

GWENT POLICE

CASH SEIZURE **POLICY PROCEEDS OF CRIME ACT 2002**



Heddlu
Gwent
Police

SUMMARY

'STAFF ARE REMINDED THAT THIS SUMMARY IS STRICTLY AN OVERVIEW OF THE KEY ELEMENTS OF THE DOCUMENT AND FOR A MORE COMPREHENSIVE EXPLANATION THE WHOLE OF THE DOCUMENT SHOULD BE READ'

This policy explains the Gwent Police approach to provisions under the Proceeds of Crime Act 2002 concerning powers of search, seizure and detention of cash of £1,000 or more, which is suspected of being obtained through unlawful conduct or intended for use in unlawful or criminal conduct.

Recovery of the proceeds of crime is a Government priority. Gwent Police is committed to ensuring that individuals do not financially benefit or profit from criminal activity.

Most crime is committed for profit. About 70% of crimes are acquisitive. The pursuit and recovery of the proceeds of crime is essential to crime reduction. If crime does not pay and is seen not to pay then this is potentially a huge disincentive to career criminals, and others that may embark on criminal lifestyles.

The Proceeds of Crime Act 2002 (POCA) provides increased powers to investigate the financial background of criminals and to seize and restrain their assets. The majority of these powers can only be undertaken by Accredited Financial Investigators (AFI's).

PRINTED VERSIONS SHOULD NOT BE RELIED UPON. THE MOST UP TO DATE VERSION CAN BE FOUND ON THE INTRANET POLICIES SITE.

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1.0 Policy Identification Page

Policy Title: Cash Seizure Policy

Reference: 223/2 a issue 2

Underlying Documents: The Proceeds of Crime Act 2002

Policy Ownership: Detective Superintendent CID Operations H.Q.

Portfolio/Business Area Owner: ACPO Operations Support

Policy Written By: Detective Sergeant Fraud/FIU

Department Responsible: HQ CID (Fraud/FIU)

Policy Lead: DS Fraud/FIU

Links to other Policies: Data Protection, Information Security, National Intelligence Model

Policy Implementation Date: 26th April 2005 STCG Reviewed March 09

Policy Review Date: March 11

2.0 Policy Statement & Intentions

1.1 Principle & Scope of Policy:

The principles and scope of this policy are as follows:-

This policy explains the Gwent Police approach to provisions under the Proceeds of Crime Act 2002 concerning powers of search, seizure and detention of cash of £1,000 or more, which is suspected of being obtained through unlawful conduct or intended for use in unlawful or criminal conduct.

Recovery of the proceeds of crime is a Government priority. Gwent Police is committed to ensuring that individuals do not financially benefit or profit from criminal activity.

Most crime is committed for profit. About 70% of crimes are acquisitive. The pursuit and recovery of the proceeds of crime is essential to crime reduction. If crime does not pay and is seen not to pay then this is potentially a huge disincentive to career criminals, and others that may embark on criminal lifestyles.

The Proceeds of Crime Act 2002 (POCA) provides increased powers to investigate the financial background of criminals and to seize and restrain their assets. The majority of these powers can only be undertaken by Accredited Financial Investigators (AFI's).

The Act simplifies money-laundering offences (in Sections 327, 328 and 329), which carry a sentence of fourteen years imprisonment.

The Act has also now been amended by the Serious Organised Crime and Police Act 2005 and the Serious Crime Act 2007. Overall there have been many developments in the law including:

- ***The forthcoming abolition of the Assets Recovery Agency and the transfer of its functions to the Serious and Organised Crime Agency and other prosecuting authorities;***
- ***the 2007 Money Laundering Regulations;***
- ***increased use of civil recovery orders in the High Court;***
- ***the creation of freezing orders in civil recovery proceedings;***
- ***clarification of the money laundering compliance obligations of legal advisers;***
- ***decisions on the apportionment of joint criminal proceeds in confiscation proceedings;***
- ***decisions on the valuation of criminal proceeds;***
- ***increased provision of and powers of accredited financial investigations;***
- ***new provisions for detained cash investigations;***
- ***the introduction of the Criminal Procedure Rules.***

In addition the Act extends power for police officers (and custom officers) to seize amounts of £1,000 or more anywhere in the United Kingdom. The policy sets out how the officer should use the power.

1.2 Aims of Policy

The aims of the Gwent Police Policy for cash seizure are as follows:-

- To fully implement the provisions of the Proceeds of Crime Act 2002, and to empower our staff to feel confident in the use of the powers conferred by the Act.
- To protect the economic well being of this Country and to prevent and detect crime and disorder in accordance with articles 6 and 8 of the European Convention on Human Rights as provided by the Human Rights Act 1998.
- By investigating such offences and prosecuting those offenders. We will seize criminal assets thereby removing the profits from their criminality.

This will be achieved by close working relationships with partner agencies, financial institutions in a multi agency setting.

The intention of this policy and supporting procedures document is to ensure that :-

- Staff are aware of their power to seize cash amounts of £1,000 or more.
- Staff follow the correct procedures when they search for and seize cash amounts of £1,000 or more.
- There is an increased use of the power to seize cash of £1,000 or more.
- Cash seized is successfully forfeited at court.
- Staff are aware of the correct procedures when they seize less than £1,000 cash.
- Staff are aware when they should notify the Financial Investigation Unit regarding offenders who require financial profiling.
- Cash seizures of less than £1,000 are not covered by POCA.

3.0 Introduction

3.1 Origins/Background Information

This policy has been developed in accordance with the Proceeds of Crime Act. 2002.

3.2 Motivators/Driving Forces

It has been developed in order to comply with, and ensure that best practice is

adopted in relation to the Act.

3.3 The Legal Basis and Legitimate Aims

The legal basis for this document is derived from:-

- The Proceeds of Crime Act 2002.
- The Police and Criminal Evidence Act 1984.

3.4 Definitions

Powers to search for cash on premises.

POCA introduces specific powers for police to search for cash amounts of £1,000 or more.

S289(1) If a constable, **who is lawfully on any premises**, has reasonable grounds for suspecting that there is on the premises **cash** (£1,000 or more) which:

a) Is **recoverable property**

Or

b) Is intended by any person for use in **unlawful conduct** he may search for cash there.

This power may not be used without the **appropriate approval** unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

Cash is defined as including, notes and coins in any currency, postal orders and cheques of any kind (including travellers cheques), bankers drafts, bearer bonds and bearer shares.

Recoverable Property is property defined as property obtained through unlawful conduct.

Unlawful conduct is defined as unlawful conduct under the criminal law within the UK and is unlawful both where it occurs and in the UK.

There is **no power of entry** to search premise for cash.

Powers to search for cash on persons

S289(2) POCA

If a constable has reasonable grounds for suspecting that a person is carrying cash (£1,000) or more:-

a) which is recoverable property

or

b) is intended by any person for use in unlawful conduct he may

- search any article (e.g. bag) that person has with him
 - search that person
- and
- can detain that person
- and
- can detain the person as long, as is necessary to conduct the search.

the search can only be to the extent necessary to find the cash.

Power to seize cash

S294(1) POCA allows that:

A constable may seize any cash if he has reasonable grounds for suspecting that it is –

a) recoverable property.

Or

b) intended by any person for use in unlawful conduct.

Application to detain cash

POCA allows a constable to detain the cash and bring it before a Magistrates Court for an application to further detain it. There is a strict time limit for this. No more than 48 hours can elapse between the point of seizure and the conclusion of the first hearing. If the hearing has not been concluded within 48 hours the cash must be returned unless it is also being detained under Sect 22 PACE (evidence in criminal proceedings)

Criminal lifestyle

A defendant has a criminal lifestyle if (and only if) the following condition is satisfied. The condition is that the offence (or any of the offences) concerned satisfies any of these tests:-

- it is an offence specified under Schedule 2 POCA (e.g. money laundering, drug trafficking)
- It constitutes conduct forming part of a course of criminal activity (see Section 75 POCA for full definition).
- It is an offence committed over a period of at least 6 months and the defendant has benefited from the conduct which constitutes the offence

The benefit from the criminal conduct must not be less than an aggregate (that is the total from the offences the person has committed) of £1,000.

4.0 Implications of the Policy

4.1 Financial Implications

Increase in expenditure to cover potential staff call outs to deal with cash seizures.

Incentivisation scheme – increase in seizures will increase our repayment from the scheme.

4.2 Human Resources/Training

To take it's place within the Force Crime Strategy.

To reduce crime and the fear of crime.

To contribute to delivering justice in a way that secures and maintains public confidence in the rule of law.

To use the National Intelligence Model in order to achieve the above objectives.

4.3 Strategic Plan Links

An increase in staff will be needed to cover the additional workload. This will result in training needs for new and existing staff, in relation to the legislation.

4.5 Diversity

In the application of this policy consideration must be given to the possible social impact of this policy on the community. A equality impact assessment is a requirement to ensure all issues are considered. This is also a requirement of the Gwent Police Race Equality Scheme. Equality impact assessments must be undertaken before and after the application of this policy.

Under the Race Relations (Amendment) Act 2000 Gwent Police is required to undertake proactive work to meet the General Duty of :

- Eliminating unlawful racial discrimination;
- Promoting equality of opportunity;
- Promoting good relations between people of different ethnic groups.

The General Duty is outlined in Section 71 (1) of the Act, and must be met in its entirety.

Monitoring must be undertaken to ensure that there is no adverse impact either positive or negative upon any one particular social group or individual. The results of monitoring must be analysed and be available for publication, and appropriate changes made.

All individuals using this policy must be aware of the potential impact that this policy has on the individuals to whom it is applied. The following strands of diversity and their corresponding pieces of legislation must be considered when answering these questions.

- Welsh Language Act 1993
- Race – Race Relations Act 1976
- Race Relations Amendment Act 2000
- Disability - Disability Discrimination Act 1995
- Gender – Sex Discrimination Act 1975
- Equal Pay Act 1970
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Age) Regulations 2006

4.6 Consultation

Police Authority
Chief Officer
Divisional and Departmental Heads
Information Security Officer/Data Protection Officer
Superintendents Association
Police Federation
UNISON Trade Union
Force Solicitor
Freedom of Information Officer
Gwent Police Women's Association
Gwent Black Police Association
Gwent Disability Network
Gwent Police Gay Support Network

5.0 Human Rights Consideration Certification

5.1 Auditing for potential interference and discrimination

Q1. What articles of the Human Rights Act 1998 may be engaged?

Articles 2, 3, 4, 5, 6, 8, 9, 10,11, 12,14

Q2. Where individual rights are engaged what is the potential to discriminate against the parties involved?

As well as details of the potential to discriminate, the policy should include a generic statement.

" In the application of this policy the Force will not discriminate against any persons regardless of sex, race, colour, language, religion, political or other opinion, national or social origin, association with national minority, property, birth or other status as defined under article 14 of the European Convention on Human Rights ".

5.2 Key Human Rights Principles

Q1. What is the legal basis for your policy?

See section 3.3

Q2. Does the policy provide details of what could be considered as a legitimate aim for the potential interference with an individual's rights, through the exercising of this policy? Restrictions on the rights protected in articles 8 - 11 in the Human Rights Act will be compatible with the convention only if they are aimed at protecting one of the interests listed in articles 8(2), 9(2), 10(2) and 11(2) respectively. The interest protected are broadly the same and generally

include:

1. National Security
2. Public Safety
3. The protection of health or morals
4. The prevention of disorder or crime; and
5. The protection of the rights of others.

This policy aims to provide clear aims and to prevent undue interference to individual rights.

Q3. How are staff made aware of the clearly defined decision making processes?

The procedure accompanying this policy outlines the relevant processes.

Q4. What are the minimum standards of documentation in relation to decision making?

These will be outlined in the procedure.

Q5. How does your policy provide guidance on the justification for actions and assessment as to whether the action is the least intrusive?

The justification for particular decisions taken in relation to the implementation of this policy must be 'relevant and sufficient' and the least intrusive. There must be a fair balance between the restrictions on individual rights and the interests of the community at large. Therefore restrictions on individual rights must be proportionate to the legitimate aim they pursue. It is important that where a right is restricted the authority restricting it does not go beyond what is strictly necessary to achieve that purpose.

5.3 Rights, Publication, Audit and Inspection

Q1 Are there any sections of the document which should not be disclosed to the public on the Force Publication Scheme; because they consist of tactical or operational procedures, that would inhibit the apprehension or prosecution of offenders if publicly known, or would compromise the ability of the force to carry out its duties?

This document can be disclosed to the public.

Q2. What rights to make representation and appeal process are available?

Persons who wish to make representations regarding the operation of this procedure will have recourse to both civil and criminal law. There is also the right to use both formal, informal and organisational complaints procedures in respect

to the operation of this procedure.

Q3. What internal review and audit process is in place or is proposed?

This policy has been drafted in accordance with the principles and rights contained within the Human Rights Act 1998. It will be reviewed and continuously assessed in the light of any relevant changes and developments.

Q4. What external independent scrutiny is recommended?

Independent audit can be through the Force Review regime/HMI/Audit Commission

5.4 Certification of Compliance

Consideration has been given to the compatibility of this policy and related policies and procedures with the Human Rights Act; with particular reference to the legal basis of its precepts: the legitimacy of its aims; the justification and proportionality of the actions intended by it; that it is the least intrusive and damaging option necessary to achieve the aims; and that it defines the need to document the relevant decision making process's and outcomes of actions.

5.5 Legal Vetting

There are no issues in this policy under ECHR which cannot be resolved.

This policy has been vetted.

6.0 Promotion and Distribution

The policy will be promoted by Force General Orders, and inclusion on the Force intranet and internet web sites.

The procedures document will also be made available on the Force intranet as well as in hard copy for all sectional stations within Gwent Police.

The FIU will take the lead on cash seizure issues and will be responsible for all cash seizure applications and forfeiture hearings at court.

7.0 Monitoring / Review

This policy and the supporting procedures document will be subject to an annual review in order that good practice and further changes in legislation or working practices can be accommodated.

Monitoring of financial investigations will be conducted within the financial investigation unit.

The principles of the Race Relations Amendment Act must be adhered to in that any recognisable adverse impact should be identified and appropriate action taken.