Forfeiture and deprivation

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Seizure and removal of property

Powers to stop and seize vehicles

The police have a number of powers to enable them to search and seize vehicles. See **disrupting criminality in road policing APP**.

The Criminal Justice and Police Act 2001

Sections 50 and 51 of the Criminal Justice and Police Act 2001 (CJPA) allow for the seizure and removal of property found on premises or on a person where it is not reasonably practicable to complete a process of examination, searching or separation at the scene.

- **section 50** refers to seizure from premises
- **section 51** refers to seizure from a person
- **section 59** gives any person, with a relevant interest in property seized using these powers the right to apply to the appropriate judicial authority for it to be returned

These powers are fully explained in the **Police and Criminal Evidence Act 1984 (PACE)**, **Code of Practice B (2013) 7.7-7.17**. These powers allow for the seizure of property (often documentary) where the sheer volume or complexity means that it could not be considered reasonably practicable to search it where it was originally located.

The CJPA and PACE Codes specify various considerations including the service of a written notice (Code B 7.12).

Investigators should seek the assistance of their FIU when exercising the power of seizure under sections 50 or 51 of the CJPA.

The Misuse of Drugs Act 1971

Section 27 of the Misuse of Drugs Act 1971 (MDA), as amended by **section 70 of the Criminal Justice Act 1988**, and the **Criminal Justice (International Co-operation) Act 1990** state that 'anything shown to the satisfaction of the court to relate to the offence' may be forfeited and either destroyed or dealt with in such other manner as the court may order.

Tackling drug dealers

Anything shown to relate to the offence applies equally to money and to other tangible objects. This may include, for example:

- the car that a drug dealer has used to commit offences
- any equipment used to produce, manufacture or grow drugs
- cash seized by police that relates directly to an offence

Investigators may find it useful to apply, under the MDA, for forfeiture of cash or anything shown to relate to the offence in those cases where the time and resources needed to support a confiscation investigation would outweigh the amount of available assets the offender is able to pay back. See **when is a confiscation investigation appropriate?**

What is the process?

Confiscation proceedings are dealt with first, before any forfeiture order. If it comes to light that a person has admitted to drug trafficking, for example, and does not have any assets apart from the cash seized, then police would ask the court to proceed under section 27 of the MDA.

The officer is not required to prepare a confiscation report under those circumstances, however, the court can always ask for one to be carried out. An offender who is also a prolific drug user might have no assets and absolutely no means of paying a confiscation order. The police could still, however, apply for forfeiture of the car used in the offence, and the small amount of cash made from the deal.

An order under section 27 of the MDA must be made within 28 days of passing sentence and it cannot be varied, rescinded or made after that period. Any such order made under this section requires the judge to direct where the sale of any items goes to.

The Powers of Criminal Courts (Sentencing) Act 2000

Once an offender has been convicted of an offence, the court may make an order under the **Powers of Criminal Courts (Sentencing) Act 2000 section 143** to deprive them of any property that was used, or intended to be used, for the purposes of committing, or facilitating the commission, of any offence.

Requirements of the Act:

- the property that is deprived needs to have been lawfully seized from the suspect
- the property must have been in their possession or under their control when they were apprehended, or when a summons in respect of the offence was issued
- the property concerned was used to commit any offence, but not necessarily the offence of which the offender has been convicted

Possession

Possession usually means physical possession but can include a legal right to possess. The property need not have been used personally by the defendant, provided they intended it to be used for criminal purposes, even by another. An intention to use for the purposes of crime will suffice, and includes the forfeiture of any vehicle used to commit serious traffic offences.

Facilitating the commission

Facilitating the commission of an offence includes taking any steps after the offence has been committed to dispose of property which is the subject of the crime, or to avoid apprehension or detection.

In considering whether to make a deprivation order the court shall have regard to the:

- value of the property, and
- likely financial and other effects on the offender of the making of the order (together with any other order the court is contemplating)

The order only takes effect after a period of six months in order to allow a person to make a claim under the **Police (Property) Act 1897**. If no successful claim is made, the property is sold and the proceeds disposed of in the same way as described in the Act.

The Sexual Offences Act 2003

The Sexual Offences Act 2003 enables the use of forfeiture to tackle those responsible for the trafficking people for sexual exploitation. It also provides an effective tool for disrupting organised crime.

Section 60A of the Sexual Offences Act 2003 applies if a person is convicted on indictment of an offence under **section 59A** (trafficking people for sexual exploitation).

The court may order the forfeiture of the vehicle(s) used (or intended to be used) in connection with the offence. This extends to the forfeiture of a ship or aircraft if the convicted person had knowingly either owned, hired, chartered or captained the vehicle (or vessel) for the purpose of committing, or intending to commit, any of these offences.

Third-party property claims

The accused is deprived of their rights to property which passes into the possession of the police.

The provisions of the **Police (Property) Act 1897** apply and a person may claim the property provided the court is satisfied that: (one of the following):

- they did not consent to the offender having possession
- they did not know, and had no reason to suspect, that the property was likely to be used for the purpose of committing an offence

Terrorist property

Section 14 of the Terrorism Act 2000 defines terrorist property. This definition includes tangible property, money likely to be used for the purposes of terrorism, the proceeds from the commission of acts of terrorism, and the direct or indirect proceeds of acts carried out for the purposes of terrorism. The definition is wider in relation to an organisation which is proscribed (outlawed in the UK). Here it can relate to any resources (any money or other property which is or will be applied or made available for use by the organisation).

The Anti-Terrorism, Crime and Security Act 2001

The **Anti-terrorism, Crime and Security Act 2001** replaces the seizure of cash powers in the Terrorism Act 2000, see **Part 1**. Under **Schedule 1, paragraph 2**, an authorised officer may seize and detain any cash to which this section applies if he has reasonable grounds for suspecting that it is terrorist cash. The Terrorism Act 2000 **section 3** and **Schedule 2** are also relevant here**.**

The Anti-terrorism, Crime and Security Act 2001 broadens investigative powers and introduces account monitoring orders. It also provides the power to freeze the assets of overseas residents. It also includes a mechanism for forfeiture of cash used for the purposes of terrorism, in civil proceedings before a magistrates' court.

The **Terrorism Act 2000** defines terrorist property, deals with money laundering, and provides additional powers of forfeiture.

Forfeiture orders

Sections 23 and 23A of the Terrorism Act 2000 allow the court by or before a person is convicted of a section 15, 16, 17 or 18 offence to make a forfeiture order. Under subsection (7) the court may also order the forfeiture of any money or other property, which wholly or partly, directly or indirectly, is received by any person as a payment (or other reward) in connection with the commission of offences under sections 15 to 18.

Restraint orders

Schedule 4, paragraph 5 of the **Terrorism Act 2000** allows the High Court to make a restraint order where:

- a forfeiture order has already been made; or
- it appears to the court that a forfeiture order may be made in the proceedings for the offence; or even
- where the court is satisfied that a person is to be charged with any relevant offence, and that a forfeiture order may be made in these proceedings

Schedule 4, paragraph 5 of The Terrorism Act 2000 refers to a relevant offence, this term includes: (a) an offence under any of sections 15 to 18, (b) an offence to which section 23A applies, (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorism offences are to be considered).

The effect of a restraint order is to prohibit a person to whom notice of it is given from dealing with the relevant property. To reinforce the powers of restraint, **Schedule 4, paragraph 7** allows a constable a summary power of seizure of any property subject to a restraint order for the purpose of preventing it from being removed from the jurisdiction, although the seizure should then be notified to the High Court for directions.

Freezing orders

Under the **Anti-terrorism, Crime and Security Act 2001** Her Majesty's Treasury can make a freezing order if appropriate providing that two conditions are satisfied. The first condition, defined by s 4(2), is that the Treasury reasonably believes that:

1. action to the detriment of the UK's economy (or part of it) has been or is likely to be taken by a person or persons, or
2. action constituting a threat to the life of property or one or more nationals of the UK has been or is likely to be taken by a person or persons.

If one person is believed to have taken or be likely to take action, section 4(3) imposes the second condition that the person is:

1. the government of a country or territory outside the United Kingdom, or
2. a resident of a country or territory outside the United Kingdom.

Seize and detain

The seizure may be undertaken even if it is not reasonably practicable to seize only that part of the cash believed to be terrorist cash.

Authorisation to seize cash should be obtained from a senior officer prior to the actual seizure of the cash. Verbal authorisation should be supported by written authorisation as soon as is reasonably practicable. Once seized, the cash must be released not later than the end of the period of 48 hours starting from the time when it is seized.

Forfeiture of cash – civil proceedings

Under the Anti-terrorism, Crime and Security Act 2001, Schedule 1, paragraph 2 an authorised officer or the Commissioners of Her Majesty's Revenue and Customs (HMRC) may apply to a

magistrates court for an order to seize cash.

The court may grant the order only if satisfied that there are reasonable grounds to suspect that the cash is:

- terrorist cash
- the resources of a proscribed organisation
- earmarked as terrorist property

The court must also be satisfied that in whichever of the three situations applies, the continued detention of the cash is justified pending:

- completion of an investigation of its origin or derivation
- a determination whether to institute criminal proceedings
- the conclusion of proceedings

Under **POCA, section 298** a constable, or the Commissioners of HMRC may also apply to a magistrates' court for an order forfeiting detained cash. The forfeiture can apply not only against the seized cash but also in relation to any accrued profits.

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