

Supplemental provisions in relation to section 787(3) to (5)

788. (1) In this section—

“extended power of seizure” shall be read in accordance with section 787 (3) or (4), as appropriate;

“material information” has the same meaning as it has in section 787;

“officer” means the officer named as mentioned in section 787 (2) in the warrant concerned;

“seizable information” shall be read in accordance with section 787 (4).

(2) Save where the officer is of opinion that compliance with this subsection could result in the concealment, falsification, destruction or the disposal otherwise of material information, an extended power of seizure shall not be exercised unless the officer has first made the following arrangements in relation to the thing or things, the subject of the proposed exercise of that power, namely reasonable arrangements:

(a) providing for the appropriate storage of that thing or those things;

(b) allowing reasonable access, from time to time, to that thing or those things by the owner, lawful custodian or possessor thereof (including, in the case of documents or information in non-legible form, by the making of copies or the transmission of matter by electronic means); and

(c) providing for confidentiality to be maintained as regards any confidential matter comprised in that thing or those things;

being arrangements to apply pending the making of the foregoing determination or the carrying out of the foregoing separation and the consequent return of anything to the owner, lawful custodian or possessor that is not material information.

(3) In deciding what the terms of those arrangements shall be, the officer shall have regard to any representations reasonably made on the matter by the owner, lawful custodian or possessor of the thing or things and endeavour, where practicable, to secure the agreement of that person to those terms.

(4) Where—

(a) by reason of the officer being of the opinion referred to in subsection (2), the arrangements referred to in paragraphs (a) to (c) of that subsection are not made in relation to the thing or things the subject of the proposed exercise of the extended power of seizure, or

(b) circumstances arise subsequent to the exercise of the extended power of seizure that make it appropriate to vary the arrangements made under that subsection,

the officer shall, as the case may be—

(i) make, as soon as practicable after the exercise of that power of seizure, the arrangements referred to in subsection (2)(a) to (c) in relation to the thing or things concerned, or

(ii) vary the arrangements made under that subsection in a manner he or she considers appropriate.

(5) In deciding what shall be the terms of those arrangements or that variation, the officer shall have regard to any representations on the matter reasonably made by the owner, lawful custodian or possessor of the thing or things concerned and endeavour, where practicable, to secure the agreement of that person to those terms.

(6) Where an extended power of seizure is exercised, it shall be the duty of the officer—

(a) to carry out the determination or separation concerned as soon as practicable, and, in any event, subject to subsection (7), within the prescribed period, after the date of its exercise, and

(b) as respects (as the case may be)—

(i) anything seized in exercise of the power found not to be material information, or

(ii) anything separated from another thing in the exercise of the power that is not material information,

to return, as soon as practicable, and, in any event, subject to subsection (7), within the prescribed period, after the date of that finding or separation, the thing to its owner or the person appearing to the officer to be lawfully entitled to the custody or possession of it.

(7) On application to the court by the Director or any person affected by the exercise of an extended power of seizure, the court may, if it thinks fit and having had regard, in particular, to any submissions made on behalf of the Director with regard to the progress of any investigation being carried on by the Director for the purpose of which the powers under this section had been exercised, give one or more of the following:

(a) a direction that the doing of an act referred to in subsection (6)(a) or (b) shall be done within such lesser or greater period of time than that specified in that provision as the court determines;

(b) a direction with respect to the making, variation or operation of arrangements referred to in subsection (2)(a) to (c) in relation to a thing concerned or a direction that such arrangements as the court provides for in the direction shall have effect in place of any such arrangements that have been or were proposed to be made;

(c) a direction of any other kind that the court considers it just to give for the purpose of further securing the rights of any person affected by the exercise of an extended power of seizure, including, if the exceptional circumstances of the case warrant doing so, a direction that a thing seized be returned to its

owner or the person appearing to the court to be lawfully entitled to the custody or possession of it, notwithstanding that the determination or separation concerned has not occurred.

(8) Any such direction may—

(a) relate to some or all of the things the subject of the exercise of the extended power of seizure,

(b) be expressed to operate subject to such terms and conditions as the court specifies, including, in the case of a direction under subsection (7)(c), a condition that an officer of the Director be permitted, during a specified subsequent period, to re-take and retain possession of the thing returned for the purpose of carrying out the determination or separation concerned (and, retain after the expiry of that period, that which is found to be material information or is material information).

(9) An application under subsection (7) shall be by motion and may, if the court directs, be heard otherwise than in public.

(10) In subsection (6) “prescribed period” means—

(a) in the case of paragraph (a) of it—

(i) unless subparagraph (ii) applies, 3 months, or

(ii) such other period as the Minister prescribes in consequence of a review that may, from time to time, be carried out by or on behalf of the Minister of the operation and implementation of section 787 (3) to (5) and this section,

(b) in the case of paragraph (b) of it—

(i) unless subparagraph (ii) applies, 7 days, or

(ii) such other period as the Minister prescribes in consequence of such a review that may, from time to time, be carried out by or on behalf of the Minister,

but no regulations made to prescribe such a period shall be read as operating to affect any direction given by the court under subsection (7)(a) in force on the commencement of those regulations.

(11) The Minister may make regulations providing for such supplementary, consequential and incidental matters to or in respect of section 787 (3) to (5) and subsections (2) to (6) of this section as he or she considers necessary or expedient.