

Statutory Document No. 2009/0456



*Proceeds of Crime Act 2008*

## **PROCEEDS OF CRIME (APPLICATION OF POLICE POWERS AND PROCEDURES ACT 1998) ORDER 2009<sup>1</sup>**

*Approved by Tynwald:* 14 July 2009  
*Coming into operation:* 1 August 2009

The Department of Home Affairs makes this Order under section 172 of the Proceeds of Crime Act 2008<sup>1</sup>.

### **1 Title**

This Order is the Proceeds of Crime (Application of Police Powers and Procedures Act 1998) Order 2009.

### **2 Commencement**

If approved by Tynwald<sup>2</sup>, this Order comes into operation on 1 August 2009.

### **3 Interpretation**

In this Order “the Act” means the Police Powers and Procedures Act 1998<sup>3</sup>.

### **4 Application of section 18 of the Act**

- (1) Section 18 of the Act (search warrants – safeguards) applies to search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation, with the modifications in paragraph (2).
- (2) The modifications are that –
  - (a) for subsection (1), substitute –

**(1)** This section and section 19 have effect in relation to the issue to an appropriate officer (within the meaning of Part 4 of the Proceeds of Crime Act 2008) of a search and seizure warrant under section 169 of the Proceeds of Crime Act 2008 for the purposes of a confiscation

<sup>1</sup> 2008 c.13

<sup>2</sup> As required by section 223(3) of the Act

<sup>3</sup> 1998 c.9

- investigation or a money laundering investigation and an entry on or search of premises under such a warrant is unlawful unless the warrant complies with this section and is executed in accordance with section 19, **22**;
- (a) in subsection (2), for “a constable”, there is substituted **23**an appropriate officer **22**;
  - (b) in subsection (2), paragraph (b) is omitted;
  - (c) in subsection (2), paragraph (c) is omitted;
  - (d) in subsection (3), the words “and supported by information in writing” are omitted;
  - (e) in subsection (4), for “constable”, there is substituted **23**appropriate officer **22**;
  - (f) in subsection (4), the words “justice of the peace or” are omitted;
  - (g) in subsection (6), for sub-paragraph (iii) of paragraph (a), substitute —
    - 23**(iii) the statutory power under which it is issued and, unless “in the case of a warrant which is issued because the Deemster orders otherwise, an indication of the nature of the investigation in respect of which is issued; and **22**;
  - (h) in subsection (6), at the beginning of paragraph (b), insert **23**in the case of a warrant which is issued because the Deemster is satisfied that the requirement in section 169(6)(a) of the Proceeds of Crime Act 2008 is satisfied (production order made and not complied with), **22**;
  - (i) in subsection (6)(b), for “articles or persons”, there is substituted **23**material **22**.

## 5 Application of section 19 of the Act

- (1) Section 19 of the Act (execution of warrants) applies to search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation, with the modifications in paragraph (2).
- (2) The modifications are that —
  - (a) subsection (1) is omitted;
  - (b) in subsection (2), for “Such a warrant”, substitute **23**A Search and seizure warrant issued under section 169 of the Proceeds of Crime Act 2008 **22**;
  - (c) in subsection (2), for “constable”, substitute **23**appropriate person (within the meaning of Part 4 of the Proceeds of Crime Act 2008) **22**;
  - (d) for “the constable”, in each subsequent place where it occurs, substitute **23**the appropriate person **22**;

- (e) for (“a constable”, in each subsequent place where it occurs, substitute **“an appropriate person”**;
- (f) at the beginning of subsection (9), insert **“In the case of a warrant which is issued because the Deemster is satisfied that the requirement in section 169(6)(a) of the Proceeds of Crime Act 2008 is satisfied (production order made and not complied with),”**;
- (g) in subsection (9)(a), for “articles or persons sought were”, substitute **“material sought was”**;
- (h) in subsection (9)(b), for “articles were seized, other than articles which were”, substitute **“material was seized, other than material which was”**.

## 6 Application of section 24 of the Act

- (1) Section 24 of the Act (access and copying) applies to powers of seizure under search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation, with the modifications in paragraph (2).
- (2) The modifications are that —
  - (a) in subsection (1), for “A constable”, substitute **“An appropriate person (within the meaning of Part 4 of the Proceeds of Crime Act 2008)”**;
  - (b) in subsection (1), for “in the exercise of a power conferred by any enactment, including an enactment contained in an Act passed after this Act,” substitute **“under a search and seizure warrant issued under section 169 of the Proceeds of Crime Act 2008 for the purposes of confiscation investigation or a money laundering investigation”**;
  - (c) in subsection (2), for “officer”, substitute **“appropriate person”**;
  - (d) in subsection (3), for “a constable” where first occurring, substitute, **“an appropriate person”**;
  - (e) in subsection (3)(b), for “the police”, substitute **“the appropriate person or an appropriate officer (within the meaning of Part 4 of the Proceeds of Crime Act 2008)”**;
  - (f) in subsection (3)(b), the words “for the purpose of investigating an offence” are omitted;
  - (g) in subsection (3), before “officer in charge of the investigation”, insert **“appropriate”**;
  - (h) in subsection (3), for “a constable” in the second place where it occurs, substitute **“an appropriate officer”**;
  - (i) in subsection (4), before “officer in charge of the investigation”, insert **“appropriate”**;

- (j) in subsection (4)(a), for “a constable”, substitute **“an appropriate officer”**;
- (k) in subsection (5), for “A constable”, substitute **“An appropriate person”**;
- (l) in section (8), before “officer in charge of the investigation”, insert **“appropriate”**;
- (m) in subsection (8)(b), the words “other than the offence for the purposes of investigating which the thing was seized” are omitted;
- (n) in subsection (8)(c), after “criminal proceedings”, insert **“(including proceedings related to the making of a confiscation order)”**.

## 7 Application of section 25 of the Act

- (1) Section 25 of the Act (retention) applies to powers of seizure under search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation, with the modifications in paragraph (2).
- (2) The modifications are that —
  - (a) in subsection (1), for “a constable” where first occurring, substitute **“an appropriate person (within the meaning of Part 4 of the Proceeds of Crime Act 2008)”**;
  - (b) in subsection (1), for “a constable” in the second place where it occurs, substitute **“an appropriate person”**;
  - (c) in subsection (1), for “following a requirement made by virtue of section 22 or 23”, substitute **“under a search and seizure warrant issued under section 169 of the Proceeds of Crime Act 2008 for the purposes of a confiscation investigation or a money laundering investigation”**;
  - (d) in subsection (1), after “retained”, insert **“by the appropriate person or an appropriate officer (within the meaning of Part 4 of the Proceeds of Crime Act 2008)”**;
  - (e) in subsection (2), for “criminal investigation”, substitute **“confiscation investigation or money laundering investigation”**;
  - (f) after subsection (2)(a)(i), the word “or” is omitted;
  - (g) after subsection (2)(a)(ii), the word “and” is omitted;
  - (h) after subsection (2)(a)(ii) insert —
    - “(iii) for use as evidence in proceedings relating to the making of a confiscation order under the Drug Trafficking Offences Act 1987<sup>4</sup>, Part 1 of the Criminal**

<sup>4</sup> 1987 c.2

Justice Act 1990<sup>5</sup>, Part 1 of the Drug Trafficking  
Act 1996<sup>6</sup> or Part 2 of the Proceeds of Crime Act 2008;  
or

(iv) for forensic examination or for investigation in  
connection with a confiscation investigation or  
money laundering investigation; and **2**;

(i) subsections (3) and (5) are omitted.

## 8 Modified sections of the Act

For ease of reference sections 18, 19, 24 and 25 of the Act, as modified by articles 4  
to 7 of this Order, are set out in the Schedule of this Order.

MADE 16 JUNE 2009

---

<sup>5</sup> 1990 c.1

<sup>6</sup> 1996 c.3



SCHEDULE

Article 8

SECTIONS 18, 19, 24 AND 25 OF THE POLICE POWERS AND PROCEDURES ACT  
1998 AS MODIFIED

**18 Search warrants – safeguards**

- (1) This section and section 19 have effect in relation to the issue to an appropriate officer (within the meaning of Part 4 of the Proceeds of Crime Act 2008) of a search and seizure warrant under section 169 of the Proceeds of Crime Act 2008 for the purposes of a confiscation investigation or a money laundering investigation and an entry on or search of premises under such a warrant is unlawful unless the warrant complies with this section and is executed in accordance with section 19.
- (2) Where an appropriate officer applies for any such warrant, it shall be his duty –
  - (a) to state –
    - (i) the grounds on which he makes the application; and
    - (ii) the enactment under which the warrant would be issued;
  - ~~(b) to specify the premises which it is desired to enter and search; and~~
  - ~~(c) to identify, so far as is practicable, the articles or persons to be sought.~~
- (3) An application for such a warrant shall be made ex parte ~~and supported by information in writing.~~
- (4) The appropriate officer shall answer on oath any question that the justice ~~of the peace or~~ Deemster hearing the application asks him.
- (5) A warrant shall authorise an entry on one occasion only.
- (6) A warrant –
  - (a) shall specify –
    - (i) the name of the person who applies for it;
    - (ii) the date on which it is issued;
    - (iii) the statutory power under which it is issued and, unless the Deemster orders otherwise, an indication of the nature of the investigation in respect of which it is issued; and
    - (iv) the premises to be searched; and
  - (b) in the case of a warrant which is issued because the Deemster is satisfied that the requirement in section 169(6)(a) of the Proceeds of Crime Act 2008 is satisfied (production order made and not

complied with), shall identify, so far as practicable, the material to be sought.

- (7) One copy shall be made of a warrant.
- (8) The copy shall be clearly certified as a copy.

## 19 Execution of warrants

~~(1) A warrant to enter and search premises may be executed by any constable.~~

(2) A search and seizure warrant issued under section 169 of the Proceeds of Crime Act 2008 may authorise persons to accompany any appropriate person (within the meaning of Part 4 of the Proceeds of Crime Act 2008) who is executing it.

(3) Entry and search under a warrant must be within one month from the date of its issue.

(4) Entry and search under a warrant must be at a reasonable hour unless it appears to the appropriate officer executing it that the purpose of the search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises which are to be entered and searched is present at the time when a constable seeks to execute a warrant to enter and search them, the appropriate officer —

- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is an appropriate officer;
- (b) shall produce the warrant to him; and
- (c) shall supply him with a copy of it.

(6) Where —

- (a) the occupier of such premises is not present at the time when an appropriate officer seeks to execute such a warrant; but
- (b) some other person who appears to the appropriate officer to be in charge of the premises is present,

subsection (5) shall have effect as if any reference to the occupier were a reference to that other person.

(7) If there is no person present who appears to be the appropriate officer to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(9) In the case of a warrant issued because the Deemster is satisfied that the requirement of section 169(6)(a) of the Proceeds of Crime Act 2008 is satisfied (production order made and not complied with), an appropriate officer executing a warrant shall make an endorsement on it stating —



- (a) whether the material sought was found; and
- (b) whether any material was seized, other than material which was sought.

## 24 Access and copying

- (1) An appropriate person (within the meaning of Part 4 of the Proceeds of Crime Act 2008) who seizes anything under a search and seizure warrant issued under section 169 of the Proceeds of Crime Act 2008 for the purposes of a confiscation investigation or a money laundering investigation, shall, if so requested by a person showing himself —
  - (a) to be the occupier of premises on which it was seized; or
  - (b) to have had custody or control of it immediately before the seizure, provide that person with a record of what he seized.
- (2) The appropriate person shall provide the record within a reasonable time from the making of the request for it.
- (3) Subject to subsection (8), if a request for permission to be granted access to anything which —
  - (a) has been seized by an appropriate person; and
  - (b) is retained by the appropriate person or an appropriate officer (within the meaning of Part 4 of the Proceeds of Crime Act 2008) ~~for the purpose of investigating an offence,~~is made to the appropriate officer in charge of the investigation by a person who has custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an appropriate officer.
- (4) Subject to subsection (8), if a request for a photograph or copy of any such thing is made to the appropriate officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall —
  - (a) allow the person who made the request access to it under the supervision of an appropriate officer for the purpose of photographing or copying it; or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (5) An appropriate person may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4).
- (6) Where anything is photographed or copied under subsection (4)(b), the photograph or copy shall be supplied to the person who made the request.

- (7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.
- (8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the appropriate officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice —
- (a) that investigation;
  - (b) the investigation of an offence ~~other than the offence for the purposes of which the thing was seized~~; or
  - (c) any criminal proceedings (including proceedings related to the making of a confiscation order) which may be brought as a result of —
    - (i) the investigation of which he in charge; or
    - (ii) any such investigation as is mentioned in paragraph (b).

## 25 Retention

- (1) Subject to subsection (4), anything which has been seized by an appropriate officer (within the meaning of Part 4 of the Proceeds of Crime Act 2008) or taken away by an appropriate officer under a search and seizure warrant issued under section 169 of the Proceeds of Crime Act 2008 for the purposes of a confiscation investigation or a money laundering investigation may be retained by the appropriate person or an appropriate officer (within the meaning of Part 4 of the Proceeds of Crime Act 2008) so long as is necessary in all the circumstances.
- (2) Without prejudice to the generality of subsection (1) —
- (a) anything seized for the purposes of a confiscation investigation or money laundering investigation may be retained, except as provided by section (4) —
    - (i) for use as evidence at a trial for an offence; ~~or~~
    - (ii) for forensic examination or for investigation in connection with an offence; ~~or~~
    - (iii) for use as evidence in proceedings relating to the making of a confiscation order under the Drug Trafficking Offences Act 1987, Part 1 of the Criminal Justice Act 1990, Part 1 of the Drug Trafficking Act 1996 or Part 2 of the Proceeds of Crime Act 2008; or
    - (iv) for forensic examination or for investigation in connection with a confiscation investigation or money laundering investigation; and
  - (b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

- ~~(3) Nothing seized on the grounds that it may be used—~~
- ~~(a) to cause physical injury to any person;~~
  - ~~(b) to damage property;~~
  - ~~(c) to interfere with evidence; or~~
  - ~~(d) to assist in escape from police detention or lawful custody;~~
- ~~may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.~~
- (4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.
- ~~(5) Nothing in this section affects any power of a court to make an order under section 34 of the Summary Jurisdiction Act 1989 (disposal of property in possession of police).~~

## ENDNOTES

### Table of Endnote References

---

<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.