

## **THE RECOVERY AND SEIZURE OF CASH UNDER POCA**

1. The cash seizure and forfeiture provisions of POCA came into force on 30<sup>th</sup> December 2002, and apply to all cash seizures made on or after that date.
2. The legislation provides enforcement agencies with a quick and straightforward way of recovering the proceeds of criminal activity, without the need for criminal proceedings being instigated.
3. The relevant law can be found at ss289 to 303 of POCA.

### *SEIZURE AND FORFEITURE OF CASH*

4. Under s294, a Police Officer or Revenue and Customs Officer may seize cash which he comes across in the course of his duties if he has reasonable grounds for suspecting it is (a) recoverable property or (b) intended by any person for use in unlawful conduct.
5. Under s289, a Police Officer or Revenue and Customs Officer may go further and actively search premises/persons for cash which is (a) recoverable property or (b) intended for use in unlawful conduct, if he has reasonable grounds for suspecting there is such cash on the premises/person.
6. The search powers are tempered under s290. They can only be exercised if the officer has obtained the permission of a magistrate, or, if that is not practicable, an Inspector or the HMRC equivalent.
7. The minimum amount that can be seized/searched for is currently set at £1000, by the Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 SI 2006/1699.

8. Under s289(6), “cash” is given a wide definition, which includes (i) currency, (ii) postal orders, (iii) cheques, (iv) banker’s drafts and (v) bonds and shares.
9. Under s304, “recoverable property” is defined as property obtained through unlawful conduct. Property can be traced, so that if for example a painting is stolen and sold for cash, the cash becomes recoverable property.
10. There are certain defences available, under s308: if the cash was obtained in good faith, for value and without notice; if the cash was received in satisfaction of a county court judgment; if the cash was received in satisfaction of a compensation order.
11. Under s241, “unlawful conduct” is defined as conduct considered criminal in the country where it occurs, be that the UK or elsewhere.

#### *PROCEDURE*

12. The statute allows the prosecuting authority to retain the cash for 48 hours. Thereafter, an extension of time must be sought from the Magistrates’ Court (s295(1)).
13. s295(1B) assists in calculating the 48 hour period. No account shall be taken of Saturdays, Sundays or national/court holidays.
14. Under s295(2), the Magistrates may extend the period by up to three months. Continued applications may be made, and on each occasion the period may be extended by up to three months. This may continue for up to 2 years.
15. s295(4) sets out the test for allowing continued retention. If the court are satisfied either that (i) reasonable grounds for suspecting the cash is recoverable property, and continued detention is justified while its derivation is further investigated; or (ii) that there are reasonable grounds

for suspecting the cash is intended to be used in unlawful conduct, and continued detention is justified while its intended use is further investigated. The Police/Revenue and Customs Officer applies for the order and states on oath that one of the two conditions are satisfied.

16. Under s296, if the cash is detained for more than 48 hours, it must be paid into an interest bearing account and held there, and the interest accruing must be added to it on its forfeiture or release.

#### *REMEDIES FOR THE LOSER OF THE CASH*

17. Under s297, provision is made for an application by the person from whom the cash was seized that the Magistrates release the cash back to them. If the person can satisfy the court that the conditions for the detention of the cash are no longer met, they will get the cash back. The court will hear oral evidence and representations.

18. Under s301, provision is made for an application by any person, other than the person from whom the cash was seized, who claims that the cash belongs to him, that the Magistrates release the cash to him. Under s301(3), the court must return the cash if the applicant satisfies the court that the cash belongs legitimately to him, and that the cash was appropriated from him by unlawful conduct (ie most likely it was stolen from him). Under s301(4), the court must return the cash if the applicant satisfies the court that the cash belongs to him, and that the conditions for the detention of the cash are no longer met. But note the provision of s301(4)(d) - if the person from whom the cash was seized objects to the third party's claim that the cash belongs to him, it cannot be released, whatever the merits of the claim and objection.

19. It is for the applicant to satisfy the court on the balance of probabilities that he is entitled to the cash.

#### *APPLICATIONS FOR FORFEITURE OF DETAINED CASH*

20. Where the police or Revenue and Customs have completed their enquiries into the provenance of the detained monies and consider they have sufficient evidence to establish that the cash or any part of it is: (a) recoverable property, or (b) is intended by any person for use in unlawful conduct, they can apply for forfeiture of the cash.
21. Under s298, the court may order the forfeiture of the cash (or part of it) if satisfied that the cash (or part of it) is recoverable property.

### *THE HEARING*

22. Once an application for forfeiture has been received, the court will list the case for directions. At the directions hearing, if the application is not contested, the court may decide the application. If the application is contested, proceedings will ultimately culminate in a forfeiture hearing.
23. Proceedings on an application for forfeiture are treated as if they are proceedings on a complaint – ie like an ASBO, SOPO etc. They are civil in nature and therefore the civil standard of proof applies.
24. The criminal rules of evidence do not apply. This means that *inter alia*:  
Previous convictions are automatically admissible; and  
Hearsay is admissible (provided that 21 days notice had been given under Magistrates Court (Hearsay) Rules 1999  
The rules for hearings are set out from s51 MCA 1980 onwards.
25. The rules in relation to procedure are set out in the Magistrates Courts Rules (1981):  
Complainant addresses court and calls evidence;  
Defendant addresses court if he wishes and then calls evidence;  
Defendant may address the court if he has not done so already;

26. Anyone wishing to address the court for a second time must obtain permission. Where permission is given to one party it must also be given to the other. It is important for prosecutors to remember that there is no right to address the court in closing, so one should make the opening as full as possible.

### *COSTS*

27. As the proceedings are civil in nature, the normal rule is that the successful party gets his costs paid by the unsuccessful one. The court has a discretion not to make such an order.

28. CLS funding is available to resist an application for forfeiture for respondents and third parties claiming to be the innocent owner of the cash. The proceedings are civil and subject to the required means and merits tests. Funding can be granted to solicitors with either civil or criminal franchises. Guidance can be found at [http://www.legalservices.gov.uk/docs/stat\\_and\\_guidance/proceeds\\_of\\_crime.pdf](http://www.legalservices.gov.uk/docs/stat_and_guidance/proceeds_of_crime.pdf)

### *APPEALS*

29. Under s299, both the complainant and the defendant have the right to appeal to the Crown Court (and thereafter to the Court of Appeal, in the normal way).

30. Notice must be lodged within 30 days of the forfeiture hearing.

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