

Report of the Appointed Person for Northern Ireland under sections 195I, 291, and 303F of the Proceeds of Crime Act 2002 and under article 103H of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 for the period 01.04.23 until 31.03.24.

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

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“the 2005 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. Article 103H, ‘Report by appointed person on exercise of powers’, was inserted by article 27 of the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2016.

The Appointed Person

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 department¹.

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 relevant Code of Practice³, the report should be made as soon as practicable and, in all cases, within 14 days.

¹ Proceeds of Crime Act 2002 Ss 195H(4-5), 290(8)-(9), 303E(9)-(10), and article 103H(4)-(5) of the 2005 Order.

² Proceeds of Crime Act 2002 Ss 195H(1)-(3), 290(6)-(7), 303E(6)-(8) and article 103G(1)-(3) of the 2005 Order.

³ Proceeds of Crime Act 2002 Ss 195S-T, 292 and 293A, 303G and 303I and article 103L of the 2005 Order.

The Appointed Person must file an annual report with the Department of Justice, 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 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 lay magistrate or, if a lay magistrate 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 103A-L of the 2005 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 195A of PoCA (for realisable property) as an officer of HM Revenue and Customs, 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, an officer of HMRC, immigration officer or general customs official⁸ or who are accredited financial investigators are included.

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.

⁴ Proceeds of Crime Act 2002 Ss 195I(4), 291(3), 303F(4) and article 103H(4) of the 2005 Order.

⁵ Proceeds of Crime Act 2002 Ss289.

⁶ Proceeds of Crime Act 2002 Ss 195B-F and article 103B-E of the 2005 Order.

⁷ Proceeds of Crime Act 2002 Ss 303B-F.

⁸ Crime and Courts Act 2013 S 10(1)(a).

The provisions of sections 303B-J came into force on 28.06.21 in Northern Ireland, 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 2005 Order mentioned above. Immigration officers are excluded.

Reports received during 01.04.23 until 31.03.24

During this period, I received no reports of searches under sections 195D-F, 289 and 303C, nor under Articles 103C-E of the aforementioned 2005 Order, as amended from any of the law enforcement agencies.

Commentary

It may appear unusual that there were no reports in this 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 (Northern Ireland) Order 1989 (Articles 10 and 21) and the Misuse of Drugs Act 1971 (section 23), or other statutory or common law powers, to search for evidence which they may seize if it is relevant to the investigation.

Recommendations

I recommend that those officers in all law enforcement agencies should be reminded of the requirements under POCA for reporting to the Appointed Person on a regular basis to ensure full compliance with the legislation, especially by personnel new to this area of the law.

Greg McCourt, Appointed Person.

31st July 2024