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**Report of the Appointed Person for England and Wales under sections 47I, 291 and 303F of the Proceeds of Crime Act 2002 and under article 17H of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 for the period 01.04.19 until 31.03.20**

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Presented to Parliament pursuant to section 291(5) of the Proceeds of Crime Act 2002  
and Article 17H of the Proceeds of Crime Act 2002 (External Requests and Orders) Order  
2005

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## **Report of the Appointed Person for England and Wales under sections 47I, 291 and 303F of the Proceeds of Crime Act 2002 and under article 17H of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 for the period 01.04.19 until 31.03.20**

### **The Proceeds of Crime Act 2002 (POCA)**

This legislation was enacted to empower police and other law enforcement agencies to investigate, search and seize the apparent assets obtained by persons and organisations by criminal activity. Assets include cash, realisable property and “listed assets” (e.g. precious metals). Recovery procedures include, *inter alia*, confiscation upon a criminal conviction, forfeiture, freezing of accounts and real property, taxation and civil recovery from persons not convicted in the courts. The Act includes anti-money laundering legislation.

### **POCA 2002 (External Requests and Orders) Order 2005**

This Statutory Order was made under sections 444 and 459(2) of POCA. Generally, it provides powers for the freezing of property which may be needed to satisfy requests from other countries for the recovery of criminal assets. It also enables registration and enforcement of overseas confiscation orders. The powers and obligations are similar to those for search and seizure for domestic investigations.

### **The Appointed Person<sup>1</sup>**

This is the person who has been appointed to oversee those circumstances where the exercise of these powers by appropriate officers has been carried out without judicial authority, even though a superior officer gave approval. The Appointed Person must be independent and not be employed under, or for the purposes of, any government department.

An appropriate officer must file a written report to the Appointed Person where assets are seized but not detained for more than 48 hours and where no assets are seized. The report must set out why they believed the powers were exercisable and why it was not practicable to obtain prior judicial approval<sup>2</sup>. In accordance with the Code of Practice<sup>3</sup>, the report should be made as soon as practicable and, in all cases, within 14 days.

The Appointed Person must file an annual report with the Secretary of State, giving their opinion as to the circumstances and manner in which these powers were exercised without judicial approval. The report may make any recommendations the Appointed Person considers appropriate<sup>4</sup>.

### **Searches and seizures**

The Act sets out very detailed requirements before an appropriate officer can carry out searches for and seizures of assets. It has been amended and added to on many occasions since 2002 by widening and strengthening the powers afforded to such officers. The original

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<sup>1</sup> Proceeds of Crime Act 2002 sections 47H(4-5), 290-291 and 303E-F

<sup>2</sup> Proceeds of Crime Act 2002 sections 47H, 290 and 303E

<sup>3</sup> Proceeds of Crime Act 2002 sections 47S, 292 and 303G

<sup>4</sup> Proceeds of Crime Act 2002 sections 47I, 291 and 303F

Act provided for search and seizure of cash (which is widely defined)<sup>5</sup> but now includes defined realisable property<sup>6</sup> and listed assets<sup>7</sup>. It excludes items required by the owner for work or domestic living purposes. Searches may be of a person, on premises or (under strict conditions) a vehicle.

Searches must be authorised in advance by a Justice of the Peace or, if one is not available, by a senior officer of a specific rank above that of the searching officer. However, as stated above, circumstances may arise in an investigation where, practicably, neither authority can be obtained.

Similar provisions are contained in articles 17A-17S of the Statutory Order for external requests.

If apparent assets are seized and are to be detained, with or without judicial approval for the search, an application must be brought before a court for continued detention within 48 hours of the seizure. Consequently, there is judicial oversight thereafter for a maximum of two years.

### **Appropriate Officers**

These are defined under section 47A (for realisable property) as an officer of HM Revenue and Customs (HMRC), an immigration officer, a constable, a Serious Fraud Office officer and an accredited financial investigator (AFI). Officers of the National Crime Agency who are designated to have the powers of one or more of a constable, officer of HMRC, immigration officer or general customs official or who are accredited financial investigators are included<sup>8</sup>.

Sections 289 and 291 (for recovery of cash) and sections 303C and 303J (for listed assets) authorise those same officers, except immigration officers, to exercise the powers of search and seizure. Although not called “appropriate officers” in those sections, this report will use that term for convenience.

The provisions of sections 303B-J came into force on 16.04.18, having been enacted by the Criminal Finances Act 2017.

### **External Requests and orders**

Provisions are made for similar search and seizure powers and reporting to the Appointed Person under the Statutory Order mentioned above. Immigration officers are excluded.

### **Reports received during 01.04.19 until 31.03.20**

During this period, I received eleven reports of police searches under sections 47D-F, 289 and 303C, resulting in seizures under sections 47C, 294 and 303J respectively for which prior judicial approval had not been obtained. As stated above, an application must be made to a magistrates’ court within 48 hours for the continued detention of the assets otherwise they must be returned.

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<sup>5</sup> Proceeds of Crime Act 2002 sections 289-293

<sup>6</sup> Proceeds of Crime Act 2002 sections 47B-F

<sup>7</sup> Proceeds of Crime Act 2002 sections 303B-F

<sup>8</sup> Crime and Courts Act 2013 section 10(1)(a)

Seven seizures had received senior officer approval from an inspector or more senior rank, as required.

One of the four which did not have such approval involved an entry of premises to arrest a suspect for indictable sexual offences. The search of the premises was carried out under section 32 of the Police and Criminal Evidence Act 1984 (PACE) for relevant evidence. Items of value were seized under section 47C but released later when the suspect was also arrested for money laundering offences, the items then became evidential PACE exhibits. The items were not expected to be found and there was no time to obtain senior officer approval.

Another case where no senior officer approval was obtained involved the arrest of a suspect in a blackmail case. A search under section 32 found that there was a substantial sum of Bitcoin currency held by the arrested suspect who had a written note of the access code to the wallet. Because cryptocurrency can be quickly transferred by those who have access to the wallet, officers immediately used the code to transfer it into a police wallet without senior officer approval because of the danger of another person transferring it, thus preventing its detention. The currency was then transferred to the victim of the blackmail.

The third case involved the seizure of a vehicle in the course of a drugs investigation in which a misunderstanding about a senior officer's authority to seize resulted in the vehicle being returned to the suspect.

The fourth case involved a drugs search, with drugs and PACE warrants, of a home in the early hours of the morning. Following discovery of paperwork referring to a store, a search was carried out without additional authority for that store, in which items were seized.

The following cases all had senior officer authorisation.

Drugs were involved in three reported cases, other than the last mentioned. One case was a result of a drugs deal being observed in a carpark. The vehicle was seized but further investigations showed it had been classed as a write-off by previous insurers and was of little value as a result. It was released to the driver.

Another case was where a vehicle was seized after a drugs search but was returned to the suspect as it was required by him as they suffered a serious medical condition.

The remaining drugs case involved a seizure of items of value found in premises and seized where a person was arrested for a non-indictable offence. Although authority had been given, the items were returned when it was realised they could not be the subject of a successful application to a court because the offence was non-indictable.

Another case was reported where an investigation into fraud and money laundering resulted in a vehicle being seized but not made the subject of a court application because it was wholly owned by a finance company, to which it was returned.

The three remaining cases were all reported by officers at a port where three separate vehicles were stopped before leaving the country on the suspicion that each vehicle was carrying hidden cash. No cash was found.

There were no reports from any appropriate officers from the other law enforcement agencies.

Having considered the full reports, I am satisfied that the criteria for impracticability required for justifying the searches without prior judicial approval were met and that the powers of search were exercised appropriately.

### **Commentary**

It must be borne in mind that almost all searches under POCA will be well prepared in advance and based on sound evidence, information and intelligence. Such planned searches, some of which may not have prior judicial approval because of urgency, will usually result in seizures which are notified to the court within 48 hours. They do not need to be reported to the Appointed Person as the assets seized will be decided upon by the Court.

As outlined in the cases above, officers investigating non-POCA offences can result in the discovery of assets including cash, vehicles or other items of which the officers had no knowledge prior to meeting the suspect.

In addition, police and other agencies can often use the provisions of the Police and Criminal Evidence Act 1984 (sections 8 and 19) and the Misuse of Drugs Act 1971 (section 23) to search for evidence which they may seize if it is relevant to the investigation.

### **Recommendations**

I recommend that those officers in all law enforcement agencies should be reminded of the requirements under POCA for reporting to the Appointed Person on a regular basis to ensure full compliance with the legislation, especially by personnel new to this area of the law.

Greg McCourt, Appointed Person.

June 2021









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