

Investigative Orders



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Section 36- PoCC Act 1997 (as amended) Order

to Make Material Available

Main elements –

- (1) Police officer investigating money laundering or benefit from any other criminal conduct or extent or whereabouts of the proceeds of any criminal conduct, apply to the Court for an order in relation to a particular material or material of a particular description.
- (2) If Court is satisfied it may make an order that the person who appears to the Court to be in possession of the said material
 - (a) produces it to a police officer for him to take away, or
 - (b) gives a police officer access to it within a specified period
- (3) The period specified shall be seven days, unless the Court deems that a longer or shorter period would be appropriate



Section 36 (4) Specified Conditions

There MUST be-

- (a) Reasonable grounds for suspecting that specified person is involved in or may be related to an act of money laundering or has benefitted from any criminal conduct;
- (b) Reasonable grounds for suspecting that the material (i) is likely to be of substantial value to the investigation; and (ii) is not subject to legal privilege;
- (c) Reasonable grounds for believing it is in the public interest



Further Essentials-

(5) Where the Court makes an order under subsection (2)(b) in relation to material on any premises, it may, on the application of a police officer, order any person who appears to the Court to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) An application under subsection (1) or (5) may be made ex parte to a judge or magistrate in chambers.

(8) Where the material is on a computer,

(a) The material must be produced in a form in which it can be taken away and in which it is visible and legible; and

(b) An order under subsection (2)(b) access to the material must be in a form in which it is visible and legible



Further Essentials-(continued)

(9) An order under subsection (2)

(a) Shall not give access to any items subject to legal privilege;

(b) Shall have effect even if there is an obligation of secrecy or other restriction upon it; and

(c) May be made in relation to material in the possession of a Government department.

(9A) Where material is produced pursuant to an order under this section,

(a) A police officer or the Agency may make a copy; and

(b) The material may (i) be retained for as long as it is necessary for the purposes of completing an investigation; and (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.



Offence and Defence

(10) Where an order has been made or has been applied for and has not been refused or a warrant under section 37 has been issued, a person knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation.

(11) It is a defence to prove that:

- (a) Suspect did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) Suspect had lawful authority or reasonable excuse for making the disclosure.

(12) A person who commits an offence is liable on summary conviction to imprisonment for a term not exceeding two years or to a fine not exceeding \$150,000.



What can we get?

Banks/Building Societies:

- Statements of account
- Paying in slips
- Cheques (paid and unpaid)
- Correspondence between customer & business
- Managers' notes
- Identification material used in KYC process
- Details of payments or loans
- Transaction details
- ATM usage incl. change of PIN and balance enquiries.

Other businesses or persons:

- Accounting documents
- Invoices
- Sales details
- Loan & repayment details

What can we get? Some examples (continued)



- Hotels: method of payment, address and telephone No. provided, copy of handwriting from register etc, names of other persons or paid for booked by the same source, previous bookings, telephone calls made or received, messages taken for the person, visitors, internal CCTV, any extras on the bill (food etc) room service and number of meals purchased, bar bills etc.
- Garages or Car Sales: method of payment, finance including KYC checks, source of finance repayments, deposit method, any CCTV, vehicle traded in, previous business by named person or persons from same address, associates, recorded mileage between service intervals leading to fuel consumption, address & phone numbers given.
- Shops: Loyalty card incl. what points have been acquired for e.g. car/home/holiday insurances (Tesco etc.), methods of payment, regularity of payment (regular shopping date/time), specific purchases for identified dates, purchasing history, clothes sizes, CCTV, associated persons (joint loyalty cards), known addresses.
- In fact all manner of financial documents but **not** Legal Professional Privileged material.

Section 37- PoCC Act 1997 (as amended)



Authority for Search

(1) A police officer may, for an investigation into money laundering or whether any person has benefitted from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the Court for a warrant in relation to specified premises.

(2) The Court may issue a warrant authorising a police officer to enter and search the premises if the Court is satisfied that:

- (a) an order made under section 36 in relation to material on the premises has not been complied with;
- (b) the conditions in subsection (3) are fulfilled; or
- (c) the conditions in subsection (4) are fulfilled.



Subsection (3)

(3) The conditions are that:

- (a) Reasonable grounds for suspecting that person has benefitted from criminal conduct;
- (b) Conditions in section 36 (4)(b) and (c) ie substantial value and public interest, are fulfilled; and
- (c) It would not be appropriate to make an order under section 36 because:
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises; or
 - (iii) the investigation might be seriously prejudiced unless immediate access to the material can be secured.



Subsection (4)

(4)The conditions are:

- (a) Reasonable grounds for suspecting that specified person is involved in or may be related to money laundering or has benefitted from criminal conduct;
- (b) Reasonable grounds for suspecting that on the premises there is material relating
 - (i) to the specified person, or
 - (ii) to whether that person is involved in money laundering, benefitted from any criminal conduct or the extent or whereabouts of the proceeds of criminal conduct,

as is likely to be of substantial value to the investigation, but that the material cannot at the time of the application be particularised;

- (c)
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation might be seriously prejudiced unless immediate entry to the premises can be secured.



And Finally.....

- (5) On execution of the warrant the police officer may seize and retain any material, except items subject to legal privilege, which is likely to be of substantial value to the investigation.
- (6) Where material is produced
 - (a) A police officer or the Agency may make a copy; and
 - (b) The material may
 - (i) be retained for as long as it is necessary to complete an investigation; and
 - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.



Drug Trafficking Offences Act 1992 (as amended)

Relevant sections are sections 40-47 and are very similar to PoCC 1997, but relate purely to drug trafficking or drug money laundering.

Introduces concepts of excluded material, and personal records and lays out relevant offence of prejudicing an investigation.

Any Questions?



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