

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 5 – Proceeds of Crime

Confiscation

Section 55 Search and seizure of property: England and Wales

291. *Section 55* inserts new sections 47A to 47S into POCA. These new sections provide for search and seizure powers in England and Wales to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. The property may be seized in anticipation of a confiscation order being made. The seizure power is subject to oversight. If a confiscation order is made, the property may be sold in order to satisfy the order.
292. New section 47A of POCA sets out who may exercise the powers. These are an officer of Revenue and Customs, a constable and an accredited financial investigator. An accredited financial investigator is an investigator who has been trained and accredited under section 3 of POCA, and an order made under section 453 of POCA may specify the type of accredited financial investigators who can exercise these powers.
293. There are a number of pre-conditions for the exercise of these powers. These are set out in section 47B and cover the situation in which an individual is arrested or proceedings are begun against him or her for an indictable offence, and there is reasonable cause to believe that he or she has benefited from the offence. They also cover the situation where an application in respect of further confiscation proceedings has been made or is to be made.
294. The property may be seized if there are reasonable grounds to suspect that it may otherwise be made unavailable for satisfying a confiscation order or that the value of the property may be diminished. The seizure power applies to ‘realisable property’. The definition of this term is found in section 83 of POCA and covers any free property held by the defendant or by the recipient of a tainted gift. (‘Free property’ is property not subject to the forfeiture, detention and other orders specified in section 82 of POCA and ‘tainted gift’ is defined in section 77 of POCA). Section 47C(2) however provides that cash and exempt property may not be seized. Section 47C(4) defines exempt property and includes items necessary for the defendant’s personal use in his or her business, employment or vocation, and clothing, bedding, furniture, household equipment and other provision necessary for satisfying the basic domestic needs of the defendant and his or her family. Cash may not be seized under this power because there is already a separate regime for the seizure of cash in Chapter 3 of Part 5 of POCA.
295. New sections 47D to 47I provide the search powers necessary to support the power to seize property and set out safeguards.
296. The search power for premises is only exercisable on private premises where the officer has lawful authority to be present. This could be, for example, when a constable is

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(c.26) which received Royal Assent on 12 November 2009*

exercising his powers of entry under the Police and Criminal Evidence Act 1984 or when an officer of Revenue and Customs is exercising such powers under the Customs and Excise Management Act 1979. An officer could also be lawfully present on private premises if he is there at the invitation of the owner. The officer may carry out a search of the premises if he has reasonable grounds for suspecting that property may be found there which the officer intends to seize under section 47C. This means that the officer has to have reasonable grounds for suspecting that the property may otherwise not be available for satisfying a confiscation order or that the value of the property may be diminished.

297. By virtue of new section 47E, the search powers include the power to search a person. However, this power does not extend to requiring a person to undergo a strip search (subsection (5)). The officer may carry out a search of a person if he has reasonable grounds for suspecting that the person is carrying property that may be seized under section 47C.
298. New section 47F provides the power to search vehicles. The provision does not contain a power of entry; rather it allows the officer to require the person who it appears to him is in control of the vehicle to permit entry to and a search of the vehicle. This power applies, in brief, where the vehicle is in a public place or within the environs of a dwelling that the person does not reside in and the vehicle is there without the permission of another person who resides there. Failure to permit a search may amount to an offence of obstruction. The officer may carry out a search of a vehicle if he has reasonable grounds for suspecting that the vehicle contains property that may be seized under section 47C. New section 47F(5) provides that the vehicle may be detained for so long as is necessary for the officer to exercise the search power.
299. Each of the search powers in new sections 47D to 47F and the seizure power in new section 47C may only be exercised with the ‘appropriate approval’ described in new section 47G unless, in the circumstances, it is not practicable to obtain such approval in advance. New sections 47G to 47I make provision in relation to this appropriate approval. Appropriate approval is the prior approval of a justice of the peace or, if that is not practicable, that of a senior officer (as defined in new section 47G(3)). If judicial approval is not obtained prior to a search and no property is seized, or any seized property is not detained for more than 48 hours, an appropriate officer must prepare a written report and submit it to an independent person appointed by the Secretary of State (the “appointed person”). The report must detail why the officer considered that he had the power to carry out the search and why it was not practicable to obtain judicial approval of the search. In all cases if the property is detained for more than 48 hours, it will be subject to judicial oversight.
300. Section 47I provides that the appointed person to whom the reports are submitted is under an obligation to submit an annual report to the Secretary of State drawing general conclusions about the matters reported to him or her and making any appropriate recommendations. This report will be laid before Parliament and be published.
301. Section 47J provides that the initial detention of seized property is for 48 hours (not including weekends, Christmas Day, Good Friday or bank holidays).
302. Section 47K provides for the further detention of the property pending the making of a restraint order which authorises the detention or pending the exhaustion of any related avenue of appeal. Section 47L provides for the subsequent detention of seized property in cases where the property is already subject to a restraint order but the restraint order does not include provision authorising detention of the property. In these cases, new section 47L allows the property to be detained if an application is made for the variation of the restraint order to include such provision within 48 hours of seizure (or such longer period as may be authorised under new section 47M). Applications to vary restraint orders are made to the Crown Court.

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303. If the seized property is not subject to a restraint order, and no application has been made for a restraint order authorising its detention, section 47M provides that a magistrates' court may by order authorise the further detention of the property. The magistrates' court may make such an order if satisfied of the matters listed in subsection (2). Section 47N allows the law enforcement agency, or any person affected by the order (including any third party claiming to have an interest in the property) to apply to the magistrates' court for the discharge or variation of the detention order. Section 47O provides a right of appeal to the Crown Court to the law enforcement agency against a decision of the magistrates' court not to make a detention order. It also provides a right of appeal to that agency or any person affected by the order against the decision of the magistrates' court on an application to vary or discharge a detention order.
304. In cases where the property is subject to a restraint order any person affected by the continued detention may apply for a variation or discharge of the order under section 42(3) of POCA. An appeal may be made against the decision of the Crown Court to the Court of Appeal under section 43.
305. Section 47P provides for the continued detention of property while an appeal by the law enforcement agency under section 47O is pending or remains possible.
306. Section 47Q provides that hearsay evidence is admissible in proceedings relating to the detention of property before a magistrates' court. Section 46 of POCA already provides for hearsay evidence to be admissible in restraint proceedings.
307. Section 47R imposes an obligation on an appropriate officer to release detained property if he or she is satisfied that the conditions for the seizure no longer apply. Property can be seized if, for example, an individual has been arrested or proceedings have begun against him or her and there is reasonable cause to believe that he or she has benefited from the offence. In every case, the officer must also have reasonable grounds to suspect that the property may be made unavailable for satisfying a confiscation order or that the value of that property may be diminished. If these conditions cease to be met at any time during the detention of the property, the property must be released unless there is another power (perhaps under other legislation) authorising its continued detention.
308. Section 47S requires the Secretary of State to publish a Code of Practice setting out how the powers are to be exercised.