



Home Office

**DRAFT CODE OF PRACTICE
ISSUED UNDER SECTION 339ZL
TO THE PROCEEDS OF CRIME
ACT 2002 AND SECTION 22F TO
THE TERRORISM ACT 2000
ABOUT CERTAIN INFORMATION
ORDERS**

DATE

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DRAFT

Code of Practice issued under section 339ZL to the Proceeds of Crime Act 2002 and section 22F to the Terrorism Act 2000 about certain Information Orders

The Director General of the National Crime Agency or an authorised National Crime Agency officer must be aware of their mandatory obligations under the legislation and act in accordance with those duties. This is an absolute requirement regardless of any interpretation of this code or any other document or guidance.

Abbreviations used in this code

ECHR	European Convention of Human Rights
ECCT	Economic Crime and Corporate Transparency Bill
FATF	Financial Action Taskforce
FIU	Financial Intelligence Unit
IO	Information Order
NCA	National Crime Agency
SAR	Suspicious Activity Report
POCA	Proceeds of Crime Act 2002
TACT	Terrorism Act 2000

This is a new code to reflect some of the amendments to the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TACT) subject to the commencement of the Economic Crime and Corporate Transparency Bill.

Introduction

1. The purpose of this code is to meet the Secretary of State's obligations in section 339ZH to POCA and section 22B(1A) to TACT and to guide the Director General of the National Crime Agency (NCA) or an authorised NCA officer in connection with the exercise of the functions of –
 - a. the making of an application to the magistrates' court for an information order in reliance on Condition 3 or 4 in section

- 339ZH to POCA being met or section 22B(1A) to TACT being met; or
- b. the making of a request to a procurator fiscal for the procurator fiscal to apply for an information order in reliance on Condition 3 or 4 in section 339ZH to POCA being met or on Condition 3 or 4 to section 22B(1A) being met.
2. It applies to information orders made on or after (date).
 3. The code should not be regarded as a complete or authoritative statement of the law. Only the courts can give an authoritative interpretation of the legislation, and the contents of this code may be affected by subsequent judicial decisions and changes to the legislative provisions referred to.

Definitions

4. In this code:
 - references to statutory provisions are to provisions of POCA or TACT, unless otherwise stated;
 - “money laundering” as defined in section 340(11) to POCA is an act which –
 - a. constitutes an offence under section 327, 328 or 329 to POCA,
 - b. constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
 - c. constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
 - d. would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom;¹
 - “terrorist financing” means an act which constitutes an offence under any of sections 15 to 18 to TACT, or an act which constitutes a corresponding terrorist financing offence;²
 - “the criminal intelligence function” has the meaning given by section 1(5) to the Crime and Courts Act 2013;³
 - “foreign financial intelligence unit” means a body in a foreign country carrying out the functions of a financial intelligence unit within the meaning of Recommendation 29 of the Financial Action Task Force (FATF) (as that Recommendation has effect from time to time);⁴
 - “information order” is an order that requires a business in the regulated sector to provide information to assist the criminal intelligence function of the NCA, or a foreign financial intelligence unit (FIU), to conduct its operational or strategic analysis functions relevant to money laundering, or suspected money laundering, and/or terrorist financing, or suspected terrorist financing;

¹ Proceeds of Crime Act 2002, s.340(11).

² ECCT Bill

³ Crime and Courts Act 2013, s.1(5).

⁴ [Recommendation 29: Financial intelligence units \(cfatf-gafic.org\)](https://www.fatf-gafic.org/recommendation-29)

- the “regulated sector” is defined in Schedule 9 of POCA and Schedule 3A of TACT.⁵
 - Information orders were originally introduced under the name “Further information orders”, by section 12 (POCA) and section 37 (TACT) to the Criminal Finances Act 2017;⁶
5. The code applies to the following persons exercising functions in relation to information orders listed in the previous paragraph:
- the Director General of the National Crime Agency;
 - an authorised National Crime Agency officer;
 - “an authorised National Crime Agency officer” means an NCA officer authorised by the Director General of the NCA (whether generally or specifically) for the purposes of section 339ZH to POCA or section 22B to TACT;

Legislative context

6. The code requires that the person applying for an information order makes the application to the appropriate court. In England, Wales, and Northern Ireland the order is made to a magistrates’ court subject to conditions in section 339ZH to POCA or section 22B to TACT being met. In Scotland, the order is made to a Sheriff’s court by a procurator fiscal at the request of the Director General of the NCA or an authorised NCA officer, subject to conditions in section 339ZH to POCA or section 22B to TACT being met by the Director General of the NCA or an authorised NCA officer.
7. The code should be available for reference by the Director General of the NCA or an authorised NCA officer, and members of the public. It should be available in particular at NCA premises.
8. A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.
9. The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
10. The expectation is that the provisions of the code will apply to the exercise of all functions under this code. However, any decision not to follow the code should be carefully considered and noted.
11. The Director General of the NCA or the authorised NCA officer should be aware of the legislation and the detail of the particular provisions under which they operate. They should seek legal advice and/or guidance where necessary in advance of using the powers. This

⁵ Proceeds of Crime Act 2002, schedule 9, s.1,2,3., Terrorism Act 2000, schedule 3A s.1,2,3.

⁶ Criminal Finances Act 2017, s.12, s.37. ECCT Bill new subsections included for reference?

includes the relevant provisions in the Criminal Procedure Rules and Civil Procedure Rules as appropriate, and in Northern Ireland the relevant rules of court.

General provisions

12. The right to respect private and family life and the peaceful enjoyment of property under the European Convention of Human Rights (ECHR) is safeguarded by the Human Rights Act 1998. Powers of investigation following an information order may involve significant interference with the privacy and property of those whose personal information is obtained or seen/and or seized. The powers therefore need to be fully and clearly justified before they are used.
13. The use of the powers which impact upon individuals' rights should be proportionate to the outcome being sought. In particular, those exercising the powers should consider at every stage whether the necessary objectives can be achieved by less intrusive means – this may be by approaching the potential respondent to ascertain whether they will provide the required information without the need for a court order or to give them prior notice that an application is to be made. The giving of prior notice of an application may mean that the respondent becomes ready to comply and allows them the opportunity to make representations about the detail of the proposed order or notice.
14. In all cases, those exercising the powers should exercise them fairly, courteously, responsibly, respectfully, without unlawful discrimination and in accordance with any statutory duties on them. Under the Equality Act 2010, section 149, a public authority and also a person who is not a public authority but who exercises public functions also has a duty to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a relevant “protected characteristic” and those who do not share it, and to take steps to foster good relations between those persons.
15. The Children Act 2004, section 11, also requires the NCA to ensure that in the discharge of its functions it has regard to the need to safeguard and promote the welfare of all persons under the age of 18.⁷

Reasonable grounds to believe

16. Reasonable grounds to believe 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. However, reasonable grounds to believe should not be founded retrospectively. Therefore, the Director General

⁷ Those exercising the powers in Northern Ireland should ensure that in the exercise of their functions, they have regard to the need to safeguard and promote the welfare of all persons under the age of 18 years in compliance with obligations under Article 3 of the UN Convention on the Rights of the Child.

of the NCA or an authorised NCA officer should be able to explain to the court or the respondent, the basis for their belief by reference to intelligence or information about, or specific behaviour by, the person concerned.

17. Reasonable grounds to believe can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour. For example, a person's race, religion or age, could not be used alone or in combination with other personal factors as the reason for searching that person. Reasonable grounds to believe could not be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity.

Statutory requirements

18. The application must:
 - specify the person or entity who is the subject of the information order;
 - specify or describe the information sought under the order;
 - specify the person from whom the information is sought ("the respondent") –
 - the respondent is a:
 - person carrying on a business in the regulated sector;
 - an information order requires the respondent to provide the information specified or described in the application for the order, or;
 - such other information as the court or sheriff making the order thinks appropriate.

Particular action to be taken before an application for an information order is made

19. The Director General of the NCA or the authorised NCA officer should carefully consider the existing information prior to applying for an information order. This may include researching the NCA's intelligence system. The applicant should consider the benefit the information order may have, either in itself or as the lead to the NCA's criminal intelligence function or the function of a foreign FIU. They should also consider the cost of a business in the regulated sector complying with an information order.
20. The Director General of the NCA or the authorised NCA officer should particularly consider the proportionality of requesting an information order against the believed benefit to the NCA's criminal intelligence function or the function of a foreign FIU. They should also consider the broader issues of law enforcement such as the benefit to the community of removing the suspected proceeds or terrorist funds from circulation.

Conditions for making an information order, relevant to this code

21. An information order may be granted by a magistrates' or sheriff court on an application by the Director General of the NCA or an authorised NCA officer if satisfied that any of Conditions 1, 2, 3, or 4 of section 339ZH POCA or Conditions 1, 2, 3 or 4 of section 22B TACT are met.⁸ Conditions 3 and 4 are relevant to this code. In particular –
22. Condition 3 for the making of an information order in section 339ZH POCA and section 22B TACT is met if:
- the information would assist an authorised NCA officer to conduct –
 - operational analysis of information that is relevant to money laundering or suspected money laundering and/or terrorist financing or suspected terrorist financing, or;
 - strategic analysis identifying trends or patterns in the conduct of money laundering or terrorist financing, or systemic deficiencies or vulnerabilities which have been or are being likely to be, exploited for the purposes of money laundering or terrorist financing;
 - for the purposes of the criminal intelligence function of the NCA so far as it relates to money laundering or terrorist financing;
 - the respondent is a person carrying on a business in the regulated sector;
 - where the application for the order is made to a magistrates' court, the person making the application has had regard to this Code of Practice;
 - where the application for the order is made to the sheriff –
 - the application is made by a procurator fiscal at the request of the Director General of the NCA or an authorised NCA officer, and;
 - the person making that request has had regard to this Code of Practice, and;
 - it is reasonable in all the circumstances for the information to be provided.⁹
23. Condition 4 for the making of an information order in section 339ZH POCA and section 22B TACT is met if:
- a request has been made by a foreign FIU to the NCA for the provision of the information required to be given under the order,
 - an authorised NCA Officer has reasonable grounds to believe that the request was made only for the purpose of the foreign FIU to conduct one or both of the following—
 - operational analysis of information that is relevant to money laundering or suspected money laundering and/or terrorist

⁸ Reference conditions in both acts Proceeds of Crime Act 2002, s.339ZH(4,5), ECCT Bill Clause 171(6A, 6B); Terrorism Act 2000, s.22B(4,5); ECCT Bill Clause 172(6A,6B).

⁹ ECCT Bill

- financing or suspected terrorist financing or potential terrorism funds, or;
- strategic analysis identifying trends or patterns in the conduct of money laundering or terrorist financing, or systemic deficiencies or vulnerabilities which have been, are being or are likely to be, exploited for the purposes of money laundering or terrorist financing;
- and that the information is likely to be of substantial value to the foreign FIU in carrying out such analysis;
- the provision of the information by the NCA to the foreign FIU would be for the purposes of the criminal intelligence function of the NCA, so far as it relates to money laundering or terrorist financing;
- the respondent is a person carrying on a business in the regulated sector;
- where the application for the order is made to a magistrates' court, the person making the application has regard to this code of practice;
- where the application for the order is made to the sheriff –
 - the application is made by a procurator fiscal at the request of the Director General of the NCA or an authorised NCA officer, and;
 - the person making that request has had regard to this Code of Practice, and;
- it is reasonable in all the circumstances for the information to be provided.¹⁰

Particular action to be taken when executing an information order

24. When an information order is served on a business in the regulated sector, the covering letter should include the following:
- the name of the business in the regulated sector;
 - the name of the person(s) or other identifying factors about who the information is sought;
 - how the information required under the order is to be provided;
 - the date by which it is to be provided;
 - where the Director General of the NCA or the authorised NCA officer believes that the information order includes information held in any other names that the specified person has, or had used previously, that other name;
 - all addresses known by the Director General of the NCA or the authorised NCA officer to have been used by the specified person relating to accounts that may have been or are held by the business in the regulated sector;
 - such other information as the Director General of the NCA or the authorised NCA officer considers would assist the business in the regulated sector in complying with the order;

¹⁰ ECCT Bill

- notice that if a person fails to comply with an information order made by a magistrates' court, the magistrates' court may order the person to pay an amount not exceeding £5,000;
 - the £5,000 mentioned above is to be treated as adjudged to be paid by a conviction of the court for the purposes of the Magistrates' Courts Act 1980 or (as the case may be) the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
 - in order to take account of changes in the value of money, the Secretary of State may by regulations substitute one sum for another sum, for the time being specified above.

Statements

25. A statement made by a business in the regulated sector in response to the information order may not be used in evidence against it in criminal proceedings other than in the circumstances set out in section 339ZI to POCA or section 22C to TACT.¹¹

Particular record of proceedings under an information order

26. The Director General of the NCA or the authorised NCA officer should keep a record of all the information supplied in response to the information order and a copy of the order and any notices.

Appeals

27. An appeal from a decision on an application for an information order lies to the relevant appeal court.
28. An appeal lies at the instance of any person who was a party to proceedings on the application.
29. The relevant appeal court is:
- the Crown Court, in the case of a decision made by a magistrates' court in England and Wales;
 - a county court, in the case of a decision made by a magistrates' court in Northern Ireland;
 - the Sheriff Appeal Court, in the case of a decision made by the sheriff;
30. On an appeal the relevant appeal court may:
- make or (as the case may be) discharge an information order, or;
 - vary the order.

¹¹ Proceeds of Crime Act 2002, s.339ZI; Terrorism Act 2000, s.22C.

Supplementary

31. An information order does not confer the right to require a person to provide privileged information.
32. 'Privileged information' is information which a person would be entitled to refuse to provide on the grounds of legal professional privilege in proceedings in the High Court or, in Scotland, legal privilege as defined by section 412 to POCA and section 22E to TACT.¹²
33. Information provided in pursuance of an information order is not to be taken to breach any restriction on the disclosure of information (however imposed).
34. An application for an information order may be heard and determined in private.
35. Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to information orders.

¹² Proceeds of Crime Act 2002, s.412; Terrorism Act 2000, s.22E.