

# Cash seizure

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This section focuses on cash seizure by the police. Guidance on [confiscation and recovery](#) of property and the investigation of [money laundering](#) is also available.

## Cash seizure

It is likely that officers will find cash linked to criminal conduct during the course of their duties. This could be during any criminal investigation and particularly when searching persons, premises and vehicles. The [Proceeds of Crime Act 2002 \(POCA\)](#) gives officers the power to seize cash, this is a civil process that can run alongside a criminal investigation.

## Basic principles

If the police find £1,000 or more in any type of currency, cheques or bonds, and suspect that it has come from or is intended to be used to commit crime, they can seize and detain the funds.

In the majority of cases, non-specialists initially seize cash to the value of £1,000 or more and then contact their local financial investigation unit (FIU) for advice on the detention and forfeiture process. All officers should, therefore, be aware of cash seizure opportunities and be equipped to use these powers.

There are some cases where seizing the cash as evidence under the [Police and Criminal Evidence Act 1984 \(PACE\)](#) does not apply or will cease to apply. For example, if a criminal case collapses, any cash seized as evidence would normally have to be returned. If, however, the police suspect that the cash is derived from crime, it can be seized, detained and forfeited under sections [294 to 298 of POCA](#).

The case of [Angus v UK Border Agency \[2011\] EWHC 461 \(Admin\)](#) is a useful reminder of what must be proved when seeking forfeiture of cash. The Hon. Mrs Justice Nicola Davies DBE held

that, in a forfeiture application, the officer is required to demonstrate on the balance of probabilities that the cash was obtained through conduct of one of a number of kinds, each of which would have been criminal conduct.

In other words, the officer has to explain why there is a connection between the cash and specifically criminal activity.

## Seizing cash as evidence under PACE

Amounts of less than £1,000 can be seized, for their evidential value, under [section 19\(2\) or \(3\) and 22\(4\)](#) of PACE (for example, if the cash has been contaminated with drugs) if the suspect is arrested for money laundering or in relation to other offences where the money can be shown to be evidence of those offences, for example, theft or deception.

A distinction has to be made between grounds for seizure:

- Section 19 subsections (2), (3) and (4) allow an officer who is lawfully on any premises to seize evidence or anything obtained in consequence of the commission of an offence in order to prevent it being concealed, lost, damaged or destroyed
- Section 22(2)(b) allows retention of anything seized under section 19 in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence
- Section 22(4) provides that nothing seized under section 19 may be retained for the purpose of a criminal investigation, for use at trial or for a forensic examination, if a photograph or copy would be sufficient for that purpose. This only applies in these limited circumstances set out in section 22(2)(a)

Cash seizure, detention and forfeiture is a civil procedure and does not require the suspect to be charged or convicted of a crime, although it can run in parallel with a criminal investigation. Overall, it is a simple and straightforward process that should be used where appropriate.

For further information see [Home Office \(2002\) Code of Practice for Constables and Customs Officers Under the Proceeds of Crime Act 2002](#) (issued under POCA section 292).

## Appropriate cash seizure

Officers should use their discretion and take account of all the circumstances associated with any cash found. Their actions must be proportionate, non-discriminatory, legal, accountable and necessary (see [National Decision Model](#)).

## Conditions

Cash seizure powers require reasonable grounds for suspicion that the case meets the conditions necessary for seizure of cash.

An officer may seize cash under POCA if the following conditions apply:

- their presence is lawful
- there are reasonable grounds to suggest that the cash is recoverable property (obtained by unlawful conduct) or is intended for use by any person in unlawful conduct
- there appears to be £1,000 or more

The lower the sum of cash involved, the more discretion that must be used by the police in order to avoid unnecessary interference with people's rights and waste of police resources, see [the minimum amount of cash](#).

## Grounds for suspicion

There must be some objective grounds for that suspicion, based on facts, information, and/or intelligence. The officer should take into account the following factors:

- how the individual or premises were identified
- previous intelligence on persons or premises
- previous involvement with the persons or premises
- suspected links with criminal activities whether in the UK or overseas
- [a luxury lifestyle \(case study\)](#)
- [a missed opportunity \(case study\)](#)

### A luxury lifestyle

A person was caught stealing petrol. After the investigating officer approached the FIU for advice, a financial enquiry revealed that there were obvious discrepancies between the person's legitimate income and their general lifestyle. An investigation led to a conviction for four offences of stealing

petrol worth £219.58, and one offence of the theft of a Porsche motor car. The person had received social security benefits but was living in a luxury barn conversion. They had a lavish lifestyle and investments in Switzerland. It appeared that the person was living off the proceeds of crime.

The person would not provide any realistic explanation for their wealth and the financial investigation revealed no signs of legitimate funds to substantiate this wealth. Confiscation proceedings were pursued by the prosecution, resulting in two separate confiscation orders. With regards to the theft of the Porsche motor car, a confiscation order was imposed in the sum of £18,650.

Four offences of theft of petrol on separate occasions were sufficient to trigger criminal lifestyle assumptions under the Criminal Justice Act 1998 (CJA). Assumptions were, therefore, made about all the person's unexplained assets. Following a full confiscation hearing, the court imposed an order confiscating a total of £1,566,911 from the person.

It should be noted that the dates when the offences were committed were prior to the inception of POCA. The confiscation legislation that applied was under the CJA. If POCA had applied, the offences would still have triggered the application of criminal lifestyle assumptions.

### **A missed opportunity**

A known drug trafficker accompanied by an associate was seen by the police in suspicious circumstances in a provincial town. They were stopped and searched for drugs.

No drugs were found, but the police did find £8000 in cash in their possession – and let them drive off with it. This is a prime example of a lack of awareness leading to a missed opportunity to seize the proceeds of crime.

## **Minimum amount of cash**

The minimum sum which the police are allowed to seize is currently £1,000, created by statute under the Proceeds Of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006, SI 2006/1699.

Under section 289 (6) and (7) of POCA, cash includes:

- notes or coins of any currency
- banker's drafts, bearer bonds and bearer shares
- postal orders and any kind of cheques including traveller's cheques

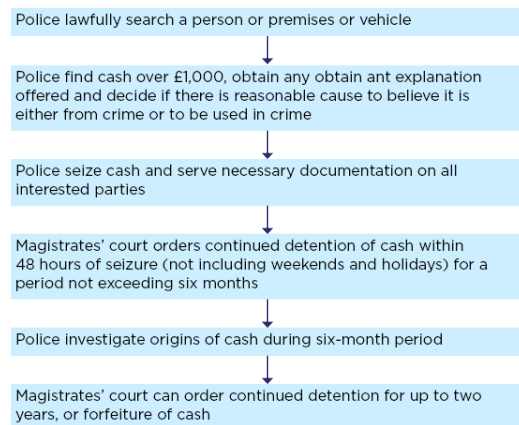
Finding a person in possession of £1,000 in cash should not, in itself, be considered suspicious. There must be reasonable suspicion that the cash is the product of or intended for use in criminal activity. Taking into account the context and circumstances of the situation, carrying a much larger sum might reasonably be considered suspicious, unless a satisfactory explanation is given.

## POCA search warrants

Investigators are advised to seek assistance from their FIU in obtaining POCA search warrants. This is a specialist area because prior authority may need to be sought. A prior authority does not include the power to enter premises.

# A guide for investigators

## The cash seizure process



The information below is intended for use by investigators and non-specialists for briefing purposes only. It is usual practice for specialist FIU officers to manage or advise on the detention and forfeiture process.

## Initial enquiries

All questions asked at the scene should be recorded in the officer's pocket book. The officer should note:

- the time that the cash was first seen
- a description of the cash
- where it was found or concealed
- any other property with the cash any unusual packaging
- any unsolicited comments made by any persons at the time the cash was found or seized

The officer should ask the person found in possession of the cash to give an explanation for its origins to establish its ownership and whether it is 'recoverable property' (see [cash seizure](#)). Investigators should also ask others who may be present (for example, family and friends) about their knowledge of the cash.

Where the person from whom the cash has been seized has been arrested on suspicion of committing a crime (for example, money laundering) detailed questions of a financial nature should be incorporated into the main PACE interview. Where the cash seizure does not form part of a criminal investigation, questioning can be conducted in a separate civil interview.

## Relevant questions

- How much cash is there?
- What types of notes or cheques are there?
- Who does it belong to?
- From what activities did the cash derive?
- How did it get there?
- Has the person touched or handled it?

## Power to arrest?

If the investigator is satisfied that the person found in possession of the cash is not involved in criminality there is no power to detain the individual at the scene or to take them to a police station for interview.

If necessary the person found in possession of the cash should be invited to attend the police station for further questioning in order to establish the ownership of the money and if it is recoverable property. In these circumstances, the person being interviewed is a witness in a civil

case.

## Cash is found independently of a person

In cases where cash is found without the identification of an owner, the police are still able to seize it (for example, where a vehicle is abandoned after a pursuit and cash is recovered in the vehicle, or the police have cause to go to an empty premises and find cash there).

If the circumstances surrounding the discovery indicate the cash may be the proceeds of crime, or that it is intended for future use in crime, it can be forfeited at the magistrates' court. Under these circumstances, the forfeiture hearing may be uncontested.

### Dirty money (case study)

Police officers conducted a house search under section 18 of PACE. As well as looking for evidence of the crime they were investigating, they also looked for the financial benefit from the crime. As the suspect could not account for the origins of the cash, it was seized under POCA. The cash was sent for drugs analysis and a higher than average percentage of controlled drug was found on each note. This supported the view that the cash was from the proceeds of crime.

## Separate civil interview

During a separate financial interview not conducted under PACE, questions should not be directed towards the person's possible criminality as cash seizure and forfeiture is a civil process.

The cash has been seized because it is believed to be derived from criminality. The interviewing officer is, therefore, entitled to ask about the origins of the seized cash. The person found in possession of the cash is not obliged to answer the questions and may have legal representation if they wish (although there is no guarantee that they will receive legal aid). The court can draw inferences from a 'no comment' reply.

Any civil interviews carried out at a police station should be tape-recorded in the normal manner but not conducted under caution. The product of a civil interview cannot be used as evidence in a subsequent criminal investigation.

Investigators should explore the person's financial situation and legitimate income, and any suspicions they may have. This is to establish whether or not the person has more expenditure or

assets than can be supported by their legitimate income.

## Interview questions

It is important that these questions are asked and recorded as having been asked, even when a reply is not received. In subsequent forfeiture hearings a person's reply and any subsequent deviation from that reply may have a bearing on the outcome.

## Income

- Do they work? If so, where and for how long?
- How much do they earn?
- If they do not work, do they receive benefits? How much?
- Do they have any other form of income or investments?

## Expenditure

- How much is their mortgage or rent?
- What do they spend on utilities?
- Do they pay for dependents or make payments to the Child Support Agency (including alimony)?
- Do they have loans or car hire or lease agreements?
- Do they have a drug habit? What is it? How long have they had it and how much do they spend on their habit per week?
- Do they consume alcohol? If so, how much? Do they smoke cigarettes or cigars and, if so, how many?
- Do they own vehicle(s)? If so, what are their running costs?

## Assets

- Do they own any houses in the UK or overseas? If so, what are the addresses?
- Do they have any bank or building society accounts in the UK? (Ask for numbers and sort codes.)
- Do they have a national savings account, premium bonds or ISAs?
- Do they hold any overseas bank accounts in their own names, or control any other overseas bank accounts in personal or corporate names?
- Do they own any businesses?
- Have they got any other valuable, tangible assets, such as a luxury car or a pedigree dog?

## Handling cash



When bagging and sealing the cash, it is advisable to ensure that:

- gloves are worn
- photographs are taken
- cash is double bagged and sealed, using clean bags
- the amount of cash found is estimated
- the cash is sealed in the presence of the subject and an entry is agreed in the officer's notebook and countersigned by the subject, if possible
- two officers are present and both sign the exhibit labels
- the cash is lodged in a safe until it can be sent for analysis (for example, mass spectrometry for drugs, contamination from explosives, or for fingerprints) or paid into the bank
- if cash is found during a search, it is logged as recovered property on the record of search form

Officers should not count cash unless it is decided at an early stage that the money is not to be forensically examined. There may be circumstances where it is necessary to remove the cash from a container, this should also be completed without counting the money. The container should be preserved in the same manner as the cash.

Counting cash is likely to cause forensic contamination, spoil subsequent tests, and may result in the integrity of the officer being called into question.

It is also advisable to avoid the following:

- taking the cash to a custody suite that is potentially contaminated with drugs, explosives or other substances
- placing property on floors or contaminated surfaces
- using officers who have recently been, or could have been, in contact with drugs, explosives or other substances
- handling the cash any more than necessary
- letting the person found in possession of the cash touch it
- removing the cash from its wrapping, container or bag

## **Providing a receipt**

It is good practice to give the person in possession of the cash a receipt. The receipt should describe the total amount seized, whether or not the total amount consists of smaller

amounts claimed by different people (an estimated total if the money is not counted).

The receipt is in addition to any other receipt or form normally issued (for example, premises search form and items seized receipt). This should be signed by the person found in possession of the cash and a copy retained for the file.

## Arranging the cash detention hearing

An FI (or AFI), constable or customs officer must apply to a magistrates' court for a cash detention hearing. The hearing must be concluded within forty-eight hours of the officer first seizing the cash (not including Saturdays, Sundays or bank holidays).

If the hearing has not been concluded within the 48 hours, the cash must be returned unless it is also being **detained as evidence** in criminal proceedings (either under section 19 of PACE for seizure **or** section 22 for retention).

Legally, any police officer can complete the paperwork and attend the magistrates' court for the cash detention hearing. However, investigators are advised to contact their FIU to arrange for the cash detention hearing to be conducted with the force solicitor. Some forces have appointed cash seizure officers who are able to provide support at this stage. In each case an entry should be made on JARD recording the cash seizure and detention details. This is usually done by staff within the FIU.

## Service of POCA Form A

It is a legal requirement to serve the person found in possession of the cash and any other identified interested parties with the POCA Form A (First Application for Continued Detention of Seized Cash).

This informs the person that the police are going to make an application to the court for further detention of the cash and where and when the hearing will take place. The police officer must also provide a copy of Form A to the court. Investigators should make sure they have proof of service of this form (such as a witness statement or receipt).

## The right to appeal

The person found in possession of the cash has the right to appeal against the detention of the cash under section 297 of POCA. Investigators may serve a notice telling the person how they can

reclaim the seized cash. The policy for the use (and format) of this form may vary from force to force. Investigators should check their own force policy.

## **Application for further detention**

The application for further detention is a document outlining the evidence upon which the suspicion that the cash is recoverable property, or intended for use in unlawful conduct, is based. It usually includes:

- grounds for the application
- a detailed description of the circumstances
- a list of enquiries already conducted (including information from any interviews) and their results
- a list of enquiries to be completed

The application for continued detention of the cash is made at the magistrates' court. This remains a civil procedure and the application is made by the FIU or by a force solicitor, depending on force policy.

The application can be contested by other parties. If, however, there are reasonable grounds at this stage for suspecting that the money is recoverable property and further enquiries have to be made, the court may grant another detention order.

If the case is contested or complicated, legal representation should be considered at an early stage. The force solicitor should be notified as soon as possible.

The cash seizure provisions allow further applications for continued detention of the cash every six months up to a maximum of two years, or until it is either forfeited or returned if this occurs before the end of two years.

### **A sizeable cash seizure (case study)**

As part of an ongoing money laundering investigation, police officers executed a search warrant at the home of two suspects. During the course of the search, the police found what was believed to be £100,000 in eight bundles of cash in a trunk inside the garage. A second quantity of money believed to be £50,000 in four bundles was found in a safe in the garage.

A substantial amount of gold jewellery and financial documentation relating to an alias was also found in the safe. Further cash was found in a bundle in the bedroom.

Both suspects were arrested and charged with a range of offences from money laundering to deception. An application to detain the money seized for a period of three months was made under POCA to allow further investigation into the origin of the funds. This case is currently awaiting the forfeiture hearing.

## Order granted – what next?

If the magistrates grant an order of continued detention it is issued as POCA Form B. A notice to affected persons for the order of continued detention (POCA Form C) is attached to Form B.

The officer investigating the cash (usually an FI) should arrange the next court hearing to further detain the cash. This hearing must be held within a six-month period. The court will either set the next hearing date and location immediately, or at least seven days prior to the hearing. (This practice may vary from force to force.)

Using Form A, the date of this hearing must be sent to the person from whom the cash has been seized, and any other parties with an interest in the money.

This form can be sent by the court but it is good practice for the investigator to also send it between seven and fourteen days prior to the hearing (force policies may differ).

## Cash procedure

The cash should be deposited in an interest-bearing account at the earliest opportunity, provided it is not required as an exhibit in the cash seizure and/or criminal investigation.

Each force has internal processes governing interest-bearing accounts, and all forces should be capable of determining the interest which accrues on the individual deposits.

The only exception to this is if the cash is required in its original state to be submitted for forensic analysis. Once the reason for retaining the cash in its original state lapses, it should be paid into an interest-bearing account as soon as possible.

## Further detention orders

An order for the continued detention of the cash cannot exceed six months.

Further detention applications can be made in six-monthly intervals for a total of two years from the date of the first order (or other lesser time periods depending on the outstanding enquiries). They are made to the court using POCA Form A, along with supporting information as described in the 'information in support of application for further detention'.

A copy of POCA Form A (but not the information in support of the application for further detention) must be served on the person(s) from whom the cash was seized and all interested parties, no less than seven days before the date of the court hearing. The fact that POCA Form A has been served should be recorded in the information in support of the application for further detention.

If the period of time given in the further detention order expires before another order for continued detention is granted, the cash must be returned unless it is being retained for another reason.

Costs should be applied for after each contested hearing.

## Lawfulness

If enquiries subsequently reveal that the cash originates from legitimate means or is found to be below the minimum amount, it should be returned to the owner and no further court applications are necessary. If, at the time of seizure, the officer reasonably suspected it to be the minimum amount, this does not apply, even if it is lower. As a matter of courtesy, a note of this should be submitted to the court.

It may, however, be necessary to consider restraint of the cash if there are any ongoing associated criminal proceedings where confiscation is being considered or sought, and where the cash can be considered an asset of the person involved in those proceedings. This applies even if it is below the minimum amount.

## Release of the cash

At any time, the person(s) from whom the cash was seized, or any other interested party, may make an application to the court for the release of the cash (and any accrued interest). If the court is satisfied that all, or part, of the cash is not recoverable property and is lawfully claimed by the person, it may order the release of the cash.

This can also occur at a continued detention hearing if the court is not satisfied that there are grounds to detain the cash.

These orders are produced by the court on POCA Forms D, E and F.

## Applying for forfeiture

Cash detained as part of the cash seizure process is taken into account when assessing a person's benefit from criminal conduct. However, it is not included in the amount of the confiscation order. In order for it to be included, an application to forfeit the cash must be made and the hearing adjourned to await the outcome of the criminal proceedings.

If the criminal case is successful – the cash can be included in the confiscation order amount, providing that the correct procedure has been followed.

If the criminal case is not successful – the cash forfeiture proceedings can continue provided that it can be shown on the balance of probabilities that the cash (or part of it) is recoverable property, or was intended for use in unlawful conduct.

An officer may apply for the cash (and accrued interest) to be forfeited after the investigation into the origins of the cash has been completed. This application may be made at any time while the cash is detained and is completed on POCA Form G (for further information, consult the force FIU). This form must be served on the person(s) from whom the cash was seized and all other interested parties no less than seven days before the date of the court hearing.

Information is produced in support of the application for the court, but the forfeiture hearing itself should be a full hearing with the complete file of available evidence. The process for exchanging papers should be dealt with by way of a 'directions hearing' at which time notices of hearsay evidence should be served.

## When the criminal prosecution fails (case study)

A person suspected of drug trafficking was found not guilty of the criminal charges brought against them. During a search of their house, the police found a large sum of money concealed in the chimney. The person could not provide a reasonable explanation for the origins of the cash. Initially they claimed that they had found the cash under a bush. A number of witness statements were

obtained that showed the person's lack of legitimate income and the existence of unidentified income received into the person's bank accounts.

Investigators were able to use local intelligence and interviews about the criminal matters concerning that individual in the confiscation hearing, together with hearsay evidence. An application for detention of the cash was made at the magistrates' court. Even though the criminal prosecution had failed, the cash was still forfeited.

## Forfeiture of the cash

### If an application is successful

The court will order the forfeiture of the cash under section 298 of POCA, using POCA Form H. Copies of Form H must be served on all parties by the court. The cash must be retained by the police for 30 days following the date of the order. This is to allow time for any of the parties to appeal against the decision.

If no appeal is lodged within the thirty-day-period, the cash must be transferred to the relevant Home Office account. The cash cannot be released once an application for forfeiture has been made until that application is concluded.

### If the hearing is unsuccessful

The court will order the release of the cash. The cash must then be returned unless it can be subject to a restraint order should confiscation proceedings be pursued against the defendant.

## POCA forms

The forms used in the cash seizure, detention and forfeiture proceedings are available through each force FIU and usually via the local force intranet.

## Tags

Investigation