

## **Part 12 - Procedures applying to seized and produced things**

## Table of Contents

Table of Contents	2
Policy statement and principles	3
What	3
Why	3
How	3
Overview	4
Purpose of this chapter	4
Dealing with other than seized and produced things	4
References to the "Act"	4
Recording and storing seized and produced things	5
Procedures for recording seized and produced things	5
Seized and produced things to be stored in property /exhibit stores	5
Return, transfer, and custody of seized or produced things	6
Certain things must be returned	6
Transfer of things between law enforcement agencies	6
Custody of seized or produced things	6
Custody when things are held by other agencies	6
Immediate release of things when events occur	7
When things relate to more than one offence	7
Extension of time for holding things	7
Returning things when copies adequate	7
Returning exhibits	7
Applications for access to or release of things	8
Who can apply for access or release?	8
Making the decision	8
Decision to be in writing	8
Unconditional and conditional release or access under Police bond	8
Police bond	8
Application to district court for access to things	9
Powers of court	9
Application to district court for release of things	9
Failure to comply with bond or conditions	9
Disputed ownership and forfeiture	11
Disputed ownership	11
Effect of a court order	11
Forfeiture to Crown if ownership is not established	11
Disposal of seized or produced things	12
Disposal of unlawful things	12
Disposal of forensic copies	12
Copies of computer or other storage data	12
Other copies and generated material may be retained	12
Application to district court to dispose of seized property	12
Court refusal to grant an order	13
Sale or disposal of seized and produced things	13
Application of proceeds	13
Drugs	13
Court related documentation relating to seized and/or produced things	14
"Person with an interest" defined	14
Documentation for Court	14
Description of seized or produced things on documentation	14
Copies of documentation	14
Application	14
Order	14
Person requesting copies of application or order relating to seized and/or produced things	16

## Policy statement and principles

### What

This chapter contains procedures that apply to things that are seized or produced, apart from property taken from persons locked up in Police custody and privileged material, which are both dealt with elsewhere in the '[Search](#)' chapter ('[Searching people](#)' and '[Privilege and immunities under the Act](#)').

The chapter outlines what must be done with seized and produced items and when they must be returned to the owner.

### Why

To deliver services in relation to seized and produced items that the public expect, deserve and want from their Police.

### How

Police will:

- comply with subpart 6 of part 4 (sections 149-163) of the Search and Surveillance Act 2012
- provide an inventory of all things seized no later than 7 days after the seizure
- return, transfer, retain, allow access or release things seized or produced according to law
- manage disputed ownership, forfeiture, disposal and requests for copies of seized or produced things.

## Overview

### Purpose of this chapter

This chapter outlines the procedures in the Act applying to things **after** their initial seizure or production including:

- the rights of owners and others in relation to things seized or produced
- the return and custody of seized or produced things
- applications for access to or release of seized or produced things
- disputed ownership and forfeiture of seized or produced things
- disposal of seized or produced things.

Information about:

- what can be seized during a search
- the requirements for recording items seized during a search and for providing notice (an inventory) about what is seized is contained in '[Carrying out search powers with or without a warrant](#)'.

### Dealing with other than seized and produced things

See the '[Exhibit and property management](#)' chapter for information about dealing with other than seized and produced things, e.g. found property and property taken possession of as an exhibit or for safe keeping.

### References to the "Act"

References to "the Act" or to sections of an Act in the above chapters are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

## Recording and storing seized and produced things

### Procedures for recording seized and produced things

At the completion of a search, Police must give the occupier of a place or person in charge of the vehicle **written notice** about the search including the reasons for it, and how enquiries about the search can be made. This notice must also include advice about whether or not items were seized.

(s [131](#))

**If anything was seized**, the person must be given an **inventory** of the things seized no later than 7 days after the seizure, including information about rights to access the seized items and to bring claims of privilege. These obligations extend also to the owners of seized items, when they are identified.

(s [133](#))

See [Notice and inventory requirements](#) in the '[Carrying out search powers with or without a warrant](#)' chapter for detailed procedures on recording seized items and providing the required notice following a search.

### Seized and produced things to be stored in property /exhibit stores

As a general principle, all seized and produced property, with the exception of cash, must be stored in a common property store. However, in exceptional circumstances the District Commander / Director may authorise storage in alternative premises.

## Return, transfer, and custody of seized or produced things

### Certain things must be returned

Any thing seized or produced:

which is ...	must be...
<ul style="list-style-type: none"> <li>- <b>not</b> required for investigative or evidential purposes, <b>or</b></li> <li>- <b>not</b> liable to forfeiture to the Crown or any other person (by law, court order or otherwise)</li> </ul>	<ul style="list-style-type: none"> <li>- returned to its owner or the person entitled to possession, or</li> <li>- made the subject of an application for <a href="#">disputed ownership</a> (<a href="#">s154</a>), or</li> <li>- disposed of as an unlawful item (<a href="#">s160</a>), or</li> <li>- disposed of as <a href="#">forensic copies of computer data</a> if it does not contain evidential material (<a href="#">s161</a>), or</li> <li>- destroyed if it:               <ul style="list-style-type: none"> <li>- is perishable and has become rotten or deteriorated, or</li> <li>- is likely to become rotten or perish before a court orders its disposal, or</li> <li>- is likely to pose a risk to public health.</li> </ul> </li> </ul>

([s150](#))

### Transfer of things between law enforcement agencies

Things seized or produced to Police may be transferred to another law enforcement agency. A document for the transfer of things between law enforcement agencies must be prepared. Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ.

#### Notes:

- The obligations under [Part 4](#) of the Search and Surveillance Act 2012 are transferred to the law enforcement agency after the transfer of the thing is carried out ([s90](#)).
- You may set conditions of the transfer on the transfer document.

### Custody of seized or produced things

Any thing seized or produced:

which is...	may be ...
<ul style="list-style-type: none"> <li>- required for investigative or evidential purposes, <b>or</b></li> <li>- liable to forfeiture to the Crown or any other person (by law, court order or otherwise)</li> </ul>	<p>held in Police custody or by a person acting on behalf of Police <b>until the first of the following occurs:</b></p> <ul style="list-style-type: none"> <li>- a decision is made not to bring proceedings</li> <li>- the thing is forfeited to the Crown or any other person</li> <li>- the thing is released following a District Court order (<a href="#">s158</a> or <a href="#">s159</a>)</li> <li>- proceedings for an offence have not started within six months of the seizure or production <b>and</b> the person from whom it was seized has requested its return (unless an application for an extension has been made) (<a href="#">s153</a>)</li> <li>- proceedings are withdrawn or dismissed, or completed</li> <li>- the thing is disposed of as an unlawful item (<a href="#">s160</a>).</li> </ul>

([s151](#)(1))

### Custody when things are held by other agencies

Things held by other agencies for examination are still in Police custody as long as they are under the direction and control of Police. However things transferred to another law enforcement agency for the purposes of investigation, prosecution or forfeiture become the

responsibility and custody of that agency.

(s [90](#))

## Immediate release of things when events occur

Once the relevant event occurs (see [custody table](#) above), the thing must be immediately released:

- to the owner or a person entitled to possession, **unless** it is an unlawful thing for disposal, or
- in the case of things forfeited to the Crown or another person or subject to court orders requiring access or release, in the manner required under the Act.

## When things relate to more than one offence

If the thing is seized or produced in relation to more than one alleged offence, the thing does not need to be released until the first of the events described in the tables above has occurred in relation to each and every alleged offence.

(s [151](#)(2) & (3))

## Extension of time for holding things

You may apply to the district court for an extension of time to hold a seized or produced thing if:

- a request has been made for its return, and
- you wish to hold it for longer than six months in circumstances where no proceedings for an offence involving that thing have been brought.

(s [153](#))

'Application for an extension of time for holding thing(s) seized or produced' form SZ3 and the 'Extension of order' form SZ4 are not available on Police Forms because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

## Returning things when copies adequate

The O/C case may use discretion and return the thing to the owner or to a person entitled to possession if a photograph or copy of a seized or produced thing will be adequate for investigative or evidential purposes.

(s [152](#))

## Returning exhibits

Where the thing is an exhibit in criminal proceedings or civil proceedings under the Criminal Proceeds (Recovery) Act 2009, the court may, during or after the hearing, make an order about the thing's disposal. If an order is not made, you may:

- return the thing to the person who produced it, or from whom it was seized as soon as practicable,  
or
- apply to a district court judge for an order about its disposal.

Do not hold things on the off-chance that you can use them as evidence in a subsequent, unrelated offence.

## Applications for access to or release of things

### Who can apply for access or release?

Applications to Police for access to or the release of seized or produced things before proceedings are brought can be made by:

- the person who produced the thing or from whom it was seized
- the owner or person entitled to possession
- any person with a legal or equitable interest in the thing.

The application to Police must be made in writing.

### Making the decision

The O/C case may:

- release the thing, or
- provide reasonable access to it, or
- refuse the application on the ground that release of the thing or, as the case requires, access to it, is likely to prejudice the maintenance of the law.

A release or provision of access to a thing may be:

- unconditional, or
- under Police bond for a sum (with or without sureties), and on conditions, acceptable to the person in whose custody the thing is.

(s [156](#))

### Decision to be in writing

The applicant **must** be informed of the Police decision in writing.

Use the 'Letter of reply to applicant requesting release of or access to thing seized or produced' form (SZ11) located in Police Forms > Search and Surveillance > Seizure, when responding to an application.

**Note:** The letter must also advise the applicant that they may apply to the District Court for a review of:

- any refusal relating to their request, or
- the conditions set by Police relating to the thing(s) release or access.

(s [156](#))

### Unconditional and conditional release or access under Police bond

Whether the decision is for the unconditional or conditional release of or access to the thing, the decision letter must name a Police employee (and state their business address) who is to be contacted to arrange for the release of or access to the thing.

If the release or access is conditional, the decision letter must advise that a bond is to be signed in order to arrange release or access.

(s [156](#))

### Police bond

Use the 'Police bond' form (SZ12 - located in Police Forms > Search and Surveillance > Seizure) for the conditional release of or access to a thing seized or produced.

Prepare sufficient copies of the Police bond for:

- court (original, if application for estreat of bond is required)
- applicant
- each surety
- file.



## Application to district court for access to things

A person can apply to the District Court for access to a seized or produced thing if their application to Police under section [156](#) for access was refused or granted subject to conditions they do not accept.

### Powers of court

The district court may:

- grant the application and may require sureties and impose conditions, or
- refuse it on the ground that allowing access or varying or cancelling the conditions concerned is likely to prejudice the maintenance of the law.

(s [158](#))

## Application to district court for release of things

A district court may, on an application, release a seized or produced thing, if it is satisfied that it would be contrary to the interests of justice for the thing to be retained in custody having regard to:

- the gravity of the alleged offence
- any loss or damage to the applicant that is caused or likely to be caused by not returning the thing
- the likely evidential value of the thing, having regard to any other evidence held by Police
- whether its evidential value can be adequately preserved by means other than by keeping it.

The court may require sureties and impose conditions on a release.

(s [159](#))

## Failure to comply with bond or conditions

Follow this table if a person fails to comply with any bond, surety, or condition imposed by Police on the release of or access to a thing.

Who	Actions
Police response	<p>The O/C case may:</p> <ul style="list-style-type: none"> <li>- seize the thing again, or</li> <li>- require it to be produced, or</li> <li>- direct that access to the thing be ended, <b>and</b></li> <li>- apply to the district court for an order for estreat of the bond.</li> </ul> <p>'Application for estreat of bond' form (SZ9) and 'Estreat of bond order' (SZ10) are not available on Police Forms because they involve a civil process and must comply with the format requirements set in the <a href="#">District Court Rules 2014</a>. Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.</p>
District court response	<p>On an application for an order for estreat of the bond, the registrar of the district court must:</p> <ul style="list-style-type: none"> <li>- fix a time and place for the hearing of the application, and</li> <li>- not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place for the hearing.</li> </ul>
Court order	<p>If the court is satisfied that a condition of the bond has not been complied with, it may make an order to estreat the bond:</p> <ul style="list-style-type: none"> <li>- in the amount it thinks fit, and</li> <li>- to any person bound by the bond on whom notice of the hearing is proved to have been served as required above.</li> </ul> <p>The amount payable under the bond is recoverable as if it were a fine.</p>

(s [157](#))

## Disputed ownership and forfeiture

### Disputed ownership

If a seized or produced thing is not to be produced in evidence but there is a dispute about its ownership or you are not sure who to return it to (e.g. because it is unclaimed) you may apply to the district court for directions as to the ownership or holding of the property.

The district court may order that the thing be:

- destroyed
- [forfeited to the Crown](#) (if authorised by another enactment)
- delivered to the person appearing to be the owner and entitled to possession of it, or
- if the owner or person entitled to possession cannot be found, make any order with respect to its possession or sale as the court thinks fit.

When seeking directions as to ownership or holding of the property, the 'Application for directions as to ownership or holding of seized or produced thing' form (SZ5) and 'Ownership or holding order' form (SZ6) are not available on Police Forms, because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

### Effect of a court order

If, after a court order is made, an action is commenced for the recovery of the thing or its value, the order and the delivery of the thing in accordance with the order may be given and must be received in evidence in bar of the action.

No such order or delivery affects the right of any person entitled by law to possession of the thing to recover the thing from any person or body (other than from a constable, other enforcement officer or the Crown).

(s [154](#))

### Forfeiture to Crown if ownership is not established

A thing that is seized or produced is forfeited to the Crown if:

- the owner or person entitled to its possession is not established within 60 days of seizure or production, and
- the thing:
  - is not, after 60 days, still required for investigative or evidential purposes, and
  - has not been disposed of or sold by court order within that 60 days.

To try and establish ownership of a thing in Police custody, you must (unless it is impossible or impracticable to make contact):

advise...	that...
<ul style="list-style-type: none"> <li>- the person who produced the thing or from whom it was seized</li> <li>- the occupier or owner of the place or vehicle where the thing was before it was produced or seized</li> <li>- any other person who you believe may be affected by the forfeiture</li> </ul>	the thing will be forfeited to the Crown if ownership is not established.

(s [155](#))

## Disposal of seized or produced things

### Disposal of unlawful things

You may destroy a seized or produced thing:

If...	and if...
<ul style="list-style-type: none"> <li>- it was unlawful under New Zealand law for a person to be in possession of it (e.g. a controlled drug found in circumstances in which possession is an offence against the <a href="#">Misuse of Drugs Act 1975</a>), <b>and</b></li> <li>- there is no mechanism provided for disposing of the thing or it has not been disposed of under any other enactment, <b>and</b></li> <li>- no order has been made by a court as to its disposal...</li> </ul>	<ul style="list-style-type: none"> <li>- you have given notice to the person from whom it was seized or produced, and they:               <ul style="list-style-type: none"> <li>- consent to its destruction, or</li> <li>- do not within 30 working days object to its destruction, <b>or</b></li> </ul> </li> <li>- the person to whom notice should be given cannot be located after reasonable inquiries have been made, <b>or</b></li> <li>- the person objects to the destruction within 30 working days of receiving the notice, <b>and</b> on an application to determine the thing's status, the court is satisfied that possession by the person is unlawful.</li> </ul>

Use the 'Notice to person of disposal by destruction of seized or produced unlawful thing' form, located in Police Forms > Search and Surveillance > Seizure, when giving notice to the person from whom the thing was seized or produced.

(s [160](#))

### Disposal of forensic copies

#### Copies of computer or other storage data

If you make a forensic copy of any data held in a computer or other data storage device and the...

data contains...	then you...
no evidential material	<b>must</b> ensure the forensic copy and copies made are: <ul style="list-style-type: none"> <li>- deleted</li> <li>- erased,</li> <li>or</li> <li>- otherwise destroyed in a way that prevents retrieval of the copy or copies by any method.</li> </ul>
a mixture evidential and not evidential material	<b>may:</b> <ul style="list-style-type: none"> <li>- retain the forensic copy and any copies made of that copy in their entirety, and</li> <li>- continue to search that forensic copy and any copies made of it, if such a search was authorised by the search power under which it was seized.</li> </ul>

(s [161](#))

### Other copies and generated material may be retained

Any thing made or generated by Police exercising a search power (e.g. photographs or audio or video recordings or copies of things) may be retained as part of permanent Police records.

The exception may be when a privilege under section [136](#) and any other enactment or rule of law exists.

(s [162](#))

### Application to district court to dispose of seized property

You may apply to a district court for an order that a thing seized, produced or transferred by another enforcement agency be disposed of (by sale or otherwise):

if...	and...
<p>you believe the thing:</p> <ul style="list-style-type: none"> <li>- is perishable or likely to deteriorate, or</li> <li>- the cost of holding the thing is unreasonable having regard to its market value</li> </ul>	<p>you have made reasonable efforts to advise these people of your intended application:</p> <ul style="list-style-type: none"> <li>- the person who produced the thing or from whom it was seized</li> <li>- the owner or person entitled to possession of the thing</li> <li>- any person with a legal or equitable interest in the thing.</li> </ul>

(s [163](#))

Note: 'Application for disposal of seized/produced property' form (SZ7) and the 'disposal order' form (SZ8) are not available on Police Forms because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

### Court refusal to grant an order

If the court refuses the order, Police must continue to hold the thing until it is released in accordance with section 151(2). (See [Custody of things seized or produced](#) in this chapter).

### Sale or disposal of seized and produced things

If seized and produced things are to be sold or otherwise disposed of following a court order, you should follow the disposal procedures applying to found property in the '[Exhibit and property management](#)' chapter as far as practicable. See these parts in particular:

- '[Custody and disposal of exhibits](#)'
- '[Disposal of found property](#)'.

### Application of proceeds

Police must hold in custody any proceeds received from carrying out the court order (less costs of sale and any sums required to be paid to a security holder or other person as a condition of the order for sale) as if the proceeds were the seized property.

(Section [151](#)(1) applies with any necessary modifications).

(s [163](#)(3) & (4))

### Drugs

Follow the additional procedures in the '[Exhibit and property management](#)' chapter for the receipt and destruction of drugs.

## Court related documentation relating to seized and/or produced things

### "Person with an interest" defined

'Person with an interest', in this section, means:

- the person who produced the thing or from whom it was seized
- the owner or the person entitled to possession of the thing
- any person with a legal or equitable interest in the thing.

### Documentation for Court

Both the application and order relating to seized and/or produced things must be presented to a Judge when Police request:

- an extension of time (s 153 - SZ3 and SZ4 forms for District Court only)
- ownership holding (s 154 - SZ5 and SZ6 forms for District Court only)
- disposal of property (s 163 - SZ7 and SZ8 forms for District Court only)
- estreat of bond (s 157 - SZ9 and SZ10 forms for District Court only)
- retention of raw data (s 63 - SZ13 and SZ14 forms for District Court or High Court)
- retention of raw data excerpts (s 63 - SZ16 and SZ17 forms for District Court or High Court).

**Note:** Forms SZ13, SZ14, SZ16 and SZ17 are available on Police Forms > Search and Surveillance > Seizure. Forms SZ3 to SZ10 are not available on Police Forms, because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

### Description of seized or produced things on documentation

Ensure the description of seized or produced things on the application and order align with the description of those seized or produced things entered on the POL268, Property record sheet inventory.

### Copies of documentation

Three copies of both the application and order relating to seized and/or produced things must be prepared for presenting to the Judge.

#### Application

Copies of the application are required for these purposes:

- original retained by Court
- duplicate and triplicate for Police file (may attach to POL268, Property record sheet inventory).

#### Order

Copies of the order are required for these purposes:

- original (signed by Judge) for Police file
- duplicate copy retained by Court
- triplicate copy for Police (to retain with POL268 - Property record sheet inventory).

As a matter of courtesy and good practice you should notify persons with an interest in a seized or produced thing either personally or by phone, fax, email or letter of the existence of the Court order and what the order directs.

**Note:** Notifying persons with an interest in a seized or produced thing does **not** apply to ex parte (involving one party to an application and no respondents) applications for an order (e.g. application for order for postponement of notice and inventory requirements under section [134](#)).

## Person requesting copies of application or order relating to seized and/or produced things

There is no requirement under the Act for Police to provide a copy of the application or an order to a person with an interest in seized and/or produced things. Any request for copies of the application or order from the person should be dealt with as follows:

- If criminal proceedings have **not** been commenced against the person requesting a copy of the application, then respond to the request under the [Official Information Act 1982](#). There may be conclusive reasons for refusing the disclosure of the application or for redacting of parts of the application under section 6 of the Official Information Act 1982. Good reasons for Police to withhold official information include the likelihood of:
  - prejudicing the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
  - endangering the safety of any person.

**Note:** In some circumstances the request will be dealt with under the [Privacy Act 2020](#), but similar considerations about disclosure of the applications may apply.

- If criminal proceedings have commenced against the person requesting a copy of the application, then respond to the request under the [Criminal Disclosure Act 2008](#).

For further guidance, see:

- the section, '[Applications for access to or release of things](#)' in this chapter for information about:
  - the person with an interest making application to Police for access to and release of things
  - Police providing a decision regarding unconditional or conditional access to or release of things in writing
  - the person with an interest making application to District Court for access to or release of things
- these chapters, [Privacy and official information](#) and [Criminal disclosure](#) for information about disclosure.