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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 01.04.18 until 31.03.19**

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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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ISBN 978-1-5286-2828-0

CCS0721936800 07/2021

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

## **Report of the Appointed Person for England and Wales under sections 47I, 291 and 303F<sup>1</sup> 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 01.04.18 until 31.03.19**

### **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>2</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>3</sup>. In accordance with the Code of Practice<sup>4</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>5</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> 303F came into effect on 16 April 2018

<sup>2</sup> Proceeds of Crime Act 2002 sections 47H(4-5), 290-291 and 303E-F

<sup>3</sup> Proceeds of Crime Act 2002 sections 47H, 290 and 303E

<sup>4</sup> Proceeds of Crime Act 2002 sections 47S, 292 and 303G

<sup>5</sup> Proceeds of Crime Act 2002 sections 47I, 291 and 303F

Act provided for search and seizure of cash (which is widely defined)<sup>6</sup> but now includes defined realisable property<sup>7</sup> and listed assets<sup>8</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>9</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 01.04.18 until 31.03.19**

I received two reports of searches under section 289 (recovery of cash) during this period.

The first was from an AFI in relation to a search of a van. They had obtained prior judicial approval for a search of premises, but they were unaware until during the search that a van parked in the street was under the control of the occupant of the premises. It was

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<sup>6</sup> Proceeds of Crime Act 2002 sections 289-293

<sup>7</sup> Proceeds of Crime Act 2002 sections 47B-F

<sup>8</sup> Proceeds of Crime Act 2002 sections 303B-F

<sup>9</sup> Crime and Courts Act 2013 section 10(1)(a)

impracticable for them to obtain further judicial approval and their superior officer was unavailable for good reason.

The second was from a police officer who searched a suspicious vehicle which was about to leave the country. They had obtained approval from their Inspector, having been unable to obtain judicial approval because of practicable time constraints.

In neither case was cash found.

Having considered the full reports, I am satisfied that the circumstances of the searches without prior judicial approval justified their conduct and that the powers of search were exercised appropriately.

### **Commentary**

It may appear unusual that there are only two reports in a year. 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.

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.

Greg McCourt, Appointed Person.

June 2021











CCS0721936800

978-1-5286-2828-0