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**POLICE
SCOTLAND**

Keeping people safe

Proceeds of Crime

Standard Operating Procedure

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1. Purpose

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland, hereafter referred to as Police Scotland, policies for:
- Crime Investigation
 - Serious and Organised Crime
- 1.2 This SOP aims to provide guidance on practices and procedures relating to the implementation and use of police powers under the Proceeds of Crime Act 2002 (POCA), which has four main strands:
- Cash Seizures;
 - Asset Confiscation;
 - Money Laundering;
 - Civil Confiscation.
- 1.3 Advice on financial investigation and POCA is available by contacting the Financial Investigation Unit (FIU).
- 1.4 All documentation must be retained in accordance with the Record Retention SOP.

2. Cash Seizure

2.1 Legislation

- 2.1.1 Section 294 POCA provides for the recovery of cash through civil proceedings in a Sheriff Court. The Act creates procedures for the seizure, retention and forfeiture of cash, which is either recoverable or intended by any person for use in unlawful conduct.
- 2.1.2 Cash is defined as – cash found at any place in the UK which is:
- Notes and coins in any currency;
 - Postal orders;
 - Cheques of any kind including travellers' cheques;
 - Bankers' drafts;
 - Bearer bonds and bearer shares.
- 2.1.3 Recoverable Property is property obtained through unlawful conduct or which:
- Has been disposed of and is held by a person into whose hands it can be followed; or
 - Represents the original property; or

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- Is the portion of mixed property that represents property obtained through unlawful criminal conduct; or
- Is profit accrued in respect of the recoverable property.

2.1.4 Recoverable property can be traced to other property if the original property is sold and new property bought and it can be traced to the hands of third parties where it represents recoverable property.

2.1.5 Unlawful Conduct is conduct that is:

- Committed in any part of the UK and is unlawful under criminal law; or
- Committed outside the UK and is unlawful under the criminal law of that country and would contravene the criminal law of the UK if committed here.

2.1.6 A constable may seize any cash if they have reasonable grounds for suspecting that it is recoverable property or intended by any person for use in unlawful conduct. There does not need to be evidence of a crime being committed to justify reasonable grounds, only that you suspect that the cash is the proceeds of crime or intended for use in unlawful conduct.

2.1.7 The minimum amount of cash that may be seized under POCA is currently £1000. There is no power under the Act to seize any amount of cash under this limit, there is no maximum limit. The £1000 does not have to be in the possession of just one person. To illustrate: if two people are traced in a vehicle, searched and found to be in possession of £600 each (total £1200) and there is reasonable suspicion that the cash is the proceeds of criminal activity, or is intended for use in furtherance of crime, then all the cash can be seized together under POCA.

2.1.8 When cash is seized under POCA, the cash should not revert back to being a production for a criminal case. If there is any possibility of cash being used as evidence in a criminal investigation, it should be treated as a production from the start. Cash can be seized under POCA at a later date if an investigation does not lead to a prosecution or following the conclusion of any criminal proceedings.

2.2 Prior Approval for Searches

2.2.1 While POCA searches do not require a warrant, 'Prior Approval' is required; unless in the circumstances it is not practicable to obtain approval before exercising the power.

2.2.2 Approval should be given in the first instance by a Sheriff or, where that is not practicable, a senior officer of at least the rank of Inspector. The Constable should explain to the Sheriff the grounds for wishing to undertake the search. Where appropriate and practicable the officer should prepare a written application in the form of a report. Where a senior officer is asked to approve a search, the senior officer should make a written record of their decision.

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2.2.3 If the powers are exercised without the approval of a Sheriff in a case where:

- No cash is seized by virtue of Section 294; or
- Any cash so seized is not detained for more than 48 hours,

the Constable who exercised the powers must give a written report to the senior officer.

2.2.4 The report must give particulars of the circumstances which led the Constable to believe that:

- The powers were exercisable; and
- It was not practicable to obtain the approval of a Sheriff.

2.2.5 To illustrate, the following are examples of where 'Prior Approval' under POCA would be considered:

- A person is currently serving a custodial sentence in prison. Cash exceeding £1000 is handed into the prison for the prisoner. Scottish Prison Service staff retain the cash and inform police. Police make enquiry and have reasonable cause to suspect the cash is proceeds of or intended for use in unlawful conduct. Prior approval is required to seize the cash under POCA; it would be practicable to obtain prior approval from a Sheriff.
- Information is received from staff at a local bank that one of their customers has just withdrawn over £1000 cash and they suspect that it is to be used for unlawful purposes. Police hold intelligence that this person is a drug dealer and want to stop and search the person. Prior approval would be required to search that person for cash. In the timescale required it is unlikely that it would be practicable to obtain prior approval from a Sheriff and in such circumstances, approval must be sought from a senior police officer, of at least Inspector rank.
- A constable attends a dwelling as a result of domestic abuse incident. The officer is informed by one partner that the other partner is holding cash for a 'drug dealer' in another room of the dwelling. The officer may search that room for the cash after seeking prior approval from a senior officer without warrant under the provisions of the Act, irrespective of whether the other partner protests or asks the officer to leave the dwelling.

2.2.6 In most cases where cash is seized prior approval will not have been required as officers will usually encounter cash when searching under other provisions such as a search warrant or other statutory power. (e.g. Section 23 Misuse of Drugs Act 1971).

2.3 Searches for Cash

2.3.1 Section 289 of POCA provides that a constable who is lawfully on any premises may search for cash if they have reasonable grounds for suspecting that there is on the premises cash:

- Which is intended by any person for use in unlawful conduct; and

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- The amount of which is not less than the minimum amount.

If a constable has reasonable grounds for suspecting that a person is carrying cash:

- Which is intended by any person for use in unlawful conduct; and
- The amount of which is not less than the minimum amount.

They may so far as they think it necessary or expedient, require the subject:

- to permit a search of any article they have with them; and
- to permit a search of their person.

2.3.2 A constable searching any person may detain the subject for so long as is necessary to recover any cash. The power of search does not require a person to submit to an intimate search or strip search.

2.3.3 This power of search **can only be** carried out after seeking 'Prior Approval' under section 290 of POCA except in extreme circumstances where no Inspector can be contacted.

NB Before carrying out any search of persons or premises officers and staff should refer to the Police Scotland S-004 Searching Generic Risk Assessment.

2.4 Questioning Of Subjects

2.4.1 Once officers have made the decision to seize a quantity of cash under POCA, it is important that the person concerned is given the opportunity to account for their possession of the cash. A refusal to answer can be used in support of a cash seizure detention hearing.

2.4.2 It is good practice for the subject to be cautioned and questioned about their possession of the cash. It is important to fully question any person from whom cash is seized at the time of seizing the cash. The sooner appropriate questions are asked, the less time any person will have to fabricate an explanation for possession and origins of the cash. Suggested questions to be asked as follows:

- How much cash is there?
- Whose cash is it?
- Why do you have possession of it?
- Where did it come from?
- Do you have any paperwork to support your claims?
- Does anyone else claim ownership of it?
- How long have you known them?
- What are you doing here?

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- Where have you just come from?
- Where are you going?
- Where and for whom do you work?
- How long have you been in/out of work?
- What do you work as?
- How much do you earn?

2.4.3 These questions are merely a guideline and do not prevent any further questions being asked. Further guidance is available on the Specialist Crime Division (SCD) Guidance Documents page of the Intranet under 'Economic Crime':

- Cash Seizure Guidance and Questions
- Interview for Cash Seizure under Section 294

2.4.4 Upon deciding to seize cash using the provisions of section 294 of the Act, the subject should be advised the cash is being seized under the Proceeds of Crime Act 2002 and the time and date they were informed should be noted. This is the time the cash is seized under POCA.

2.4.5 The subject should be informed that a detention hearing will take place at the appropriate Sheriff Court within the next 48hrs (excluding weekends and public holidays). Contact details should be obtained from the persons from whom the cash is seized in order that they may be informed where and when the hearing will take place.

2.4.6 Where English is not the first language of the subject, officers should engage the services of an appropriate interpreter to ensure fairness and maintain the integrity of the interview. Refer to the Interpreting and Translating Services SOP for guidance on how to contact a suitable interpreter. If it is identified that an appropriate adult is required again to ensure fairness and maintain the integrity of the interview officers should engage the services of an appropriate adult. Refer to the Appropriate Adult SOP for guidance on this.

2.5 Reporting and Administration Procedures

2.5.1 The seized cash should be counted with corroboration, recorded on the appropriate form:

- Form 112-041 Certificate of Counting – GBP (£); or
- Form 112-042 Certificate of Counting – Foreign Currency

and placed in a safe, adhering to local procedures, until the outcome of the initial detention application is known.

2.5.2 A subject sheet / report requesting detention of the cash under Section 295 of the Proceeds of Crime Act 2002, should be dictated by the seizing officer, to be treated as a custody case, prior to the completion of their tour of duty. This

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report should be forwarded to the FIU for onward transmission to the local Procurator Fiscal, along with a Criminal History System (CHS) print out for all subjects.

- 2.5.3 The maximum period allowed from the time of the cash seizure to when a detention hearing commences is 48 hours (excluding weekends and court holidays). The FIU have responsibility to ensure that the relevant Procurator Fiscal is made aware of the seizure in sufficient time to organise the detention hearing. Once FIU receive the report of a cash seizure, they will liaise with the local Procurator Fiscal, who will then prepare an application for detention to be heard by a Sheriff. If the detention hearing is not arranged within the 48 hours period, the cash must be returned.
- 2.5.4 At the hearing the Sheriff will consider the circumstances and, if deemed appropriate, will order the cash to be retained for a period of up to 6 months. The matter will then be dealt with by the Civil Recovery Unit (CRU). If the Sheriff decides that the cash is not suitable for further detention the FIU will be informed and arrange for the cash to be returned to the subject.
- 2.5.5 The subject from whom the cash was seized can make representations at the hearing to justify their possession of the cash and attempt to show that it was not obtained by unlawful conduct or intended for use in unlawful conduct.
- 2.5.6 If following the hearing the money is to be returned to the subject the seizing officer is responsible for this. If the money is to be retained for a further period of time the seizing officer is responsible for ensuring the cash is banked in accordance with local practices following consultation with the divisional FIU. The certificate of counting should be retained with the banking receipt.
- 2.5.7 The FIU will act as a Single Point of Contact (SPOC) between the seizing officers and the CRU. All further enquiries by the CRU will be transmitted on to the seizing officers by the FIU.

3. Asset Confiscation

3.1 Identifying Assets

- 3.1.1 At the initial stage of any Police enquiry into an acquisitive crime or a lifestyle offence, officers should consider contacting the FIU in an effort to identify if the subject(s) of the enquiry has assets suitable for consideration of criminal confiscation procedures.
- 3.1.2 The proceeds of all acquisitive crimes can be subject to confiscation and where a person is proved to have a 'criminal lifestyle' then all assets that cannot be legitimately accounted for, can be subject to criminal confiscation.

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3.2 Criminal Lifestyle

3.2.1 A person has a criminal lifestyle only if the offence concerned satisfies any one of the following tests:

1. Is an offence as listed in Schedule 4 of POCA as amended by The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011, summarised as follows:
 - Money Laundering;
 - Drug Trafficking, including psychoactive substances;
 - Directing Terrorism;
 - People Trafficking;
 - Arms Trafficking;
 - Counterfeiting;
 - Intellectual Property (Copyright, Designs and Patents Act 1988);
 - Pimps and Brothels;
 - Blackmail;
 - Inchoate Offences (conspiring, incitement, aiding, abetting, counselling or procuring the commission of such an offence) ;
 - Gangmasters (Licensing) Act 2004;
 - An offence under section 39(1) of the Consumer Credit Act 1974;
 - Distribution of obscene material;
 - Supplying or Possessing Unclassified video recordings;
 - An offence under section 5(1) of the Private Security Industry Act 2001 (using an unlicensed security operative);
 - The Criminal Justice and Licensing (Scotland) Act 2010, section 28(1) (involvement in serious organised crime); section 30(1) or (2) (directing serious organised crime) and section 29(1) (offences aggravated by connection with serious organised crime).
2. Constitutes an offence committed over a period of at least six months and the total benefit to the accused is not less than £1000.
3. Conduct forms part of a course of criminal activity. The test of a course of criminal activity is that the accused:
 - Has been convicted of four or more offences on the same occasion from all of which he or she has benefited; or
 - Has at least two previous convictions on separate occasions, since enactment of the Proceeds of Crime Act 2002, and within six years of the most recent proceedings, for offences from which he or she has benefited; and
 - The accused benefit is not less than £1000.

3.3 Asset Investigations

- 3.3.1 Where a person has been reported for an acquisitive crime or has been shown to have a 'criminal lifestyle' the local FIU should be informed to allow them to carry out an asset investigation. FIU units should have procedures in place to identify when subjects are reported for acquisitive crime or where they are shown to have a 'criminal lifestyle' and should carry out an asset investigation for all such subjects.
- 3.3.2 Where assets are identified, that are suitable for restraint, the FIU are responsible for submitting a request for restraint of assets to Crown Office. The FIU will thereafter act as the SPOC between Crown Office and the reporting officer for any follow up enquiries with regard to the restraint request.

3.4 Financial Profile

- 3.4.1 Where Crown Office decide to pursue a subject's assets for criminal confiscation they will request that a 'financial profile' is compiled by the Police FIU units. The purpose of the profile is to calculate the subjects criminal benefit figure (total of their benefit from criminal activity over a period of six years preceding the date of charge or reporting) and the available amount of assets, to enable Crown Office to carry out their criminal confiscation procedures.
- 3.4.2 FIU units will act as the Police SPOC for all criminal confiscation procedures and will act on instruction given by Crown Office.
- 3.4.3 Crown Office will keep the FIU updated with the progress of all criminal confiscation cases and will report on the final outcome.

4. Money Laundering

4.1 Money Laundering Explained

- 4.1.1 Money laundering is the process by which the proceeds of crime are converted into assets which appear to have a legitimate origin, so that they can be retained permanently or recycled into further criminal enterprises.
- 4.1.2 It was first criminalised in the United Kingdom in respect of the proceeds of drug trafficking, by means of the Drug Trafficking Act 1986.
- 4.1.3 Further drugs related money laundering offences were subsequently enacted, together with separate offences relating to the proceeds of other criminal conduct and terrorist funding. The Proceeds of Crime Act 2002 consolidates previous legislation, introducing specific money laundering offences.
- 4.1.4 Under previous legislation, having to identify the predicate offence often resulted in failed prosecutions for money laundering, even where evidence

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supported the allegation that the funds in question were generated by criminal activity. Under POCA this obstacle to prosecution has been removed.

- 4.1.5 Prosecution for money laundering may now be practicable even if it cannot be identified for certain which specific offence or offences actually generated the criminal proceeds, or who is responsible for any offence. The onus remains on the prosecution to prove that the funds were derived from unlawful activity.

4.2 Criminal Property

- 4.2.1 The Money Laundering provisions of POCA relate to a person's handling of 'Criminal Property'. Criminal property is described in POCA at Section 340, summarised as follows:

- Property is criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and the alleged offender knows or suspects that it constitutes or represents such a benefit.
- Criminal conduct is conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there.

4.3 Types of Money Laundering Offences

- 4.3.1 **Concealing:** This offence is committed where a person conceals, disguises, converts, transfers or removes from the jurisdiction criminal property.
- 4.3.2 **Arrangements:** In establishing an offence of arrangement, it is essential to prove that a person entered into or became concerned in an arrangement which he knew or suspected would make it easier for another person to acquire, retain, use or control criminal property.
- 4.3.3 **Acquisition, use and possession:** This offence is committed where a person knows or suspects that the property which is acquired, used or possessed, constitutes or represents his own or another's benefit from criminal conduct.
- 4.3.4 **Failure to Disclose – Regulated Sector or Other Nominated Officers:** Creates an obligation in certain instances to report suspicions of money laundering to authorities.
- 4.3.5 **Tipping Off:** Creates an offence of making a disclosure likely to prejudice money laundering investigations being undertaken, or which may be undertaken, by law enforcement authorities.

4.4 Types of Investigatory Powers (POCA Investigations)

- 4.4.1 **Production Orders:** The Crown Office and Procurator Fiscal Service (COPFS) may make application to the Sheriff for an Order to require that specified material be produced.

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- 4.4.2 **Search Warrants:** The POCA Act, under certain circumstances, makes provision for an application in writing to be made to the Sheriff for a Search Warrant.
- 4.4.3 **Customer Information Orders:** This is a new Order introduced by POCA, requiring a financial institution to provide any customer information that it has relating to a specified person, upon being required to do so by a notice in writing by a proper person authorised by COPFS.
- 4.4.4 **Account Monitoring Orders:** An order made by a Sheriff requiring a financial institution to provide 'in time' account information on a specified account, for a specified period not exceeding 90 days.

4.5 Investigation Responsibility

- 4.5.1 When information or intelligence is received suggesting that a Money Laundering scheme is operating, the FIU will be responsible for initiating a Money Laundering Investigation and the appointment of an enquiry officer.
- 4.5.2 Where during the course of an ongoing criminal enquiry, an offence is identified that one or more sections of POCA relating to Money Laundering has been breached, it shall be the responsibility of the initial enquiry officer to conduct the investigation into the Money Laundering offences. The FIU must be notified, thus ensuring that the appropriate guidance and support is provided.
- 4.5.3 In all cases the FIU will liaise with Crown Office, Serious and Organised Crime Division (SOCD) and advise them of the proposed investigation and request authorisation for a designated money laundering investigation. In this regard, all initial subject reports providing details of the enquiry must be transmitted to the Crown Office via the FIU.

4.6 Case Submission

- 4.6.1 At the conclusion of any designated Money Laundering Investigation, where it is considered that there is sufficient evidence to merit criminal proceedings, the initial investigating officer will submit a report outlining all available evidence direct to the Serious and Organised Crime Division (SOCD) within the Crown Office. SOCD have ultimate responsibility for the investigation and prosecution of all designated Money Laundering Investigations.
- 4.6.2 Where there is insufficient evidence or the evidence does not identify criminality, a subject report outlining the findings should be made to SOCD via the FIU, in order to conclude and close the case file. SOCD will consider whether the case should be referred to the CRU.

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4.7 Recording of Money Laundering Investigations

- 4.7.1 The FIU will be responsible for maintaining a record of all designated Money Laundering Investigations undertaken by the Police Service. The FIU will act as the conduit through which initial subject reports and subsequent investigative power requests are brought to the attention of SOCD.
- 4.7.2 This will enable the FIU to contribute to the National Crime Agency strategic Threat Assessment and relevant Police Scotland Strategic Assessments on the extent and modus operandi of money laundering and dissemination of intelligence and good practice.

5. Civil Confiscation

5.1 Civil Recovery Unit

- 5.1.1 The CRU has the power under POCA to prohibit the dissipation and pursue civil confiscation of assets which can be shown, on the balance of probabilities, to have been gained through criminal conduct. Where civil confiscation fails, or is not deemed appropriate, the CRU can refer the criminal assets to Her Majesty's Revenue and Customs (HMRC) for a taxation investigation.
- 5.1.2 The CRU receive their referrals direct from Crown Office, the police cannot directly refer cases to the CRU. Cases will be referred to the CRU by Crown Office where a criminal case has failed or been deemed unsuitable for criminal prosecution or where the police have reported an Expedited Referral to Crown Office for the consideration of referral to the CRU.

5.2 Expedited Referral

- 5.2.1 Where the Police have identified assets that are believed to have been gained through criminal conduct, FIUs should instigate investigations (that may include designation of a money laundering enquiry) with the intention of evidencing a criminal case against the subjects who have gained the criminal assets. Where insufficient evidence is found to justify a criminal case, the assets identified, along with a full report of the circumstances, should be reported to SOCD as an Expedited Referral for them to consider referring to the CRU for a civil asset confiscation investigation.
- 5.2.2 FIUs should actively research possible targets in their area to identify assets that may have been gained through criminal conduct with a view to reporting the subjects and assets to SOCD for either a criminal investigation or for consideration of an Expedited Referral.
- 5.2.3 The FIU will act as the SPOC between the CRU and the Police with regard to all follow up enquiries requested in respect of Expedited Referrals and Civil Confiscation cases.

6. Property Seizure

6.1 Legislation

6.1.1 Section 127 POCA provides for the search, seizure and retention of property that may be used to satisfy a confiscation order. Property which was seized, for example, as evidence in a criminal investigation and which is subject to a restraining order may continue to be retained even when the evidential purpose for retention no longer exists and in normal circumstances would be returned.

6.2 Powers to Seize Property

6.2.1 Section 127C provides a Constable may seize property if satisfied that any of the following conditions set out in section 127B is met

First Condition

- a criminal investigation has been started in Scotland with regard to an indictable offence,
- a person has been arrested for the offence,
- proceedings for the offence have not yet been started against the person in Scotland,
- there are reasonable grounds to believe that the person has benefited from conduct constituting the offence and
- a restraint order is not in force in respect of any realisable property.

Second Condition

- a criminal investigation has been started in Scotland with regard to an indictable offence,
- a person has been arrested for the offence,
- proceedings for the offence have not yet been started against the person in Scotland and
- a restraint order is in force in respect of any realisable property.

Third Condition

- proceedings for an indictable offence have been started in Scotland and have not been concluded,
- there is reasonable cause to believe that the accused has benefited from conduct constituting the offence and
- a restraint order is not in force in respect of any realisable property.

Fourth Condition

- proceedings for an indictable offence have been started in Scotland and have not been concluded and
- a restraint order is in force in respect of any realisable property.

Fifth Condition

- an application by the prosecutor has been made under Sections 104, 105, 111 or 112 of POCA and not concluded or the officer believes that such an application is to be made and
- there is reasonable cause to believe that the accused has benefited from criminal conduct.

Sixth Condition

- an application by the prosecutor has been made under Section 106 of POCA and not concluded or the officer believes that such an application is to be made and
- there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the accused's benefit exceeds the relevant amount (as defined in that section).

Seventh Condition

- an application by the prosecutor has been made under Section 107 of POCA and not concluded or the officer believes that such an application is to be made and
- there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the accused's benefit exceeds the relevant amount (as defined in that section)

6.2.2 Section 127C states that on being satisfied on the conditions mentioned above a constable may seize any realisable property if the officer has reasonable grounds for suspecting that

- the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the accused
- or
- the value of the property may otherwise be diminished as a result of conduct by the accused or any other person

But the officer may not seize

- Cash, or
- Exempt property

Exempt property means:

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- Such tools, books, vehicles and other items of equipment as are necessary to the accused for the use personally in the accused employment, business or vocation
- Such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the accused and the accused's family

6.3 Searches for Property

6.3.1 Section 127D of POCA provides that if an officer is lawfully on any premises the officer may search the premises for the purpose of finding any property which

- the officer has reasonable grounds for suspecting may be found there; and
- If found there, the officer intends to seize under section 127C

This power to search **can only be** carried out with appropriate approval under section 127G of POCA.

6.3.2 Section 127E of POCA provides that if an officer has reasonable grounds for suspecting that a person is carrying property that may be seized under Section 127C the officer may, so far as the officer thinks is necessary or expedient for the purpose of seizing the property require the person

- to permit a search of any article with the person
- to permit a search of the person

A constable searching any person may detain the subject for so long as is necessary for this exercise. The power of search does not require a person to submit to an intimate search or strip search.

This power to search **can only be** carried out with appropriate approval under section 127G of POCA.

6.3.3 Section 127F of POCA provides that if an officer has reasonable grounds for suspecting that a vehicle contains property that may be seized under section 127C, and it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle. The officer may, so far as the officer thinks is necessary or expedient for the purpose of seizing the property require the person to

- permit entry to the vehicle,
- permit a search of the vehicle.

A constable searching any vehicle may detain the vehicle for so long as is necessary for this exercise.

The powers are exercisable only if the vehicle is

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- in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
- in any other place to which at that time people have ready access but is not a dwelling.

But if the vehicle is in a garden or yard or other land occupied with and used for the purpose of a dwelling, the officer may exercise the powers of search only if the officer has reasonable grounds for believing

- that the person does not reside in the dwelling, and
- that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling.

This power to search **can only be** carried out with appropriate approval under section 127G of POCA.

6.3.4 **NB** Before carrying out any search of persons, vehicles or premises officers and staff should refer to the Police Scotland S-004 Searching Generic Risk Assessment.

6.4 Appropriate Approval for Searches

6.4.1 While POCA searches for property do not require a warrant, 'Appropriate Approval' is required; unless in the circumstances it is not practicable to obtain approval before exercising the power. In all cases divisional FIU should be consulted and the Crown Office Proceeds of Crime Unit informed where possible prior to the search.

6.4.2 Approval should be given in the first instance by a Sheriff or, where that is not practicable, a senior officer of at least the rank of Inspector. The Constable should explain to the Sheriff the grounds for wishing to undertake the search. Where appropriate and practicable the officer should prepare a written application in the form of a report. Where a senior officer is asked to approve a search, the senior officer should make a written record of their decision.

6.4.3 If the powers are exercised without the approval of a Sheriff in a case where:

- No property is seized by virtue of section 127C; or
- Any property so seized is not detained for more than 48 hours,

the Constable who exercised the powers must give a written report to the appointed person. A copy should also be provided to the local FIU who will ensure the Proceeds of Crime Unit of COPFS is provided with a copy.

6.4.4 The report must give particulars of the circumstances which led the Constable to believe that:

- The powers were exercisable; and
- It was not practicable to obtain the approval of a Sheriff.

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6.5 Reporting and Administration Procedures

- 6.5.1 The seized property should be clearly labelled and stored in a safe place, adhering to local procedures, until the outcome of the initial detention application is known.
- 6.5.2 A subject sheet / report requesting further detention of the property should be dictated by the seizing officer, to be treated as a custody case, prior to the completion of their tour of duty. This report should be forwarded to the FIU for onward transmission to the Proceeds of Crime Unit of SOCD. The report should include
- Time and date of seizure of the property.
 - Conditions under Section 127B of POCA under which the property was seized, details of the number of the case if it has been reported to COPFS and details of any restraint proceedings.
 - Details of authorisation obtained for the search and seizure, judicial approval, senior officer approval, or whether no approval could be sought.
 - The property seized and its estimated value.
 - Confirmation the property is not cash or exempt property.
 - Why continued detention is necessary – why it is considered that the value may diminish as a result of the direct or indirect conduct by the accused or any other person.
 - Why they reasonably suspect that the property may otherwise be made unavailable for satisfying any confiscation order that has been made or may be made against the accused.
 - Any information about third party claims to the property.
 - Information about what the officer anticipates the benefit to the accused from criminal conduct is.
- 6.5.3 The maximum period allowed from the time of the property being seized to when a detention hearing commences is 48 hours (excluding weekends and court holidays). The FIU have responsibility to ensure that the relevant Procurator Fiscal is made aware of the seizure in sufficient time to organise the detention hearing. Once FIU receive the report of a seizure of property, they will liaise with the Proceeds of Crime Unit of SOCD, who will then prepare an application for detention to be heard by a Sheriff. If the detention hearing is not arranged within the 48 hours period, the property must be returned.
- 6.5.4 At the hearing the Sheriff will consider the circumstances and, if deemed appropriate, will order the property to be retained. The matter will then be dealt with by the Proceeds of Crime Unit of SOCD. If the Sheriff decides that the property is not suitable for further detention the FIU will be informed and arrange for the property to be returned to the subject.

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- 6.5.5 If following the hearing the property is to be returned to the subject the seizing officer is responsible for this. If the property is to be retained for a further period of time the seizing officer is responsible for ensuring the property is stored in accordance with local practices following consultation with the divisional FIU.
- 6.5.6 The FIU will act as a Single Point of Contact (SPOC) between the seizing officers and the Proceeds of Crime Unit of SOCD. All further enquiries by the Proceeds of Crime Unit of SOCD will be transmitted on to the seizing officers by the FIU.

NOT PROTECTIVELY MARKED

List of Associated Legislation

- The Proceeds of Crime Act 2002
- The Serious Organised Crime and Police Act 2005
- The Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011
- Misuse of Drugs Act 1971
- Copyright, Designs and Patents Act 1988
- Gangmasters (Licensing) Act 2004;
- Consumer Credit Act 1974;
- Private Security Industry Act 2001
- Criminal Justice and Licensing (Scotland) Act 2010

List of Associated Reference Documents

Policy

- Crime Investigation
- Serious and Organised Crime

Standard Operating Procedures

- Interpreting and Translating Services SOP
- Record Retention SOP

Reference Documents

- Cash Seizure Guidance and Questions
- Interview for Cash Seizure under Section 294

List of Associated Forms

- Form 112-041 Certificate of Counting – GBP (£); or
- Form 112-042 Certificate of Counting – Foreign Currency

Glossary of Terms

CHS	Criminal History System
COPFS	Crown Office and Procurator Fiscal Service
CRU	Civil Recovery Unit
FIU	Financial Investigation Unit
HMRC	Her Majesty's Revenue and Customs
POCA	Proceeds of Crime Act 2002
SCD	Specialist Crime Division
SOCDD	Serious and Organised Crime Division
SOP	Standard Operating Procedure
SPOC	Single Point of Contact