

**LORD ADVOCATE'S GUIDELINES ISSUED
UNDER SECTION 127R OF THE
PROCEEDS OF CRIME ACT 2002**

**Search and Seizure and Retention of
Property**

Lord Advocate's Guidelines Issued under Section 127R of the Proceeds of Crime Act 2002 (as inserted by section 56 of the Policing and Crime Act 2009)

Overview

New powers, set out in the Policing and Crime Act 2009, have been introduced in Scotland to provide for search, seizure and continued retention of property with a view to ensuring that property is available for confiscation at the conclusion of criminal proceedings. The powers may be exercised whether or not a restraint order is in place.

These Guidelines are issued by the Lord Advocate under Section 127R of POCA. They are designed to ensure clarity for officers as to the exercise of the powers of search, seizure and retention and the circumstances in which the seizure of property requires to be reported to Crown Office Proceeds of Crime Unit (POCU).

This guidance is available at <http://www.copfs.gov.uk/publications/prosecution-policy-and-guidance>

Legislative Framework

The powers of search, seizure and retention of property were brought into force by The Policing and Crime Act 2009 (Commencement No. 10, Transitional Provision and Savings) Order 2015.

Confiscation orders under the Proceeds of Crime Act 2002 are available following a criminal conviction. The purpose of confiscation proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. The court calculates the value of that benefit and orders the offender to pay an equivalent sum (or less where a lower sum is available for confiscation). Confiscation was first introduced in Scotland by the Proceeds of Crime (Scotland) Act 1995 and the provisions in the Proceeds of Crime Act 2002 (POCA) came into force in 2003.

Prior to confiscation, an application can be made to the Court for a restraint order. A restraint order has the effect of freezing property that may be liable to confiscation. It provides that the specified persons are prohibited from dealing with or disposing of specified property, but it does not provide for a power to seize and retain property. The Crown can apply to the sheriff court exercising its civil jurisdiction or the Court of Session for a restraint order.

Section 56 of the Policing and Crime Act 2009 amends the Proceeds of Crime Act 2002 (POCA) to provide for new search and seizure powers to prevent the dissipation of personal property that may be used to satisfy a confiscation order. Sections 53 and 56 provide for powers to retain property that may be used to satisfy a confiscation order. These provisions insert a number of new sections into POCA.

Section 53 of the Policing and Crime Act 2009 specifically amends the restraint order provisions of POCA to provide that property can continue to be retained that has been seized under a specified power if that property is also subject to a restraint order. Property which was seized, for example, as evidence in a criminal investigation and which is subject to a restraint order may continue to be retained even when the evidential purpose for retention no longer exists and in normal circumstances would be returned.

Liaison with Crown Office Proceeds of Crime Unit (POCU)

Separately from seeking judicial or senior officer approval for search or seizure, Police Officers should contact Crown Office Proceeds of Crime Unit (POCU) in the following circumstances:

1. Where a restraint order is live

Where there is a live restraint order in place, police should, where possible, advise POCU of any proposed search for and seizure of property in advance where this can be done during working hours.

Regardless of whether POCU has been advised of a search or seizure in advance, where there is a) a live restraint order in place and b) where items have been seized using the powers covered by these guidelines, POCU must be advised by 09:30 am the next working day. If items are seized using the powers covered by these guidelines POCU is responsible for applying for the continued detention of the property, for which strict time limits are in place. This may be in the form of

- a restraint order being varied to allow for the continued detention or
- by a sheriff court issuing a detention order.

2. There is no restraint order currently in place

Where there is no existing restraint order, it would be helpful if police could, where possible, advise POCU of any proposed search for and seizure of property in advance where this can be done during working hours. Where items are seized, POCU must be notified as soon as possible and by 09:30 am the next working day. Again, POCU is responsible for any applications for detaining the property, including the issue of a restraint order, which must be done within strict time limits. (Under s127M, it is possible for applications for further detention of property in cases where no restraint order is in force or authorised to be made by HMRC, an immigration officer, or a constable, as well as the prosecutor).

Persons covered by the Guidelines

The Guidelines will apply to officers of Revenue and Customs, Constables, Immigration Officers, National Crime Agency Officers (NCA).

Lord Advocate's Guidelines Issued Under Section 127R of the Proceeds of Crime Act 2002

Detailed Guidance Introduction

1. This guidance is made in connection with the exercise of the following powers under the Proceeds of Crime Act 2002 ("POCA"), which were inserted by the Policing and Crime Act 2009 ("the 2009 Act"):

- seizure power conferred by section 127C¹ POCA
- search powers conferred by sections 127D to 127H² of POCA, and
- retention and detention of property powers conferred by sections 120A³, 122A⁴ and 127J to 127P⁵ of POCA.

2. An appropriate officer, who can exercise these powers means an officer of Her Majesty's Revenue and Customs (HMRC), a constable, an Immigration Officer, and a member of staff of the National Crime Agency (NCA). Not all the powers are available to all these persons; section 120A(3) and 127A of POCA identifies who has been given a specific power, which is further explained below.

3. These guidelines are issued under section 127R of POCA⁶. They apply to all searches, seizures and detentions made under these powers on or after 1 June 2015. There is a separate code of practice for the exercise of these powers in relation to England and Wales and Northern Ireland issued by the Secretary of State.

4. The guidelines do not apply to searches carried out under any other legislation or provisions in POCA.

5. The guidelines should be available at all police stations for consultation by the police and members of the public.

¹ Inserted in POCA by section 56 of the 2009 Act.

² Inserted in POCA by section 56 of the 2009 Act.

³ Inserted in POCA by section 53 of the 2009 Act.

⁴ Inserted in POCA by section 53 of the 2009 Act.

⁵ Inserted in POCA by section 56 of the 2009 Act.

⁶ Inserted in POCA by section 56 of the 2009 Act.

General

6. The right to respect private life and family life and the protection of property are safeguarded by the Human Rights Act 1998. Powers of search seizure and retention of property may involve significant interference with the privacy of those whose premises and persons are searched and therefore they need to be fully and clearly justified in terms of the Act before they are used. In particular, constables should consider whether their actions in terms of search and seizure are necessary and proportionate, given all the circumstances.

7. The appropriate officer should take special care and have particular regard to an individual's vulnerabilities and possible difficulties when conducting a search. This is particularly relevant in the case of a search of a person who is a juvenile or persons with a mental or physical disability.

Scope of the powers

8. Section 127B POCA provides seven pre-conditions for appropriate officers using the search and seizure powers. The appropriate officer must be satisfied that one of these conditions 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 suspect⁷ that the person has benefited from conduct constituting the offence and a restraint order is not in force in respect of any realisable property.⁸

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.⁹

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

⁷ Section 127B(2) POCA, wording amended in POCA by Section 56 of the 2009 Act

⁸ Section 127B(2) POCA but see also section 127B(11) and (12) POCA

⁹ Section 127B(3) POCA but see also section 127B(11) and (12) POCA

accused has benefited from conduct constituting the offence and a restraint order is not in force in respect of any realisable property.¹⁰

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.¹¹

Fifth Condition

an application by the prosecutor has been made under sections 104¹², 105¹³, 111¹⁴ or 112¹⁵ 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.¹⁶

Sixth Condition

an application by the prosecutor has been made under section 106¹⁷ 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 that the person's benefit is to be increased.¹⁸

Seventh Condition

an application by the prosecutor has been made under section 107¹⁹ 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 that the person's available amount is to be increased.²⁰

9. Section 127B(10) provides that the fifth, sixth or seventh condition is not met if the officer believes that there has been undue delay in continuing the application referred to in that condition or that the prosecutor does not intend to proceed. The Officer must contact Crown Office POCA unit to discuss any case in which Crown Office have an involvement or will require to make an application to the court, namely where there is an existing restraint order or where there is a need to apply for the continued detention of the property.

¹⁰ Section 127B(4) POCA but see also section 127B(9) POCA

¹¹ Section 127B(5) POCA but see also section 127B(9) POCA

¹² No order made: reconsideration of case

¹³ No order made: reconsideration of benefit

¹⁴ Conviction or other disposal of accused

¹⁵ Accused neither convicted nor acquitted

¹⁶ Section 127B(6) POCA but see also section 127B(10) POCA

¹⁷ Order made: reconsideration of benefit

¹⁸ Section 127B(7) POCA but see also section 127B(10) POCA

¹⁹ Order made: reconsideration of available amount

²⁰ Section 127B(8) POCA but see also section 127B(10) POCA

Seizure

10. Following the appropriate officer being satisfied that one of the seven pre-conditions in section 127B POCA is met, he may seize²¹ any realisable property if he has reasonable grounds for suspecting that:

- the property may otherwise be made unavailable for satisfying any confiscation order that has been made or may be made against the person (mentioned in one of the seven conditions), or
- the value of the property may be diminished as a result of the direct or indirect conduct by the accused or any other person.

However, the appropriate officer cannot seize:

- “cash” which means notes and coins in any currency, postal orders, cheques of any kind (including travellers’ cheques), bankers’ drafts, bearer bonds and bearer shares found at any place in the United Kingdom²². The Secretary of State, after consultation with Scottish Ministers, can amend the definition of ‘cash’ by order²³
- “exempt property” which means such tools, books, vehicles and other items of equipment as are necessary to the accused for use personally in their employment, business or vocation. It also includes such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the accused and their family.²⁴

11. Where the condition in section 127B requires the appropriate officer to have “reasonable grounds to suspect²⁵” (proactive cases) or “reasonable cause to believe²⁶” (other cases), they should take into account all relevant issues such as:

- the likely criminal charges
- the likely defence of the person
- liaising with senior officers (where appropriate)
- liaising with POCU (where appropriate)

²¹ Section 127C(1) POCA

²² Section 289(6) POCA

²³ Section 289(7) POCA

²⁴ Section 127C(4) POCA

²⁵ Section 127B(2) POCA

²⁶ Sections 127B(4), 127B(6), 127B(7) or 127B(8) POCA

- the evidence already obtained
- the likelihood of obtaining a confiscation order or a recalculation of the amount on an existing order
- an estimate of the person's benefit from their criminal conduct (and not seize property whose value exceeds that amount).

In any cases of doubt or difficulty, the Officer should contact POCU.

12. In relation to the assessment by the appropriate officer of the risk of dissipation or the value of property diminishing under section 127C(1), this must be assessed in light of the facts and circumstances of each case. The appropriate officer should consider

- an assessment of the degree, nature and history of criminality,
- the amount of unexplained wealth and the history of dissipating or concealing assets
- Particular consideration should be taken with low level offenders and potentially low value proceeds from the likely criminal charge(s).

Cases of doubt or difficulty should be discussed with POCU.

Authority to seize property

13. A decision to seize for property under section 127C of POCA may only be exercised with "appropriate approval" unless, in the circumstances, it is not practicable to obtain that approval before exercising the power. Appropriate approval is the prior approval of a sheriff or, if that is not practicable, that of a senior officer.

14. Prior approval is only likely to be impractical because of the immediacy of the circumstances of the case. Appropriate officers should assess each case on its merits. There can be no assumption that approval is impractical for all searches – appropriate officers should carefully consider and document any decision not to obtain such approval. Further detail about obtaining approval is set out below in paragraphs 33 onwards.

Search

15. The new powers of search to support the power to seize property are as follows:

section 127D: premises - if the appropriate officer is lawfully on any premises he may carry out a search if he has reasonable grounds for suspecting that property may be found there, and if found, he intends to seize it under section 127C of POCA.²⁷

²⁷ Section 127D POCA

section 127E: people - the appropriate officer may require a person who he has reasonable grounds for suspecting is carrying property that may be seized under section 127C require the person to permit a search of any article with that person or to permit a search of the person. The person can be detained for so long as necessary to allow the search to be carried out. The officer cannot though require the person to submit to an intimate search or strip search^{28 29}

section 127F: vehicles - a vehicle search may take place if the appropriate officer has reasonable grounds for suspecting that a vehicle contains property which may be seized under section 127C of POCA and it appears that the vehicle is under the control of a person who is in or in the vicinity of the vehicle³⁰ The vehicle must be in a public place or in any other place to which at that time people have ready access but which is not a dwellingplace. If the vehicle is in a garden or yard or other place used for the purposes of a dwelling, the officer can only exercise their powers if he reasonably believes that the person does not live there and the vehicle is not there with the express or implied permission of a person who lives there. The officer may, as they think necessary or expedient for the purpose of seizing property-require the person to permit entry and search of the vehicle and detain the vehicle for as long as is necessary to do so.

16. The powers are exercisable only so far as is reasonably required for the purposes of finding property to be seized under section 127C of POCA. The appropriate officer will have in mind the right to respect private life and family life and the right to protection of property under Article 1 of the First Protocol of the ECHR.

Extent of the use of the Powers by Officers of HMRC

17. The power to search for property to be seized under section 127C of POCA is, under section 127C(6A), exercisable by an officer of HMRC only if that officer has reasonable grounds for suspecting that conduct constituting the relevant offence³¹ relates to an assigned matter within the meaning of the Customs and Excise Management Act 1979 ("CEMA 1979"). Assigned matters are those in respect of which the Commissioners for Revenue and Customs are required, in pursuance of any enactment, to perform any duties and currently include:

- money laundering
- evasion of VAT, excise and other indirect taxes and duties; and

²⁸ See paragraph 50 below

²⁹ Section 127E POCA

³⁰ Section 127F POCA

³¹ Defined in section 127C(7) POCA

- evasion of a wide range of import and export prohibitions and restrictions.

This is not an exhaustive list of offences.

Extent of the use of the Powers by Immigration Officers

18. The power to search for property to be seized under section 127C of POCA is, under section 127C(6B), exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence³² relates to:

- a) the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.

Authority to search for property

19. A decision to search for property to be seized under section 127C of POCA may only be exercised with “appropriate approval” unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.³³ Appropriate approval is the prior approval of a sheriff or, if that is not practicable, that of a senior officer.³⁴

20. Prior approval is only likely to be impractical because of the immediacy of the circumstances of the case. This is more likely to be the case in relation to the search of a person or vehicle than the search of premises. But appropriate officers should assess each case on its merits. There can be no assumption that approval is impractical for all searches – appropriate officers should carefully consider and document any decision not to obtain such approval.

21. If prior approval from the sheriff is not obtained even if senior officer approval has been obtained and no property is seized or any seized property is not detained for more than 48 hours, an appropriate officer must prepare a written report³⁵ and submit it to the Appointed Person.

22. Officers should note that a report to the Appointed Person is not necessary in cases which have been subject to judicial oversight.

³² Defined in section 127C(7) POCA

³³ Sections 127C(6)(a) (see also 127C(6)(aa), 127C(6A) and 127C(6B)), 127D(2), 127E(4) and 127F(6) POCA

³⁴ Defined in section 127G(3) and (4) POCA

³⁵ The report must detail why the officer believed the power was exercisable and why it was not practicable to obtain judicial approval.

Seeking judicial approval

23. To seek judicial approval for a search or seizure the appropriate officer will need to contact the court to arrange a hearing in front of a Sheriff. This hearing can be held without notice to the person who is to be subject to the search or seizure and in private; the normal reason for this would be to avoid alerting the person(s) connected to the property to be seized that such action is being contemplated. The appropriate officer must consider whether the person would be likely to move the property and thereby frustrate the purpose of the application if they are alerted to the application.

24. If the appropriate officer obtains prior approval but when it comes to the time of the search they no longer have reasonable grounds to suspect there is property which could be seized under these powers, the appropriate officer cannot go on to exercise his search powers.

Seeking senior officer approval

25. If it is not practicable to seek approval from a Sheriff, appropriate approval may be given by a senior officer. A senior officer is:

- where the search is undertaken by a constable, a police officer of the rank of Inspector or above
- where the search is undertaken by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to a police officer of at least the rank of Inspector

in relation to the exercise of a power by an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to a police officer of at least the rank of Inspector

- in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorized by the Director General (whether generally or specifically) for this purpose.

26. The appropriate officer should explain to the senior officer the reasonable grounds for suspicion that he has for undertaking the search. The senior officer must only give approval where he is satisfied that the necessary grounds exist. The senior officer must make a written record of such grounds. Any oral approval should be supported by a written approval as soon as that is reasonably practicable. The written approval should set out why it was not reasonably practicable to obtain approval from the Sheriff.

27. The search under prior approval should be exercised within a reasonable time and in any event within one month of the date of the approval, subject to any time limitation imposed by the Sheriff.

28. If an application for prior approval is refused (either by a Sheriff or a senior officer) the appropriate officer must not undertake a search or make a fresh application for a search of the same person(s), premises or vehicle(s) unless he has new or additional reasonable grounds for suspicion. The appropriate officer, on any new application, must inform the Sheriff or the senior officer of the prior refusal and the reasons thereto.

29. If it is impracticable to obtain prior approval by a senior officer for a search, a search may be conducted without that approval.³⁶ It is unlikely that approval by a senior officer will be impracticable unless, for example, there is some problem in making contact with them or to do delay doing so would mean that the search or seizure could not take place. If a search is conducted without any prior approval, the reason for this should be clearly recorded by the appropriate officer. The appropriate officer should explain to a senior officer the reasons for the search and for not obtaining prior approval as soon as that is reasonably practicable. The senior officer must make a written record of those reasons.

30. If prior approval has been obtained for one search power it does not apply to the other search powers. For example, if prior judicial or senior officer approval was obtained for the search of a person and during that search the appropriate officer decides to undertake the search of a vehicle the person is in control of, separate prior approval is required for that power. If prior approval is not obtained, but senior officer approval is obtained, then the provisions of section 127H of POCA will apply.

Reports to the “appointed person”-for searches without prior judicial approval.

31. If a search under sections 127D, 127E or 127F of POCA is conducted without prior judicial approval (even if senior officer approval has been obtained) – the appropriate officer is required to submit a report to the appointed person in the following circumstances:

- property is seized under section 127C of POCA and any of the seized property is not detained for more than 48 hours and it is not intended to make an application to retain the property, or
- the appropriate officer exercises powers under sections 127D, 127E and 127F of POCA and no property is seized under section 127C of POCA.

Copies of these reports should also be sent to POCU.

32. Property may not be detained for more than 48 hours without a court order. Crown Office POCU will need to apply for such an order. When

³⁶ Sections 127C6(a), 127D(2), 127E(4) and 127F(6) POCA

calculating the period of 48 hours, no account is taken of weekends, Christmas Day, Good Friday, any day that is a bank holiday or any day prescribed as a sheriff court holiday in a sheriff court district within which the power is exercised.

Reporting to Crown Office POCU where there is a live restraint or and/or property is seized and intended to be detained

33. In all cases where property is seized, POCU should be informed as soon as possible on the day of the seizure or if the seizure is outside office hours by 9.30 am the next working day. The relevant form (attached) should be completed in this respect. This is in order that POCU can make the necessary applications to the court for the continued detention of the property in terms of sections 127K, 127L or 127M (applications under s127M can also be made by HMRC, an Immigration Officer or a constable where no restraint order is in force or authorised), and any applications for a restraint order or variation of a restraint order.

34. Where there is a live restraint order in place, the officer should, where practical and within working hours, advise POCU in advance if a search is to be undertaken or property is to be or has been seized. If this is not practical, POCU should be advised of any search and the results by 9.30 am on the next working day. Reporting to POCU is not required where there is no live restraint order and no property is seized. In addition to any other recording requirements, is essential that officers should record clearly what property has been seized in all cases. Such a record must be included in the report transmitted to POCU.

Search of a person

35. During the exercise of the power to search a person³⁷, the appropriate officer may, so far as the appropriate officer thinks necessary or expedient for the purposes of seizing property, require the person:

- a) to permit a search of any article with the person; or
- b) to permit a search of the person.

36. The appropriate officer may detain the person to carry out the search, but the intrusion on liberty should be for no longer than is necessary, unless the person is being arrested or detained under another power. The legislation does not require a person to submit to an intimate search or strip search.

³⁷ Section 127E POCA

37. The exercise of search powers is subject to judicial/senior officer approval as outlined above.

Conduct of searches - persons

38. An appropriate officer who has reasonable grounds for suspicion may detain the person for so long as is necessary to carry out the search.

39. If, there ceases to be reasonable grounds for suspecting that the person is carrying property that may be seized under section 127C POCA, no search of the person may take place. In the absence of any other lawful power to detain, the person is free to leave.

40. There is no power to detain a person under POCA so that grounds can be identified for a search. If reasonable grounds for suspicion emerge during an encounter with a person, the appropriate officer may search the person with prior approval³⁸, even though the grounds did not exist when the encounter began.

41. The length of time for which a person may be detained should be only for so long as is necessary for the exercise of the power. If the person is being detained under some other power, this provision does not apply. Any exercise of these powers of search should be necessary and proportionate.

42. The search power under section 127E POCA does not extend to requiring a person to undergo an intimate search or a strip search

Recording requirements – searches of a person

43. In addition to any recording requirements of the Police Service of Scotland, it is essential for the purposes of any court proceedings that the following information is clearly recorded:

- the name of the person searched, or (if it is not given) a description
- their address and date of birth, if provided
- the date, time and place that the person was detained
- the date, time and place that the person was searched (if different)
- the grounds for making the search
- details of authorization given
- if a search was conducted without prior judicial approval, the reason for not obtaining such approval
- the outcome of the search
- a detailed list of property seized (if any)
- a note of any injury to the individual resulting from the search
- a note of any damage to property
- the identity of the officers conducting the search

³⁸ See section 127G POCA. However see also sections 127C(6)(a) and 127E(4) POCA.

- the date time and place the search was concluded.

Search of premises

44. Section 127D of POCA does not provide for the power to enter premises for the purposes of a search conducted under sections 127C-F. Neither judicial approval, nor approval of a senior officer can give officers the right of entry to premises under this section. The section does not provide for applications for search warrants for the search and seizure provisions. To search premises for property to be seized (see paragraphs 15 and 16 above), an appropriate officer must already be lawfully on the premises and, if possible, have prior approval³⁹. This could include a search of premises undertaken with the consent of a person entitled to grant entry to the premises. It could also include a search carried out where an appropriate officer has exercised a power of entry conferred by a search warrant or power of entry under some other legislation or common law and circumstances subsequently lead the appropriate officer to have reasonable grounds to suspect property may be found there and if found, to seize it.

45. For the purposes of these guidelines,⁴⁰ the term “premises” is as defined in section 23 of the Police and Criminal Evidence Act 1984. This includes any place including a vessel, aircraft and hovercraft, any offshore installation, any renewable energy installation and any tent or movable structure. Whilst the definition includes vehicles, the power to search vehicles is provided for separately in terms of section 127F. The person in control of the vehicle is required to grant access to for the purposes of a search. However, if the vehicle is in a public place or within the environs of a dwelling and the appropriate officer has reasonable grounds for believing that the person does not reside in the dwelling and the vehicle is there without the permission of another person who resides in the dwelling, the search of the vehicle is to be conducted under section 127F POCA. Section 127F POCA is covered in more detail by paragraphs 47-49 below.

Recording requirements – search of premises

46. Where premises have been searched in terms of section 127D, a record of the search must be prepared. The record must include

- the address of the premises searched, and if relevant the part of those premises searched
- the grounds for making the search

³⁹ Section 127G POCA. However see also section 127C(6)(a) and 127D(2) POCA.

⁴⁰ Section 127D(3) POCA

- the date, time and duration of the search
- the authority under which the search was made, including whether prior judicial or senior officer approval was obtained
- the name of the officer in charge of the search and the names of all other personnel involved
- the names of any people on the premises if known
- details of any damage caused during the search and the circumstances in which it was caused
- the outcome of the search.

Search of Vehicles

47. An appropriate officer has no power to enter a vehicle; rather where the appropriate officer has reasonable grounds for suspecting that the vehicle contains property that may be seized under section 127C of POCA, the appropriate officer can require the person who is either in or in the vicinity of the vehicle and appears to be in control of the vehicle, to permit entry to and a search of the vehicle.

48. This search power can only be exercised where the vehicle is in a public place or within the environs of a dwelling and the appropriate officer has reasonable grounds for believing that the person does not reside in the dwelling and the vehicle is there without the permission of another person who resides in the dwelling. If the vehicle does not fall within the power under section 127F of POCA, the appropriate officer should consider the search power available under the power to search premises (section 127D of POCA). This is set out at paragraphs 44-46 above.

Recording requirements – search of vehicles

49. Where a vehicle has been searched a record including the following information must be prepared:

- the location of the vehicle, registration mark and a description of the vehicle
- the ground for marking the search
- the date, time and duration of the search
- the authority under which the search was made, including whether prior judicial or senior officer approval was obtained
- the name of the officer in charge of the search and the names of all other personnel involved
- the name and address of any suspect who has been required to permit entry to and a search of the vehicle
- details of any damage caused during the search and the circumstances in which it was caused
- the outcome of the search.

Seizure and detention of property

Seizure

50. An appropriate officer who is searching any person, premises or vehicle may seize realisable property under section 127C of POCA. The appropriate officer must have reasonable grounds for suspecting that the property may not be available in the future for satisfying a confiscation order that has been made or may be made, or that the value of the property may otherwise be diminished. An appropriate officer may, therefore, decide that it is not appropriate to seize property because of an explanation from any person.

51. Whether an appropriate officer has reasonable grounds for suspicion will depend on the circumstances in each case. There should be some objective basis for the appropriate officer's suspicion. This could be based, for example, on facts, information and/or intelligence. The appropriate officer may well take into account such factors as to how the individual, premises or vehicle were identified, previous intelligence on persons, premises or vehicles and any previous law enforcement involvement with the persons, premises or vehicles. During working hours, officers may wish to consult POCU to discuss ongoing cases.

Retention

52. Anything seized in accordance with section 127C of POCA may be retained only for so long as there is a legal basis for detention, whether under POCA or any other legislation. Under these powers, property can initially be detained for 48 hours and then can only continue to be detained if:

- an application for a restraint order is made which includes provision to detain the property (or there is an outstanding related appeal following such an application)
- a restraint order is already in force which provides for the detention of the property
- an application is made to vary an existing restraint order to provide for the detention of the property; or
- an application is made to a sheriff court to authorise further detention of the property.

53. Authorised Officers must consult with Crown Office POCU where property is seized under this section as soon as possible after seizure or if seizure is outwith office hours by 9.30 am the next working day. A report (style attached) must be provided containing the following information:

- Time of seizure of the property
- The condition under section 127B of POCA under which the property was seized and 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 as far as that can be ascertained at that time.
- Confirm that the property is not property within the meaning of cash or exempt property in section 127C(4)
- Why continued detention is necessary- information as to why it is considered that the value of the property may be diminished 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 provided by the accused, for example where it is claimed the property is being held for another person and full details of the property in respect of which such claims are made
- Information about what the officer anticipates the benefit to the person from the criminal conduct is.

COPFS will be responsible for making the appropriate applications to the Court within the statutory timescales. In all other cases the property must be released unless there is another power authorising its detention.

54. In all cases, the property should be properly secured, insured and stored so as to retain its value so far as is possible (although some property will inevitably depreciate in value over time). An appropriate officer should consider the proportionality of seizure and retention. This includes the calculation of the likely costs of storage and insurance as against the value of the property (particularly depreciating assets) in order to assess whether it is reasonable to continue to retain the property rather than seek a consent order for its sale or to release it. This also includes calculating the value of the property against the likely amount to be set on any related confiscation order. In cases of difficulty, POCU should be consulted.

55. If an appropriate officer considers that any detained property no longer meets the test of being property that should be seized under section 127C of POCA –this must be discussed with POCU before any decision to release the property is made. Considerations in this respect include the person’s estimated benefit from their criminal conduct and an assessment of the risk of dissipation or value being diminished. The assessment should be done in the light of the original circumstances of the seizure and any new factors such as the length of time of detention of the property, developments in the criminal investigation or proceedings and any new information relating to the person.

56. Any request from the person who had custody or control of the property immediately before seizure or their representative for supervised access to the property should be discussed with POCU.