



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
01.04.21 until 31.03.22**

January 2023



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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 978-1-5286-3610-0

E02770505 1/23

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of His Majesty's Stationery Office

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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

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

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 Act provided for search and seizure of cash (which is widely defined)⁵ but now includes defined

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

5 Proceeds of Crime Act 2002 sections 289-293

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

6 Proceeds of Crime Act 2002 sections 47B-F

7 Proceeds of Crime Act 2002 sections 303B-F

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 01.04.21 until 31.03.22

During this period, I received eight reports of police searches under sections 47D-F, 289 and 303C, resulting in nothing seized or seizures under sections 47C, 294 and 303J respectively for which prior judicial approval had not been obtained. As stated above, an application

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

must be made to a magistrates' court within 48 hours for the continued detention of the assets otherwise they must be returned.

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

2020 – 2021 cases

Four reports were received in 2021 – 2022 for searches and/or seizures carried out during 2020 – 2021. There were no explanations for the delays in submitting the reports. The relevant code of practice states “The written report should be submitted as soon as is reasonably practical and, in any event, no later than 14 days following the exercise of the power.” The lengthy delay is most unsatisfactory, despite the fact that none of reports suggested circumstances of a search and/or seizure which was unjustified. I understand that regular reminders about the 14 day reporting requirement from the Home Office to the various agencies were instituted in early 2021/2022. It may well have been that individual agency members were not aware of the urgency in reporting to the Appointed Person. I am satisfied that no prejudice has been caused to any of the subjects of searches.

One report was about a search of a property connected to a suspected drug dealer. A high value item was seized under the Police and Criminal Evidence Act 1994. The investigation was ongoing for nine months at which point

the suspect died. Seizure of the item was then made by an Accredited Financial Investigator under sections 303B – 303Z of POCA. Shortly afterwards a senior officer authorised detention for a further limited period but it was decided that the item should no longer be the subject of seizure.

Two separate cases involved police at a port who had a reasonable suspicion that persons were about to leave the jurisdiction on a ferry without pre-booking. These persons were suspected of smuggling cash out of the country. Because there was insufficient time to obtain judicial approval, a senior officer gave authorisation for searches in both cases. In one case, no cash was found and no seizure took place. In the other case, a substantial amount of cash was found but a satisfactory explanation was given by the occupants of the vehicle. No seizure took place.

In another case, a person was suspected of misconduct in public office. A person was arrested but as time went on, they were to be released still under investigation. At that point, a decision was made to search his property for realisable assets on the basis of information received. There was insufficient time to obtain judicial approval for searches at two addresses. No items of value were seized.

2021 – 2022 cases

Four reports were received for searches and/or seizures for the period 01.04.21 until 31.03.22.

The first case involved an operation by officers to observe and monitor large sums of cash being lodged by a number of persons in a large number of financial institutions, believed to be money laundering. It would not be possible to obtain judicial approval for searches of unknown persons at unknown locations. Equally, it was not practicable to obtain judicial approval as soon as a person was observed to be acting suspiciously at an institution. During the operation which involved many officers, a person acting suspiciously outside an institution was searched inside and found to have a limited amount of cash for deposit. Senior officer approval had been given. No seizure took place.

Three separate cases involved officers seizing crypto currencies. Two were where persons were suspected of supplying drugs and were arrested. Because cryptocurrency can be moved very easily and quickly by those persons who have the access details (not just the arrested person), the cryptocurrencies were seized without judicial approval. Authorisation was given by a senior officer.

The other case was concerning a person suspected of fraud. They were arrested and powers under the Police and Criminal Offences Act 1984 were used to

seize physical property. Again, because of the speed with which cryptocurrency can be moved, it was seized without judicial approval.

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 four cases in each of two years 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 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 recommended in last year's report that a standard form which includes more detail should be used. I understand that such a form is being prepared for circulation to all agencies. It includes brief advice as to the use of the powers under POCA.

Greg McCourt, Appointed Person.

July 2022

E02770505
ISBN 978-1-5286-3610-0