

**THE PROCEEDS OF CRIME ACT 2002  
(PART 5, CHAPTER 3)**

**REPORT OF THE APPOINTED PERSON FOR SCOTLAND**

**2002-2003**

**LAI D BEFORE THE SCOTTISH PARLIAMENT BY THE SCOTTISH  
MINISTERS UNDER SECTION 291 OF THE PROCEEDS OF CRIME  
ACT 2002**

**SE/2003/167**

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## **(PART 5, CHAPTER 3)**

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### **1. The Proceeds of Crime Act 2002**

1.1 On 24<sup>th</sup> July 2002, the Proceeds of Crime Act 2002 received Royal Assent. The Act was designed to be innovative in a number of respects concerning the seizure and confiscation of assets under particular circumstances outlined in the Act.

1.2 Consistent with the intention within the Act, it was necessary to establish procedures and grant powers to permit the proper operation of the Act to facilitate the achievement of the objectives.

### **2. The Position of the Appointed Person**

2.1 Although the Act is wide ranging in its procedures, the position of the Appointed Person is particular to one very specific area. Section 290 of the Act, provides the basis for the appointment. The position of Appointed Person was created to ensure that there were proper safeguards against the possible misuse of the power to search for and summarily seize money and other similar property as defined in the Act, and in turn lessen any potential exposure of the legislation itself to the challenge that it contravened rights enshrined in the European Convention on Human Rights and Fundamental Freedoms. Furthermore, seizures carried out within the terms of the Act may also be individually exposed to such an allegation. Accordingly, the independent scrutiny of the Appointed Person was designed to alleviate those concerns.

2.2 I was appointed to the position of Appointed Person by the Scottish Ministers, in terms of section 290(8)(b) of the Act with effect from 18<sup>th</sup> December 2002. A similar

position exists for the remainder of the United Kingdom, with appointment being made under that section by the Secretary of State in terms of section 290(8)(a).

2.3 The Appointed Person in each jurisdiction is entirely independent, despite the appointment being by the appropriate Government body and the requirement to report in terms of section 291.

2.4 This report is one which is prepared having due regard to that independence.

### **3. The Requirement of the Report by the Appointed Person**

3.1 Section 291 of the Act requires me to produce a report for the period dating from the coming in to force of the provisions summarised above, to 31<sup>st</sup> March 2003 and thereafter annually. The report must give my opinion as to the “circumstances and manner in which the powers conferred by section 298 are being exercised” in cases where a report is required.

3.2 The section also permits my making recommendations. [section 291(3)]

### **4. The Powers under the Act that the Appointed Person is required to scrutinise**

4.1 It will be appreciated that in considering the powers available, there can be no exhaustive summary and the Act requires direct consideration. However, to place this report in context, it may be useful to provide a rough summary of the powers that exist under the relevant provisions of the Act.

4.2 Searches carried out by police officers or by customs officers in terms of section 289 of the Act are permitted in circumstances which were not permitted prior to the operation of the Act. Broadly speaking, should the relevant officer have reasonable grounds for suspecting that there is on premises [section 289(1)] or in the possession of a person [section 289(2)] cash which could otherwise be recovered under the Act [viz. it is the proceeds of unlawful conduct] or is to be used in unlawful conduct, then it may be seized. It is envisaged that such searches are searches where there is no warrant currently in force justifying the search. For example, a customs officer may receive information from Airport security about

suspicious contents of hand luggage. The urgency of the situation may permit a search acting on that information, where it is not possible to obtain a warrant to carry out the search.

4.3 The following two points should be noted: first, there is a statutory minimum which enables seizure, currently at £10,000. Second, the term “cash” has a particular definition which stretches beyond what would colloquially be considered to be cash: it includes such items as cheques and postal orders [see section 289].

4.4 The Act provides that efforts should be made to obtain approval of, in Scotland, a Sheriff. [section 290(2) and 290(3)] If that is not practicable, approval of a “senior officer” as defined in section 290(4) and 290(5) must be obtained; but in any case where the Sheriff has not given approval and a search takes place, and either no cash is seized or it is seized but not detained for more than 48 hours, then a report must be submitted to the Appointed Person [section 290(6)].

4.5 Although the terms of these sections of the Act are very particular, it can be fairly summarised that where an officer as it were stumbles across suspicious cash or equivalent, and is not in the course of acting upon a warrant or other authority, then a search can take place without warrant. If no cash is found, or the cash is not detained for more than 48 hours (in which event procedures exist to bring the matter under the protection of the Court – see section 295) then a report must be submitted. It is therefore, as it were, urgent but fruitless searches which come under scrutiny and require reports.

## **5. Information made available to me generally**

5.1 The legislation clearly presents new challenges for the agencies granted these new powers. In recognition of that fact, I have to date had the opportunity of meeting with Senior Officers of Customs and Excise in not only their offices in Edinburgh but also in London.

5.2 I am indebted to them for their guidance on the practicalities of their work and its interface with the new legislation. The officers in Edinburgh have been instrumental in designing a fast track system of reports on a pro forma basis, which assists in guiding officers who are required to complete the forms through the various stages set out in the Act. The

form of report is most helpful to me and is commended as a model which should be followed in all reports. It ensures that all information that must be reported to me is in fact so reported. That standard form is now utilised throughout the United Kingdom.

5.3 I had demonstrated to me the Customs and Excise database which permits close tracking of search and seizure operations to ensure efficiency and compliance. Again this appeared to me to be a model of clarity which is to be commended.

5.4 I have also met with the relevant department of the Crown Office, who provided me with significant assistance with the broader picture of the operation of the Act.

5.5 It is my intention to meet with members of the Association of Chief Police Officers in Scotland in the near future to discuss matters generally with them about the requirements upon them in terms of the Act.

5.6 I have also had the opportunity of meeting with Andrew Clarke QC, the appointed person for England, Wales and Northern Ireland. I found our meeting to be extremely helpful in analysing the experience he had arising from his appointment, which broadly accorded with my own.

## **6. The content of reports received**

6.1 For the period that this report is required to consider, I have received three reports, all from Customs and Excise. Although three separate reports were submitted as three individuals were subjected to the provisions of the Act, the individuals were all travelling together and stopped at an airport. The powers were exercised under the appropriate section on account of urgency. The individuals searched would have missed onward connecting flights had approval of a judicial officer been obtained.

6.2 The aggregate amount of cash fell a short distance below the sum of £10,000.

6.3 Although I have received one report from Strathclyde Police, the report did not fall within the terms of the provisions for which I have responsibility and accordingly is not relevant for the purposes of this report.

## **7. Conclusions and Recommendations**

7.1 It is in many ways hardly surprising that there have been so few reports in Scotland. The whole purpose of the legislation is to ensure, so far as possible, that searches and seizures are carried out with the appropriate judicial approval having been obtained. The powers under the Act are to be viewed very much as a last resort.

7.2 The low number of reports is also probably due to not only the fact that this part of the Act is fairly recently in force, but also the powers under it are not yet as widely known to all of the officers who are empowered to use them. This is not in any way a criticism. The powers are very different to those that pre dated the legislation, and there may be some understandable hesitation in utilising those powers at early stages.

7.3 I am unable to draw any conclusions about the operation of the provisions, with such a small number of reports. I would anticipate, however, that by the end of the next financial year (should a reasonable number of reports be forthcoming) I would be able to draw conclusions and make recommendations if appropriate.

Reported by

Andrew Smith QC

Care of  
The Scottish Executive  
Criminal Justice Division  
St.Andrew's House  
Regent Road  
Edinburgh

**SCOTTISH PARLIAMENT**

**WRITTEN ANSWER**

**For answer at 9 a.m.**

24 June 2002

Index Heading: Justice Department

**(MSP's name) (Party):** To ask the Scottish Executive when the Appointed Person's report under section 291 of the Proceeds of Crime Act 2002 will be laid before the Scottish Parliament.

**Cathy Jamieson:**

The Appointed Person's report is being laid before the Scottish Parliament and is also being published today.

Copies of the report have been placed in the Scottish Parliament Information Centre (SPICe).

**SCOTTISH EXECUTIVE**