



Home Office

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 01.04.20 until 31.03.21

July 2021

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Crime Act 2002 and under article 17H of the Proceeds of
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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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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 Person¹

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 approval². In accordance with the Code of Practice³, 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 appropriate⁴.

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

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

² Proceeds of Crime Act 2002 sections 47H, 290 and 303E

³ Proceeds of Crime Act 2002 sections 47S, 292 and 303G

⁴ Proceeds of Crime Act 2002 sections 47I, 291 and 303F

Act provided for search and seizure of cash (which is widely defined)⁵ but now includes defined realisable property⁶ and listed assets⁷. 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 included⁸.

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 01.04.20 until 31.03.21

During this period, I received ten 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.

⁵ Proceeds of Crime Act 2002 sections 289-293

⁶ Proceeds of Crime Act 2002 sections 47B-F

⁷ Proceeds of Crime Act 2002 sections 303B-F

⁸ Crime and Courts Act 2013 section 10(1)(a)

Seven of the reports included assets being seized in the course of searches for drugs.

All but two seizures had received senior officer approval from an inspector or more senior rank, as required. One of the two which did not have such approval involved a search of a vehicle following a pursuit by response police. The search produced drugs and cash, which was seized. In the other case, again a search of a vehicle driver for drugs resulted in cash being found on them, which was seized.

Two reports involved searches under firearms legislation. Cash, valuable watches and a vehicle were seized, all with a senior officer's approval. Officers did not expect that such items would be on the premises and so no prior judicial authority was obtained.

Another case again involved a search for drugs which resulted in cash, gold bars and a canal boat being seized in a "fast moving, crime-in-action investigation". The canal boat was initially believed to be of considerable value but subsequently it was realised that it would be uneconomic to continue the seizure.

In another case, a drugs search resulted in cryptocurrency being seized but further investigation found it was only worth £10 approximately.

A report involved two vehicles, with suspicious registration plates and which were about to leave the country, being searched under section 289 for cash. No cash was detected.

A further case involved a drugs search of premises. Officers had no prior knowledge of high value items including vehicles being on the premises. They were seized but no application was made within the 48 hours. However, the suspects were charged with possession of criminal property and the items seized under that legislation.

Two other cases involved searches and seizures of assets which were returned. In one case a restraint application was being considered for high value items and in the other, the items seized were retained as exhibits under the Police and Criminal Evidence Act 1984.

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 required for justifying the searches without prior judicial approval were met and that the powers of search were exercised appropriately.

Commentary

Some may consider that ten reports is a low number. However, 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 commence a search for drugs or firearms which results in the discovery of assets including cash, vehicles or other assets of which the officers had no knowledge.

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

There appears to be no standardised form for use by all the police constabularies and other enforcement agencies for these reports.

Several of the above were reports in letter form. I recommend that a standard form which includes more detail should be used.

Greg McCourt, Appointed Person.

June 2021

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