaneously at different locations as part of the same investigation or where a search is carried out by more than one officer. I understand that the draft of the new Code will reflect that recommendation.

Recommendations

I recommend that PSNI provide appropriate training to officers on their powers and duties under sections 289 and 290 and under the new section 292 Code of Practice.

Douglas Bain

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20 July 2015