

Statutory Document No. 0135/13



*Proceeds of Crime Act 2008*

## **PROCEEDS OF CRIME ACT 2008 (CODE OF PRACTICE: CASH SEARCHES) (POSTAL PACKETS) ORDER 2013**

*Approved by Tynwald:* 21 May 2013  
*Coming into Operation:* 1 June 2013

The Department of Home Affairs makes the following Order under section 45(1A) of the Proceeds of Crime Act 2008.

### **1 Title**

This Order is the Proceeds of Crime Act 2008 (Code of Practice: Cash Searches) (Postal Packets) Order 2013.

### **2 Commencement**

If approved by Tynwald, this Order comes into operation on 1 June 2013.<sup>1</sup>

### **3 Code of practice**

The code of practice required by section 45(1A) of the Proceeds of Crime Act 2008 will be that in the Schedule to this Order.

**MADE 23 APRIL 2013**

**JUAN WATTERSON**  
*Minister for Home Affairs*

<sup>1</sup> As required by section 223(3) of the Proceeds of Crime Act 2008



**SCHEDULE**



**Isle of Man**  
Government

*Reilrys Ellan Vannin*

**CODE OF PRACTICE REGARDING SEARCH POWERS FOR POSTAL PACKETS**

Issued under section 45(1A) of the Proceeds of Crime Act 2008

## Code of practice regarding search powers for postal packets

Issued under section 45(1A) of the Proceeds of Crime Act 2008

### 1 Introduction

- (1) This code of practice is made in connection with the exercise by officers of Customs and Excise and constables of the search powers conferred by section 43A of the Proceeds of Crime Act 2008 (“the Act”). This code is made under section 45(1A) of the Act and applies to all searches made under these powers made on and after **1<sup>st</sup> June 2013** (even if the search began before that date).
- (2) The code does not apply to searches carried out under any other legislation or other provisions in the Act. If searches conducted under other legislation result in cash being seized under section 46 of the Act, the provisions of this code do not apply to that search.
- (3) The code must be available at any sorting office, Postal Headquarters, Custom House and all police stations for consultation by Post Office employees, officers of Customs and Excise, the police and members of the public. The code should also form part of the published instructions or guidance for an officer of Customs and Excise.
- (4) Failure to comply with the provisions of this code may be taken into account by a court in determining the legality of any search of postal packets in which cash is seized.
- (5) In this code —

“**the Act**” means the Proceeds of Crime Act 2008 (as amended by the Cash in Postal Packets Act 2013);

“**addressee**” means the person the address of which is given on a postal packet and to whom the postal packet would be delivered;

“**assigned matters**” has the same meaning as in section 184(1) of the Customs and Excise Management Act 1986, and means those matters in relation to which Customs and Excise is required, in pursuance of any enactment, to perform any duties and currently includes drug trafficking, money laundering, evasion of VAT, excise and other indirect taxes and duties, and evasion of a wide range of import and export prohibitions and restrictions;

“**cash**” means notes and coins in any currency, postal orders, cheques of any kind (including travellers’ cheques), bankers’ drafts and bearer bonds and bearer shares. It also includes any forged or counterfeit versions of any instrument, notes or coins in any currency (see section 43(6) of the Act). The definition of “**cash**” can be amended by order made by the Department of Home Affairs under section 43(7) of the Act and officers should be aware of any such order made.

The power of search does not extend to other property (e.g. jewellery, pieces of art etc).

“**designated contact at the Post Office**” means the person or persons notified in writing to the Police and Customs and Excise by the Post Office as being the employee responsible for dealing with requests to detain and open postal packets under section 43A of the Act, and for related purposes;

“**officer**” includes an officer of Customs and Excise or a constable unless otherwise specified;

“**postal packet**” has the same meaning as in section 58(1) of the Post Office Act 1993 and includes a letter, postcard, newspaper, printed packet, parcel or insured box and every packet or article transmissible by post;

“**Post Office**” means the Isle of Man Post Office;

“**Post Office Manager**” means the senior operational manager on duty;

“**sender**” means the person whose communication the postal packet is;

“**senior officer**” means —

- (a) where a search is being undertaken by a constable, a police officer of rank of Inspector or above; or
- (b) where a search is undertaken by an officer of Customs and Excise, a Higher Executive Officer or above.

## 2 General

- (1) The right to respect for private life and home, and the right to peaceful enjoyment of possessions, are safeguarded by the *Human Rights Act 2001*. Powers of search may involve interference with the privacy of those whose postal packets are searched and therefore these powers need to be fully and clearly justified before they are used. In particular, officers should consider at every stage whether the necessary objectives can be achieved by less intrusive means. In all cases, officers should exercise powers with respect for the property of those concerned.
- (2) In the use of the powers conferred by section 43A of the Act, the Isle of Man Post Office stands as custodian for the sender and addressee and, in particular, for the purposes of that section and otherwise, all or any of the duties of the importer, exporter or person removing goods contained in postal packets.

## 3 Scope of the search powers

- (1) Section 43A of the Act provides that where an officer has reasonable grounds to suspect that a postal packet contains cash which satisfies the conditions in paragraph 3(2), he or she may request the Post Office to detain and open a postal packet, and that the officer may examine the contents of the postal packet.

- (2) The conditions referred to in paragraph 3(1) are that —
- (a) the cash is recoverable property (i.e. it is obtained through unlawful conduct or represents property obtained through unlawful conduct) or the cash is intended for use in unlawful conduct; and
  - (b) the cash does not amount to less than the minimum amount specified by the Department of Home Affairs (currently £1,000). There is no maximum amount of cash that can be seized.

Notes:

- (a) Conduct which occurs in the Island is “unlawful conduct” if it is unlawful conduct under the criminal law. Conduct which occurs in a country or territory outside the Island and is unlawful under the criminal law applying in that country or territory, and if it occurred in the Island would be unlawful under the criminal law, is also “unlawful conduct”; and
  - (b) Where two or more postal packets sent or received together hold more than the minimum amount, the amounts may be aggregated if there are grounds to suspect that the funds have a common source or destination (*Commissioners of Customs & Excise v. Duffy, 2002*).
- (3) The powers conferred are civil in nature and exercisable only so far as reasonably required for the purposes of finding relevant cash (as set out in paragraph 3(2)).
- (4) The powers to search for relevant cash are exercisable by constables and officers of Customs and Excise. If a customs officer exercises the power he or she must have reasonable grounds for suspecting that the unlawful conduct (by reason of which the cash is recoverable or for which it is intended for use) relates to an assigned matter within the meaning of the *Customs and Excise Management Act 1986*.

#### 4 Reasonable grounds for suspicion

- (1) In order to exercise the search power an officer must have reasonable grounds for suspecting that a postal packet contains relevant cash
- (2) Whether there are reasonable grounds for suspicion will depend on the circumstances in each case. There must be some objective basis for that suspicion based on facts, information and/or intelligence. The officer should take into account such factors as how an individual or premises were identified, previous intelligence on persons or premises, previous involvement with the person or premises, and suspected links with criminal activities, whether in the Island or overseas.

- (3) Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, religion or age, cannot be used alone or in combination only with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity.
- (4) Reasonable suspicion should normally be linked to accurate and current intelligence or information. It can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person.

## 5 Authority to search for cash

- (1) Any decision to search for cash under section 43A must, if practicable, be approved in advance. This approval must be given by the High Bailiff or a justice of the peace, or, if that is not practicable in any case, by a senior officer. Approval is only likely to be impracticable because of the immediacy of the circumstances of the case. Officers must assess each case on its merits. There can be no assumption that approval is impracticable for all searches – officers must carefully consider any decision not to obtain such approval.
- (2) In order to obtain approval from the High Bailiff or a justice of the peace an officer will need to make contact with the clerk to the High Bailiff or the Legal Officer (Courts), as the case may be, at the General Registry to arrange a hearing which can be held without notice and in private. The usual reason to hold an application without notice and in private would be so as not to alert persons connected to the relevant cash that such action is contemplated. Being so alerted may have the effect of the person moving the cash and thereby frustrating the operation of the scheme. However, if there is no concern that the cash would be removed; the respondent should normally be notified of the intention of making an application for prior approval to search for relevant cash. Annexed is a draft order for use in the court [Annex 1] and a model application [Annex 2]. The officer will need to –
  - (a) identify himself or herself to the High Bailiff or justice (giving name, seniority, any warrant or identifying number, and home station or place of work);
  - (b) lodge his or her written application;
  - (c) explain to the High Bailiff or justice the reasonable grounds for suspicion he or she has for undertaking the search;
  - (d) identify the sender or addressee involved, if known; and

- (e) answer any relevant questions that the High Bailiff or justice may have.
- (3) If judicial approval for a search is impracticable (see subparagraph (1) above), approval may be given by a senior officer (see paragraph 1(5) above).
- (4) If seeking approval for a search from a senior officer, an officer should explain to the senior officer the reasonable grounds for suspicion he or she has for undertaking the search. The senior officer must only give approval where he or she is satisfied that the necessary grounds exist. The senior officer must make a written record of such grounds. Oral approval must be supported by written approval as soon as that is reasonably practicable.
- (5) Searches must be made within one calendar month of the date of prior approval for that search.
- (6) If an application for prior approval is refused (either by the judicial or senior officer process) the officer must not make a fresh application for a search of the same postal packet or packets unless he or she has new reasonable grounds for suspicion.

## **6 Reports to the “appointed person”**

- (1) If a search under section 43A of the Act is conducted without prior judicial approval, even if senior officer approval has been obtained, the officer must prepare a report in the following circumstances –
  - (a) if no cash is seized by virtue of section 46 of the Act; or
  - (b) any cash seized is not detained for more than 48 hours.

Cash may not be detained for more than 48 hours except by order of the High Bailiff.

Note: The 48 hours does not include weekends, Christmas day, Good Friday or bank holidays.

- (2) A report required under paragraph 6(1) must set out why it was not practicable to obtain prior judicial approval and the circumstances which led the officer to believe that the search powers were exercisable. These factors could include what aroused his or her suspicion and why there was a need for an immediate search. If the prior approval of a senior officer was obtained, the report should state this, with the senior officer’s reasons for approval.
- (3) For cases where the power was exercised by a constable, a report required under paragraph 6(1) must be submitted to the Chief Constable. For cases where the search power was exercised by an officer of Customs and Excise, the report must be submitted to the Collector of Customs and Excise.

- (4) A report required under paragraph 6(1) should normally be submitted as soon as practicable and in no event any later than 14 days after the exercise of the search power. Following the submission of his or her report, the reporting officer must also submit, to the Chief Constable or, as the case may be, the Collector, any supplementary information which that person reasonably requires him or her to submit.

## 7 Search procedures - steps prior to a search

- (1) Where an officer has reasonable grounds to suspect a postal packet to which paragraph 3(1) applies he or she is to inform the designated contact at the Post Office of the fact and arrange to attend the Sorting Office, or such other place as is agreed with the designated contact.
- (2) The officer must advise the relevant Post Office Manager that –
  - (a) he or she has grounds for believing that the postal packet contains cash which is liable to forfeiture and provide the Post Office Manager with confirmation in writing that such reasonable grounds exist; and
  - (b) the High Bailiff or a justice of the peace or a senior officer has approved the search and confirm this in writing or, if no such approval has been obtained, shall confirm in writing that it is not practicable for such approval to be obtained.
- (3) The Post Office Manager must arrange for the postal packet involved to be presented to the officer.

## 8 Search procedures - conduct of a search

- (1) The postal packet must be opened by the Post Office Manager or by another employee of the Post Office in the presence of the officer.
- (2) When opened, the postal packet and its contents may be examined by the officer solely to determine whether there is cash.
- (3) If the postal packet is found to contain cash liable to forfeiture under section 46 of the Act, the officer may seize that cash. A notice of seizure must be provided to the designated contact at the Post Office and a copy sent to the sender (if known) and the addressee.
- (4) Any cash which is seized must be removed from the custody of the Post Office.
- (5) Following the search, if cash has been seized then unless –
  - (a) the remaining contents, or any part of the remaining contents, are liable to forfeiture under other legislation;
  - (b) the Police or Customs and Excise have or obtain a warrant under the *Interception of Communications Act 1988*; or

- (c) the packet and/or its contents are subject to customs control as containing imported or prohibited goods,

the Post Office must forward the postal packet and its remaining contents to the addressee, together with a copy of any notice of seizure and a label indicating that the packet had been opened by the Post Office for the purposes of section 43A of the Act.

- (6) Following a search undertaken by an officer of Customs and Excise, if no cash has been seized but —

- (a) the postal packet has been found to contain cash with a value in excess of €10,000; and
- (b) no declaration relating to the cash has been received by Customs and Excise for the purposes of Part VA of the Customs and Excise Act 1986,

the cash may be detained by the Post Office but the postal packet and its remaining contents must be forwarded by the Post Office to the addressee with a label indicating that it was opened by the Post Office for the purposes of section 43A of the Act. The officer will arrange for the sender or addressee (or both, if practicable) to be contacted to inform them that a declaration is required in respect of the cash under section 76CB of the Customs and Excise Management Act 1986.

- (7) If, following a search undertaken by a constable, no cash has been seized but the conditions referred to in (a) and (b) of subparagraph (6) apply —

- (a) the cash involved may be detained by the Post Office;
- (b) the designated contact at the Post Office must arrange for Customs and Excise to be notified;
- (c) the postal packet and its remaining contents shall be forwarded by the Post Office to the addressee with a label indicating that it was opened by the Post Office for the purposes of section 43A of the Act; and
- (d) an officer of Customs and Excise shall arrange for the sender or addressee (or both, if practicable) to be contacted to inform them that a declaration is required in respect of the cash under section 76CB of the Customs and Excise Management Act 1986.

- (8) All searches must be carried out with consideration and respect for the person's property and their right to privacy.

- (9) During a search, if circumstances which come to the attention of the officer mean that there ceases to be reasonable grounds for suspecting that relevant cash is recoverable property or is intended for use in unlawful conduct then, unless subparagraph (6) or (7) applies, the officer must discontinue the search.

- (10) The power in section 43A of the Act does not allow an officer to intercept any communication, or to read or copy any letters, documents etc.
- (11) If, during a search, an officer discovers cash which he or she seizes under section 46 of the Act, the officer must, as soon as is practicable, provide the sender or addressee (where practicable) an opportunity to provide an explanation of its ownership, origins, purpose and destination. If, in a particular case, questioning which covers whether the person has committed an offence is likely to constitute questioning that requires a caution, this would be under Code C (detention, treatment and questioning of persons by police officers) of the *Police Powers and Procedures Act 1998*.

## 9 Recording requirements

- (1) An officer who has carried out a search in the exercise of any power to which this Code applies must make a written record of it at the time, unless there are exceptional circumstances that would make this wholly impracticable – such as if the officer’s presence is urgently required elsewhere. If a record is not made at the time then the officer must do so as soon as practicable afterwards. There may be situations in which it is not practicable to obtain the information necessary to complete a record, but he or she must make every reasonable effort to do so.
- (2) The designated contact at the Post Office must ensure that a record is kept by the Post Office of –
  - (a) any request received from the Police or Customs and Excise to detain and open a postal packet;
  - (b) the opening and search of any postal packet;
  - (c) the results of any search; and
  - (d) subsequent action arising from the search.
- (3) A copy of a record made at the time of the search must be given immediately by an officer to a Post Office Manager. The officer must obtain the name of the Post Office Manager present during the opening and search of the postal packet and include this in the report.
- (4) Unless it jeopardizes a wider ongoing operation or investigation, the following information must always be included in the record of a search –
  - (a) the name and address to which the postal packet is being sent;
  - (b) the name and address of the sender (if available);
  - (c) the date, time and place of the search;
  - (d) the grounds for undertaking the search (and of any prior approval given). If a search is conducted without judicial prior

- approval, the reason for not obtaining such approval must be stated;
- (e) the outcome (e.g. seizure of cash and the amount, no further action);
  - (f) a note of any damage to property resulting from the search (other than necessary damage to the postal packet involved in it being opened);
  - (g) the identity of the officer undertaking the search (unless he or she reasonably believes that giving their name might put them in danger, in which case a warrant card number or other identification may be given which proves their status, but not their name, as a constable or an officer of Customs and Excise);
  - (h) the identity of the Post Office Manager, or other employee of the Post Office, who opened the postal packet, and of any other witness present during the search.
- (5) A record is required for each postal packet searched, including if more than one postal packet is searched at the same time. A record of the grounds for making a search must, briefly but informatively, explain the reasons for suspecting that the postal packet contained relevant cash.
- (6) In the case of searches undertaken by a constable, the record of the search must be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search must be maintained in a suitable form.
- (7) In order to promote public confidence in the use of the powers, bodies using these powers should make available arrangements for the records to be scrutinised by Members of Tynwald. If applicable, records of searches may also be made available.
- (8) Unless it is impracticable to do so, the sender or addressee, and any person whose cash was seized under section 46 of the Act (if different), must be provided with a copy of the report made by the officer.

ANNEX 1

IN THE *[insert name of court]* COURT AT *[insert address of court]*

PROCEEDS OF CRIME ACT 2008

**Authority for a search under section 43A**

1. This is an authority for a search made by *[name of the High Bailiff or magistrate]* on the application of *[name of officer]* of the *[Isle of Man Constabulary/Customs and Excise]* on *[insert date]*.
2. The *[High Bailiff or Justice]* has heard the applicant and is satisfied that there are reasonable grounds to suspect that there is contained in postal packets *[insert description sufficient to identify the packet or packets involved]* cash which is recoverable property or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount.
3. The *[High Bailiff or Justice]* has authorised *[name of officer]* to search *[insert details of postal packets]* for cash which is reasonably suspected to be recoverable property or intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount.
4. This authority continues in force until the end of the period of one calendar month starting with the day on which it was issued.
5. This authority is valid for one search of the *[postal packet/packets]* specified above.

**Exceptions to the authority**

6. This authority does not provide the authority to enter any premises.
7. This authority does not provide the authority to intercept any communications other than is necessary to undertake the search, and does not authorise the interception or copying of any letters or documents.

Signature of *[High Bailiff or Justice]* \_\_\_\_\_

Name of *[High Bailiff or Justice]* \_\_\_\_\_

Date \_\_\_\_\_

*[Court stamp]*

## ANNEX 2

## PROCEEDS OF CRIME ACT 2008

INFORMATION IN SUPPORT OF AN APPLICATION FOR AN AUTHORITY FOR A  
SEARCH UNDER SECTION 43A

The information of *[name of officer]*  
of the *[name and address of unit/agency]*

Who upon oath/affirmation states:

1. I apply for an authority to search for the purposes of finding cash which is recoverable property or is intended by a person for use in unlawful conduct, and the amount of which is not less than the minimum amount in respect of *[details of postal packets, sender, addressee etc]*.
2. I make this application because I have reasonable grounds for suspecting that the identified postal packets contain cash which is recoverable property or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount.
3. These grounds are *[insert reasons, attaching any relevant documentation]*.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order brings into operation the code of practice required by section 45(1A) of the Proceeds of Crime Act 2008. The code is concerned with searches for case in postal packets carried out by a police or customs officer using powers under section 43A of the Act.