

CODE OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002

Investigations

Consultation Document
July 2013

Code of Practice Issued Under Section 377 of the Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 (POCA) included a consolidation of existing powers and new powers of investigation into the extent and whereabouts of the proceeds of crime. The provisions for investigations are set out in Part 8 of POCA.

Powers of investigation within the Act

These powers are limited to confiscation investigations (also see Part 2 and 4 of POCA), civil recovery investigations (see also Chapter 2 of Part 5 of POCA), detained cash investigations (see also Chapter 3 of Part 5 of POCA and sections 75 to 77 of the Serious Crime Act 2007), money laundering investigations (see also Part 7 of POCA) and exploitation proceeds investigations (see Part 7 – specifically section 169 – and Schedule 19 to the Coroners and Justice Act 2009). They are strictly limited to these five types of investigation and are therefore not available for investigations into other proceedings under the Act (for example revenue collection under Part 6) or criminal investigations more generally. Evidence obtained under these powers may be used for other purposes provided that there is no legal or other restriction on its use and that the evidence was obtained for the purposes of a POCA investigation and its use in other matters is purely collateral.

Part 8 of POCA provides five investigation powers: production orders, search and seizure warrants, customer information orders, account monitoring orders and disclosure orders. All the investigation orders are subject to judicial approval. In England and Wales their use must be approved by a judge entitled to exercise the jurisdiction of the Crown Court, or in both jurisdiction in the case of civil recovery and exploitation proceeds investigations by a High Court judge.

Only the production order and search and seizure warrant are available in a detained cash investigation and a disclosure order is not available in a money laundering investigation. The ability to apply for a disclosure order is effectively limited to certain specified prosecutors and is therefore not covered by the investigation Code, with the exception that the Director General and members of staff of the National Crime Agency (NCA) can apply for disclosure orders in a civil recovery and exploitation proceeds investigation.

The Code extends to England and Wales and, in relation to the Director General of the NCA and officers of the NCA and HM Revenue and Customs (HMRC) and Home Office immigration officers, to Northern Ireland. In respect of police officers and accredited financial investigators (AFIs), the Department of Justice issues a Code of Practice on the exercise of these powers in Northern Ireland. There are separate powers of investigation for Scotland set out at Chapter 3 of Part 8 of POCA; section 410 requires a separate Code to be issued by Scottish Ministers.

The investigation powers are not new as they have been in force for 10 years.

New powers

Section 66 of the Policing and Crime Act 2009 (PCA) amends POCA so that applications relating to a detained cash investigation are to be made to the Crown Court rather than the High Court. Specifically, applications are to be made to a judge entitled to exercise the jurisdiction in England and Wales, which includes Circuit judges, Recorders and High Court judges in their Crown Court capacity. This transfer of jurisdiction necessitates the existing Code to be

amended as it currently refers to the High Court in relation to detained cash investigations; this wording requires amending to refer to the Crown Court.

Part 7 of the Coroners and Justice Act 2009 introduces a new civil scheme through which courts can order offenders to pay amounts in respect of assets or other benefits derived by them from the exploitation of accounts of their crimes, for example, by selling their memoirs, or receiving payments for public speaking or media interviews. The scheme is restricted to cases where the memoirs, etc. relate to offences which are triable only on indictment. Schedule 19 of the 2009 Act amends POCA so that those investigation powers are available to the NCA in such cases.

Section 34 and Schedule 18 of the Crime and Courts Act 2013 amend the definition of a civil recovery investigation to clarify that the focus of an investigation can be a person or property and also to clarify that there can be an investigation into property that has not yet been clearly identified. The 2013 Act also makes provision for evidence to be obtained from overseas if a person or property is subject to a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation.

Persons covered by the Code

The Code of Practice will apply to all those (except prosecutors) who have functions under Chapter 2 of Part 8 of POCA in England and Wales, namely those who either apply for or execute the powers of investigation. Police officers and suitably accredited financial investigators operating in Northern Ireland will be subject to a separate Code issued by the Department of Justice (see section 377ZA of POCA). More generally, prosecutors are subject to other Codes under section 377A of POCA which are issued, as appropriate, by the Attorney General and Advocate General for Northern Ireland.

Chapter 2 has a basic framework by which appropriate officers apply for and execute the investigation powers. A definition of 'appropriate officers' is found at section 378. Different appropriate officers have different access to the powers depending on the type of investigation and the specific power. The appropriate officers covered by the Code are police officers, officers of HMRC, the Director General of the NCA, members of NCA staff, Home Office immigration officers and AFIs.

The search and seizure warrants refer to an 'appropriate person' executing them. This has been expanded by the Serious Crime Act 2007 (SCA) to include suitably accredited financial investigators in respect of confiscation, money laundering, detained cash and exploitation proceeds investigations and (for the purposes of this Code) members of the NCA's staff in respect of civil recovery investigations.

The Code

The Code will ensure best practice by those operating the powers of investigation and an assurance that use of the powers are proportionate to individuals and organisations affected by POCA, notably the financial industry.

The draft Code is based both on the existing Code (<http://tna.europarchive.org/20081105173914/http://www.crimereduction.homeoffice.gov.uk/crimereduction026b.pdf>) and relevant developments in obligations under the Codes relating to the Police and Criminal Evidence Act 1984 (in particular Code A: Stop, Search and Code B: Searching of premises and seizure of property, Code C: detention, treatment and questioning of persons by police officers and Code E: tape recording of interviews with suspects).

Code of Practice Issued Under Section 377 of the Proceeds of Crime Act 2002

Introduction

1. This Code of Practice governs the exercise of the investigation powers in Chapter 2 of Part 8 of the Proceeds of Crime Act 2002 (POCA). This Code is not a statement of law. It applies to all actions undertaken as part of an investigation under POCA on or after [1 April 2014], the date on which we aim to bring this Code into force; notwithstanding that the investigation may have begun before that time. This Code replaces the Code issued on 1 April 2008.

The powers

- Production orders
- Search and seizure warrants
- Disclosure orders
- Customer information orders; and
- Account monitoring orders

2. This Code is issued by the Home Secretary under section 377 of POCA. The Code provides guidance as to how the powers in respect of confiscation, civil recovery¹, money laundering², detained cash investigations³ and exploitation proceeds investigations⁴ are to be used by certain investigators in England and Wales. Only production order powers and search and seizure warrants are available in detained cash investigations. Disclosure orders are not available in money laundering investigations and detained cash investigations. In addition to England and Wales, the Code also covers the operation of Home Office immigration officers and customs officers in confiscation, money laundering and detained cash investigations, and NCA staff in confiscation, exploitation proceeds and civil recovery investigations, in Northern Ireland. There are separate Codes of Practice in respect of the investigation powers conferred on prosecutors issued by the Attorney General or Advocate General for Northern Ireland.⁵ There are also separate Codes for the Scottish powers in Chapter 3 of Part 8 issued by Scottish Ministers and for the powers in Northern Ireland in Chapter 2 for police officers and accredited financial investigators (AFIs) issued by the Department of Justice in Northern Ireland. These powers of investigation are not available in a civil recovery investigation if proceedings for a recovery order have been started in respect of the property in question or an interim receiving order or an interim administration order is extant, or the property is detained under section 295 of POCA⁶, although they do remain available if a property freezing order has been obtained but proceedings for a civil recovery order have not started. These powers of investigation are not available for revenue investigations (Part 6). Apart from in the context of money laundering investigations, none of the powers under Part 8 of POCA is available for use in investigations into criminal offences (although evidence obtained under these powers may be used for other proceedings provided there is no restriction on its use and the evidence was firstly obtained in relation to the POCA investigation).

¹ Section 341 of POCA as amended by section 49 and Schedule 19 of the Crime and Courts Act 2013

² Section 341 of POCA.

³ Section 341(3A) of POCA inserted by section 75(1) of the Serious Crime Act 2007.

⁴ Section 169 and Schedule 19 of the Coroners and Justice Act 2009.

⁵ Accredited financial investigators (who are members of staff of the SFO) are covered by this Code rather than the one issued by the Attorney General or the Advocate General (see Section 377(1)(c) of POCA)

⁶ Detention of seized cash.

Persons covered by the Code

3. This Code places obligations on some of those (i.e. those who are not prosecutors) who either apply for or execute the powers of investigation in England, Wales and, where applicable, Northern Ireland. Part 8, Chapter 2 of POCA, sets out a framework for appropriate officers to apply for and execute the investigation powers. The appropriate officers covered by this Code are:

- the Director General of the NCA and other members of staff of the NCA;
- accredited financial investigators (AFIs)⁷;
- police officers;
- Home Office immigration officers;
- customs officers; and
- officers of Revenue and Customs.

In respect of the NCA, anything which the NCA is authorised or required to do under the investigation powers of POCA may be done by a person providing services under arrangements made by the NCA if the person is authorised by the NCA (whether generally or specifically) for that purpose.⁸ The powers can be exercised by HMRC officers only if the conduct constituting the relevant offence relates to an assigned matter within the meaning of the Customs and Excise Management Act 1979 (CEMA).

4. The categories of the appropriate officers in each case depend on the type of investigation and the specific powers. The definitions of appropriate officers are found at section 378 of POCA, and the categories of appropriate officers are outlined within this Code under each power of investigation heading.

5. Where an appropriate officer fails to comply with any provisions of this Code, he⁹ is not by reason only of that failure liable to any criminal or civil proceedings, but the Code is admissible as evidence in such proceedings. A court may take account of any failure to comply with the Codes provisions in determining any questions in the proceedings.

6. The Code should be available at all police stations and Home Office premises for consultation by the police and members of the public. It should also be available at police and Home Office premises at ports where the powers of investigation are, or are likely, to be used. Government Departments and other bodies who have AFIs operating these powers of investigation should also make arrangements for the Code to be available to both their staff and members of the public or, if practicable, at their public offices.

7. This Code only applies to appropriate officers applying for and executing powers under Chapter 2 of Part 8. However, if an appropriate officer is also carrying out an additional and separate function or power, for example a search for cash under section 289 of POCA, he must have regard to any connected Code.

⁷ An AFI is an individual who has been trained and accredited under section 3 of POCA to undertake certain investigative, restraint, search and seizure functions using POCA. An AFI must also be within a category specified in an order issued by the Secretary of State under section 453 of POCA.

⁸ See section 2B of POCA as inserted by paragraph 124 of Schedule 8, Part 6, to the Serious Crime Act 2007 amended by paragraph 110 of Schedule 8 to the Crime and Courts Act 2013.

⁹ Words importing the masculine gender include the feminine – see section 6 of the Interpretation Act 1978.

General provisions relating to all the orders and warrants

Action to be taken before an application is made

8. The powers of investigation may involve significant interference with the privacy of those whose premises are searched; on whom personal information is obtained; or whose personal information, material or documents are seen and/or seized by an appropriate officer or appropriate person. This places an obligation upon those operating the powers of investigation to ensure that the application for the order or warrant is fully and clearly justified. In particular, appropriate officers should consider at every stage whether the necessary objectives can be achieved by less intrusive means.

9. With particular reference to search and seizure warrants, if there is reason to believe that the use of the powers covered by this Code might have an adverse effect on relations between law enforcement and the community, the local police/community liaison officer should be consulted:

- before the action is taken, or
- in particularly urgent cases, as soon as possible thereafter.

The appropriate officer would need to consider whether any consultation could jeopardise an ongoing wider operation or investigation. In such circumstances consultation may not be necessary, but it is best practice to consult. However any decision not to follow the Code should be carefully considered and noted. The expectation is that the provisions of the Code will apply to all searches carried out under this Code.

10. Appropriate officers must be aware that the operation of POCA is subject to the Human Rights Act 1998 and consider their use of the powers of investigation accordingly. The use of the powers which impact upon individuals' Convention rights under the European Convention on Human Rights (ECHR) must be proportionate to the outcome being sought.

11. An appropriate officer will have to satisfy a judge that any infringement of, for example, a person's right to privacy under Article 8 of the ECHR is proportionate to the benefit to be gained from making an order or warrant. The appropriate officer must satisfy himself of these issues, as with the other requirements for the making of orders/warrants, before an application is made.

12. The appropriate judges to grant these powers are, in relation to confiscation investigations, detained cash investigations and money laundering investigations, a judge entitled to exercise the jurisdiction of the Crown Court (in Northern Ireland, a Crown Court judge); and in relation to civil recovery and exploitation proceeds investigations a judge of the High Court. Before a judge can grant any of the Part 8 orders or warrants, he will have to be satisfied that the statutory requirements are met. For each order or warrant to be granted, there is a statutory requirement that there must be reasonable grounds for suspecting that:

- in relation to a confiscation investigation, either a person has benefited from criminal conduct or the extent or whereabouts of that benefit;
- in relation to a civil recovery investigation, whether property is or has been recoverable or associated property, who holds or has held the property, what property a person holds or has held or the nature, extent or whereabouts of property;

- in relation to a money laundering investigation, a person has committed a money laundering offence (although not in the case of a disclosure order as they are not available for money laundering investigations);
- in relation to a detained cash investigation into the derivation of the cash, that the property, or a part of it, is recoverable property (but only in the case of production orders and search and seizure warrants which are the only powers available in this type of investigation);
- in relation to a detained cash investigation into the intended use of the cash, the property, or a part of it, is intended by any person to be used in unlawful conduct (but only in the case of production orders and search and seizure warrants which are the only powers available in this type of investigation);
- in relation to an exploitation proceeds investigation a person has (for the purposes of Part 7 of the Coroners and Justice Act 2009 ; obtained exploitation proceeds from a relevant offence by reason of any benefit derived by that person¹⁰ .

13. 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 with each other as the reason for establishing suspicion. 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. 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.

14. In respect of each order or warrant to be granted, there is a statutory requirement that there must be reasonable grounds for believing that the material or information is likely to be of substantial value (whether or not by itself) to the investigation. The appropriate officer must be satisfied that the material or information will progress the investigation.

15. There is also a statutory requirement that there must be reasonable grounds for believing that it is in the public interest that the material or information is obtained or accessed by the appropriate officer. The appropriate officer must ensure that the public interest in obtaining the order outweighs the disadvantages to the person against whom the order is being made. For example, an application for an account monitoring order against a bank should not normally be made unless the appropriate officer considers that this may lead to the identification of monies greater than the anticipated cost to the bank in complying with the order¹¹, or that the appropriate officer suspects that the information will be of substantial benefit with regards to the serious nature of the investigation. The appropriate officer must satisfy himself that all of these statutory requirements are met before making the application.

16. POCA only requires appropriate officers to obtain authorisation from a senior appropriate officer for their applications in respect of customer information orders (see section 369(7) of POCA)¹². However, appropriate officers should also, where practicable, obtain internal authorisation in respect of applications for the other orders and warrants. The appropriate officer should therefore obtain the authorisation of a senior officer (at least inspector rank in the

¹⁰ Section 155(3) of the Coroners and Justice Act 2009 Act provides that a person obtains exploitation proceeds from a relevant offence if they derive a benefit from the exploitation of material pertaining to the relevant offence or any steps taken or to be taken with a view to such exploitation. Section 160 of the 2009 Act makes further provision in relation to deriving a benefit.

¹¹ The appropriate officer is under no obligation to divulge the anticipated cost he has determined.

¹² Unless they are themselves a senior appropriate officer.

police or police staff equivalent, or the equivalent rank of seniority within the department or agency for which the appropriate officer works). With the exception of a member of the NCA's staff in civil recovery investigations and exploitation proceeds investigations, disclosure orders are applied for by prosecutors but at the request of an appropriate officer. Consequently the appropriate officer should obtain authorisation from a senior officer to request a prosecutor to make an application. It is of note that prosecutors are covered under a separate Code issued under section 377A of POCA, but the powers that flow from a disclosure order may be executed by appropriate officers covered by this Code.

Action to be taken in making an application

17. All the applications for the powers of investigation may be made ex parte to a judge in chambers¹³. In deciding whether the application should be made without notice¹⁴, the appropriate officer should consider the benefit of not holding the proceedings in the presence of, or by giving notice to, the other parties. An obvious and common reason would be so as not to alert the individual(s) connected to an investigation that it is ongoing. On notice proceedings might enable the person to move material and thereby frustrate the investigation. However, where an order is directed at a financial institution (who would be the respondent), the institution should normally be notified of the intention to make an application for an investigation order – the application hearing could then be held in the presence of, or by giving notice to, the institution.

18. An application in respect of a civil recovery and exploitation proceeds investigation must be made to a judge of the High Court in accordance with any relevant civil procedure rules and practice direction.

19. Appropriate officers should familiarise themselves with the requirements in the Act, but the following should be included in an application for an order or warrant:

- the name of the person who is under investigation or (if possible) who holds property or owns the cash or the property which is under investigation, and confirmation that the information sought is for the purposes of the investigation. If the application is for an order against a different person or property to the main focus of the investigation, they should also be named on the application and there should be an explanation of the connection to the investigation. In respect of applications for a disclosure order it may not be possible to name each potential recipient of a notice and so they should be named as far as practicable in the evidence in support of the application;
- the grounds on which the application is made; and
- confirmation that none of the material or information sought is, or consists of, items subject to legal privilege or excluded material (with the exception of a lawyer's client's name and address requested under a disclosure order). This does not apply to customer information orders and account monitoring orders as the type of information requested will not be that which could be subject to legal privilege or could be excluded material.

20. The identity of an informant need not be disclosed when making an application, but the appropriate officer should be prepared to handle any questions the judge may have about the accuracy of the information provided by that source or any other related matters.

¹³ This means that an appropriate officer can apply for an order or warrant without notifying the respondent that the application is being contemplated or made.

¹⁴ On notice applications are those notified to the respondent of the contemplated order or warrant. They are therefore aware of the application and can be represented at the hearing.

21. The person applying should be ready to satisfy the judge that he is an appropriate officer (see section 378 of POCA) who may apply for the order or warrant¹⁵.

Action to be taken in serving an order or warrant

22. In all cases, the investigatory powers should be exercised fairly, courteously, responsibly, with respect for the persons and property of those concerned and without discrimination.

23. In deciding the method of service of the order, the appropriate officer should take into account all the circumstances of the investigation, including the possible need to prove that service was effected, and the person or body on whom the order was served. Search and seizure warrants are executed by an “appropriate person” who should also have regard to these matters in execution of the warrant.

24. When serving the order, warrant or (in the case of a disclosure order and customer information order) notice under the order, a covering letter should be provided which includes the following information (unless it is already included in the order or the notice):

- the name of the subject of the order or the name by which he is known;
- a warning in plain language that failure without reasonable excuse to comply with the requirement is an offence and could result in prosecution;
- a statement to the effect that disclosure of information about the investigation may contravene section 342 of POCA (“offences of prejudicing investigation”), and that if anyone contacts the person about the investigation they should report this to the appropriate officer or appropriate person;
- that the warning given does not constitute a criminal caution, nor has the consequences of one;
- a general description of the investigation in connection with which the requirement is made; (it is not necessary to specify the name of the person, property or cash subject to the investigation on the order, although this information should be given to the judge as part of the application process);
- that the subject of the order should seek legal advice or ask the appropriate officer about any doubts or concerns he may have, or for guidance on complying with the order;
- the duty not to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of documents which are relevant to any investigation which the subject of the order knows or suspects is being or is about to be conducted; and a warning that to do so is an offence punishable by up to five years’ imprisonment and an unlimited fine;
- the duty not to disclose to any other person information or any other matter which is likely to prejudice any investigation which the subject of the order knows or suspects is being or is about to be conducted and a warning that to do so is an offence punishable by up to five years’ imprisonment and an unlimited fine; and

¹⁵ This could be a warrant card or documentation confirming the status of AFIs or members of staff of NCA.

- the right to apply for a variation or discharge of the order (not applicable in search and seizure warrants).

25. When serving a notice under a disclosure order or a customer information order, the appropriate officer should inform the person of his right to refuse to comply with any requirement imposed on him unless the appropriate officer has, if required to do so, produced evidence of his authority to issue that notice. The evidence of the authority could include the actual order.

26. Where it appears to the appropriate officer or appropriate person that the recipient of an order or warrant has genuine difficulty in reading or understanding English, he should attempt to serve a copy of the order on a person known to the recipient who, in the opinion of the appropriate officer or appropriate person, is able to explain or translate what is happening. If that is not practicable the appropriate officer or appropriate person should serve the order, warrant or notice and attempt to ensure that the person understands what has occurred (for example by serving a multi-lingual explanation or engaging an interpreter or translator).

27. Sections 359(1) and 366(1) of POCA provide that an offence is committed if, without reasonable excuse, a person or financial institution fails to comply with a requirement imposed by a disclosure or customer information order. The other orders are treated as orders of the court against the named person and therefore attract contempt proceedings if they are not complied with. The recipient of the order should be warned in plain language that failure without reasonable excuse to comply with the requirement of an order may be an offence that could result in prosecution, imprisonment and/or a fine.

28. Section 449 of POCA enables members of staff of the NCA to be identified by means of a pseudonym when authorised to carry out functions under POCA. An application may be made or service of an order or warrant may be carried out using a pseudonym. A certificate signed by an authorised person of the NCA is sufficient to identify a member of staff of the Agency and the member of staff may not be asked any question which is likely to reveal his true identity. The pseudonym provision does not extend to appropriate officers working outside the NCA, for example police officers or AFIs, working for a government department, with the exception of AFIs working for a relevant Director (i.e. the main prosecution agencies).

29. No document may be removed or accessed and no information sought which is subject to legal professional privilege (with the one limited exception in respect of the disclosure order as explained in that part of the Code). A respondent has the right to withhold material and information sought which is subject to legal professional privilege. POCA relies upon the evolving definition of legal privilege as in case law which is relied upon in High Court proceedings. The current case law broadly defines two categories of privilege. The first is legal advice privilege which attaches to communications passing between lawyer and client created for the purpose of giving and receiving legal advice. The second is litigation privilege which attaches to communications and documents which come into existence for the sole or dominant purpose of either giving or obtaining legal advice with regard to contemplated litigation or collecting evidence for use in litigation. However such communications made in the furtherance of a criminal purpose are not privileged.

30. None of the powers of investigation allow access to excluded material. Excluded material is defined at section 11 of the Police and Criminal Evidence Act 1984 (PACE) and includes journalistic material and medical records.

31. Aside from the legal privilege and excluded material provision, requirements for information made under the powers of investigation take precedence in spite of any restriction

on the disclosure of information, however imposed. They therefore take precedence over any contractual duties of confidentiality and the common law duty of confidence.

Action to be taken in receiving an application for an extension of a time limit

32. It is for the appropriate officer to set the time limit for replies to requirements made under disclosure orders and customer information orders. Where the subject of one of these orders asks for more time to comply with a requirement made under one of these orders, the appropriate officer should consider the request. When they have made their decision, the appropriate officer should normally set out their decision and the reasons for it in a letter to the subject of the order (unless reasons have been given orally). The circumstances in which it would be suitable for appropriate officers to consider an extension will vary from case to case but may include the need to obtain legal or other professional advice, difficulty in obtaining the requested information and/or documents and an interviewee's unavailability. The letter conveying the appropriate officer's decision should normally be served in the same way as the original notice under which the order was served.

33. Where a solicitor acting on behalf of the subject of the order makes the application for an extension of time, the letter should be served on the solicitor and must also be served on his client.

34. Time limits for compliance with a production order and an account monitoring order are set out on the face of the order - see sections 345(5) and 370(6) and (7) of POCA. Therefore they cannot be extended unless the subject of the order applies to the court for a variation of the order. If the appropriate officer receives a request for an extension of the time limit to comply with a production order or an account monitoring order, he must immediately direct the subject of the order to the court¹⁶.

Record of Proceedings

35. The appropriate officer should keep or cause to be kept a record of the exercise of the powers conferred by the provisions of Chapter 2 of Part 8.

36. The record should, in relation to each requirement, include:

- a copy of the order or warrant and copies of notices given under an order;
- a copy of the application for the order or warrant;
- the date on which the order, warrant or notice was served;
- the date of receipt of and reason for any request for an extension of the time allowed to comply with the order;
- the decision in respect of any such request and the date on which it was notified to the subject of the order;

¹⁶ This underlines the importance of an appropriate officer requesting a reasonable time limit at the time of their application for a production order or an account monitoring order. The appropriate officer should liaise where possible with the subject of the order. Realistic time limits in orders will reduce later applications to the court for extensions of time.

- the date and place that the information or documents were received in response to the order; and
- receipts provided in accordance with the provisions of this Code.

Retention of documents and information

37. If documents or information are provided which were not required to be provided under the terms of the order, no account of that document or information should be taken of it in the investigation and it should be returned to whoever provided it.

38. Appropriate officers should follow established local procedures on the retention and return of documents, material and information. Intelligence that arises during the appropriate officer's investigation may be passed to the NCA, police, HMRC and/or other departments and agencies (provided there is a legal basis in place either in statute or common law for the passing of information between those bodies for that purpose).

PRODUCTION ORDERS

39. Persons to whom this part of the Code applies should familiarise themselves with the introduction section which sets out general instructions relating to all the orders and warrants.

Definition

40. A production order is an order which can be served on any person or institution, for example a financial institution, requiring the production of, or allowing access to, material; this might include documents such as bank statements.

Statutory requirements

41. The application must state that the order is sought for the purposes of a civil recovery investigation, a detained cash investigation, a confiscation investigation, a money laundering investigation or an exploitation proceeds investigation. The application must specify the person who is subject to a confiscation investigation, money laundering investigation or an exploitation proceeds investigation or the person or property which is subject to a civil recovery investigation or the cash which is subject to a detained cash investigation. It must identify the specific material sought or describe the type of material sought and it must specify a person who appears to possess or be in control of the material. It must also state whether production of the material or access to the material is required.

42. The person named in the order must either produce the material, or provide access to it, as directed by the order. Section 345(5) of POCA provides seven days as the normal period, unless there are particular circumstances for a different period to be set by the judge.

Persons who may apply for a production order

43. As with the other orders, an application may be made by an appropriate officer; the definition of an appropriate officer depends on the type of investigation (section 378 of POCA).

Particular action to be taken before an application for a production order

44. The appropriate officer should ascertain, as specifically as is possible in the circumstances, the nature of the material concerned and, where relevant, its location.

45. The appropriate officer should, in certain circumstances, also make enquiries to establish what, if anything, is known about the likely owner, occupier, or person in control, of the premises where the material is believed to be located and the nature of the premises themselves; and to obtain any other information relevant to the application. This may not be necessary if the premises are professional bodies or financial institutions.

46. The appropriate officer should consider whether he requires production of the material or access to it. In most circumstances he would want production, so the material can be retained. There are occasions however where he may simply want sight of information contained in larger material, for example an entry in a register.

47. The seven day time limit prescribed by statute for the production of material will apply unless it appears to the judge that a shorter or longer period would be appropriate. Reasons

which the appropriate officer might submit to the judge for changing the seven day period are that:

- the investigation may be prejudiced unless there is a shorter time limit;
- it would not be reasonably practicable for the subject of the production order to comply with the seven day time limit due to the nature or amount of documentation required.

There will be cases when the best practice is to contact the subject of the production order (for example a financial institution) before the application is made to discuss a reasonable time limit.

Particular action to be taken executing a production order

48. When a production order is served on a person, business or institution under section 345(4)(a) of POCA, the order or the covering letter should, in addition to the matters specified in paragraph 24 of the general section, state:

- that the order was made under section 345(4)(a) of POCA;
- the material or class of material required to be furnished;
- the period of time within which such documents must be furnished.

49. Where an order is made under section 345(4)(b) of POCA (for access to material), the order or covering letter should, in addition, state:

- that the order was made under section 345(4)(b) of POCA;
- the material or class of material required to satisfy the production order;
- the appropriate officer's right of access to such material within the period stated in the order.

50. Section 350 of POCA concerns the service of a production order on a government department. Where a production order is served on a government department, it must be served as if the proceedings were other civil proceedings in relation to the department. This means that appropriate officers should look at the list of government departments published by the Cabinet Office under section 17 of the Crown Proceedings Act 1947 in order to find the correct address for service. A list is available on the Treasury Solicitor's website (www.tsol.gov.uk/contact_us.htm#legalproc). In many cases, the correct procedure will be to serve the order on the Treasury Solicitor at One Kemble Street, London, WC2B 4TS. A production order served on a government department can contain a requirement for the person on whom the order is served and anyone else who receives it to bring it to the attention of the official who holds the material even if they are unknown at that stage.

Particular provisions relating to the handling and retention of documents produced or accessed in response to a production order

51. If appropriate, a production order must be served on the person named in the order. If the order is made against a company or other legal persons and there are no directions for service, the appropriate officer should direct the order to a person in authority and with responsibility for the material.

52. When executing a production order, an appropriate officer must ask for the material specified in the production order to be produced.

53. An appropriate officer may remove any material covered by the production order, except where the production order is made under section 345(4)(b) of POCA and only allows access to, rather than removal of, the material.

54. An appropriate officer may photograph or copy, or have photographed or copied, any material which he has power to remove or have access to. If a copy of the material is sufficient, it should be copied on site and the original returned. If this is not practicable and the order was for production rather than providing access, the material can be taken away, be copied and the original returned as soon as possible after it has been removed.

55. Where an appropriate officer requires material to be produced from a computer in a form which may be taken away or to which access can be given in a legible form (for example a computer printout or a removable computer disk), in accordance with section 349 of POCA, care must be taken to ensure that the person producing the material in this form does not delete evidence from the computer, either deliberately or accidentally.

56. The appropriate officer should complete, unless it is impracticable to do so, a list of the articles or documents removed and give a copy of it and receipt to the owner or occupier and the subject of the order, if present, before leaving the premises. In any event, the appropriate officer should make, or have made, a record of the articles removed and/or accessed in compliance with a production order. A copy of any such record should be given to the subject of the order within seven days of the removal or access of the material.

Order to grant entry

57. An appropriate officer should consider at the application stage if he considers the right to enter premises is necessary in order to satisfy the production order. It might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order had been made in respect of material in a particular company's office in that building.

58. An order granting entry differs from a search and seizure warrant in that the order to grant entry is to overcome any physical obstacle in serving the production order and having access to the material. It does not include the power to search the premises.

SEARCH AND SEIZURE WARRANTS

59. Persons to whom this part of the Code applies should familiarise themselves with the introduction section which sets out general instructions relating to all the orders and warrants.

Definition

60. A search and seizure warrant (defined at section 352(4) of POCA) can be issued in the three circumstances set out below, and enables the appropriate officer or person to enter and search the premises specified in the warrant, and to seize material which is likely to be of substantial value to the investigation. A warrant may be issued if one of the three statutory requirements is met:

- The first requirement is met if a production order has not been complied with and there are reasonable grounds for believing that the material specified in the production order is on the premises specified in the search and seizure warrant;
- The second requirement is met if the material which is sought can be identified, but it is not practicable to communicate with the person against whom a production order might be made or with any person against whom an order to grant entry to premises might be made or that the investigation might be seriously prejudiced unless immediate access to the material is secured. This might be satisfied, for example, where the person who owns the material, or who controls access to the premises on which the material is held, is abroad and therefore it is not possible to communicate with that person. In such circumstances, it is clear that a production order in respect of that person would have no effect. The appropriate officer must also provide reasonable grounds for suspecting that the person specified in the application has benefited from his criminal conduct, or has committed a money laundering offence, or that the named property is recoverable property or associated property, the person named holds recoverable property or associated property or has held such property, or that the cash is either recoverable property or is intended by any person to be used in unlawful conduct, or the person has obtained exploitation proceeds from a relevant offence by reason of any benefit derived by that person. The appropriate officer must also satisfy the judge that the material which would be subject to the warrant is likely to be of substantial value (whether or not by itself) to the investigation and that it is in the public interest for the material to be obtained;
- The third requirement is met if there are reasonable grounds for believing that there is material on the premises and the material cannot be identified at the time of the application for the warrant but the material relates to property or a person specified in the application or certain questions (appropriate officers must refer to and have regard to section 353 of POCA for full details). This might be satisfied where it is not possible to describe the material in precise detail, but it is known that material belonging to a person is on the premises. In order for this requirement to be met, the judge must also be satisfied that it is not practicable to communicate with anyone who might grant entry to the premises or that entry to the premises will not be granted unless a warrant is produced or that the investigation might be seriously prejudiced unless immediate access to the premises is secured. The appropriate officer must also provide reasonable grounds for suspecting that the person specified in the application has benefited from his criminal conduct, or has committed a money laundering offence, or that the named property is recoverable property or associated property, the person named holds recoverable property or associated property or has held such property, or that the cash is either recoverable property or is intended by any person to be used in unlawful conduct,

or the person has obtained exploitation proceeds from a relevant offence by reason of any benefit derived by that person. The appropriate officer must also satisfy the judge that the material which would be subject to the warrant is likely to be of substantial value (whether or not by itself) to the investigation and that it is in the public interest for the material to be obtained.

61. The search and seizure warrant does not include a power to stop a person, make an arrest or to search a person. The legislation and the Code only apply to searches of premises. For the purpose of this Code and the legislation "premises" is defined in section 23 of PACE. The definition provides that premises includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation, any tent or moveable structure.

62. This Code does not apply to searches conducted under other legislation or sections 47D, 47E, 47F, 195D, 195E, 195F¹⁷ or 289 of POCA, and does not apply to searches conducted with consent without a search and seizure warrant.

Persons who can apply for and/or execute search and seizure warrants

63. As with the other powers of investigation, the Code concerns an appropriate officer's power to make an application for a search and seizure warrant and his right to retain material. This part of the Code also concerns an appropriate person's powers to execute the warrants, namely to search the premises and seize and retain relevant material found on premises.

64. As detailed in the general section it is an appropriate officer who must make an application for a search and seizure warrant. This is defined at section 378 of POCA for the purposes of this Code as a member of staff of the NCA, an AFI, a police officer, a Home Office immigration officer, a customs officer or an officer of HMRC, depending on the type of investigation in respect of which the warrant is being requested. The person who is carrying out the investigation will normally make the application. The search warrant must be executed by an appropriate person. As detailed in the introduction, section 352(5) of POCA provides that an appropriate person is a police officer, officer of HMRC or a suitable AFI for search and seizure warrants in respect of a confiscation investigation, a detained cash investigation or a money laundering investigation¹⁸, and a member of the staff of the NCA for warrants in respect of civil recovery and exploitation proceeds investigations.

Particular action to be taken before an application for a search and seizure warrant

65. The appropriate officer should at all times bear in mind that a search and seizure warrant is the most invasive of the powers of investigation. He should be ready to attest to the candour and truthfulness of the application.

66. The appropriate officer should consider why he needs a search and seizure warrant rather than a production order with an order to grant entry.

67. The appropriate officer should ascertain as specifically as is possible in the circumstances the nature of the material to be specified in the application and its location.

¹⁷ These sections were inserted into the Act by sections 55 and 57 of the Policing and Crime Act 2009. [These sections are not yet in force - the Codes required for those sections are included as part of this consultation].

¹⁸ Note that a Home Office immigration officer is not an appropriate person who can execute a search and seizure warrant.

68. The appropriate officer should also make reasonable enquiries to establish what, if anything, is known about the likely owner or occupier, or person in control, of the premises and the nature of the premises themselves; whether they have been previously searched and if so how recently; and obtain any other information relevant to the application.

Particular action in making an application for a search and seizure warrant

69. An application for a search and seizure warrant must include:

- the name of the person who is subject to a confiscation investigation or an exploitation proceeds investigation or a money laundering investigation, or the property or person which is subject to a civil recovery investigation, or the cash subject to a detained cash investigation;
- that the warrant is sought for the purposes of that investigation;
- which of the conditions under section 352(6), 353(3) or (5) [with reference to section 353(2)] of POCA apply to the application – and, if relevant, why a production order is not appropriate;
- the name (if any) and address of the premises to be searched and the object of the search;
- the material which is sought, or that there are reasonable grounds for believing that there is material falling within section 353(6), (7), (7A), (7B), (8) or (8A) of POCA on the premises;
- subject to the provisions relating to pseudonyms of members of NCA staff (see paragraph 28), or the main prosecution agencies, the name of the appropriate person;
- that the application has been authorised by a senior member of staff.

An application for a search and seizure warrant cannot be heard on the papers and therefore requires a hearing with the applicant (the appropriate officer) in attendance or available via live-link.

70. If an application for a search and seizure warrant is refused, no further application may be made for a warrant to search those premises unless supported by additional grounds which subsequently come to light.

Particular action to be taken executing a search and seizure warrant

71. If the appropriate officer who made the application is different from the appropriate person authorised to execute the warrant, the appropriate officer should explain the background and decision to apply for the warrant to the appropriate person. The appropriate person will thereby have the relevant information which will help him execute the warrant.

Time limit for conducting searches

72. Searches carried out under a warrant must be conducted:

- within three calendar months of the date of the issue of the warrant for confiscation, detained cash and money laundering investigations; or
- within one calendar month of the date of the issue of the warrant for civil recovery investigations and exploitation proceeds investigations;
- the applying officer and presiding judge should address the setting of a realistic time limit on the warrant;
- the warrant must be returned to the issuing court not more than three months after the date it was issued.

73. Where the extent or complexity of a search means that it is likely to take a long time to complete, the appropriate person may wish to consider whether the powers under Part 2 of the Criminal Justice and Police Act 2001(CJPA) (additional powers of seizure) may appropriately be used.

Entry other than with consent

74. Before entering the premises, the appropriate person should first attempt to communicate with the owner or occupier, or any other person entitled to grant access to the premises, by explaining the authority under which entry is sought to the premises, showing the warrant and asking the owner or occupier to allow entry, unless:

- the premises to be searched are known to be unoccupied;
- the owner or occupier and any other person entitled to grant access are known to be absent; or
- there are reasonable grounds for believing that to alert the owner or occupier or any other person entitled to grant access by attempting to communicate with them would frustrate the object of the search or endanger the person concerned or other people.

75. Before a search begins, the appropriate person should identify himself (subject to the provisions at section 449 of POCA as amended by paragraph 140 of Schedule 8 to the Serious Crime Act 2007 (SCA) and paragraph 110 of Schedule 8 to the Crime and Courts Act 2013 relating to pseudonyms of NCA staff and section 449A as inserted by paragraph 118 of Schedule 8 of the SCA in relation to AFIs in the main prosecution agencies) and show an official form of identification, state the purpose of the search and the grounds for undertaking it. The appropriate person does not need to comply with this provision in the circumstances of an owner or occupier not being present and the provisions at paragraph 78 apply.

76. An officer cannot enter and search premises or continue to search premises if he entered with consent (and not under any other power) and that consent was given under duress or misrepresentation or is withdrawn or it becomes known that the person who gave the consent was not actually in a position to do so, before the search is completed. If the search ends because of those reasons, the officer should record this in writing.

Notice of powers and rights

77. The appropriate person should, unless it is impracticable to do so, provide the owner or occupier of the premises with a copy of the warrant and in addition to the matters specified in paragraph 24 of the general section of this Code, a notice in a standard format¹⁹:

- summarising the extent of the powers of search and seizure conferred in POCA;
- stating that a copy of this Code is available to be consulted and giving a contact point at which it can be obtained.

78. If the owner or occupier is present, copies of the notice mentioned above, and of the warrant should, if practicable, be given to the owner or occupier before the search begins, unless the appropriate person reasonably believes that to do so would frustrate the object of the search or endanger the officers concerned or other people. If the owner or occupier is not present, copies of the notice and of the warrant should be left in a prominent place on the premises or appropriate part of the premises and endorsed with the name of the appropriate person (or, if authorised, the pseudonym used by a member of staff of NCA or an AFI in the main prosecution agencies) and the date and time of the search. The warrant itself should be endorsed to show that this has been done.

Conduct of searches

79. Premises may be searched only to the extent necessary to achieve the object of the search, having regard to the size and nature of whatever is sought. No search may continue once the appropriate person is satisfied that whatever is being sought is not on the premises. This does not prevent the issue of further search warrants in respect of the same premises if additional grounds come to light. Examples would be when as a result of new information it is believed that articles previously not found or additional articles are on the premises.

80. Searches should be conducted with due consideration for the property and privacy of the owner or occupier of the premises searched, and with no more disturbance than necessary. They should be conducted at a reasonable time of day, for example in the case of domestic premises outside of normal sleeping hours and in the case of business premises during normal business hours, unless this might frustrate the purpose of the search. If a search will take place at an unreasonable hour, the appropriate officer should record his reasons in writing.

81. The owner or occupier should be asked whether they wish a friend, neighbour or other person to witness the search. A search need not be unreasonably delayed for this purpose. The person nominated by the owner or occupier should be allowed to do so unless the appropriate person has reasonable grounds for believing that the presence of the person asked for would seriously hinder the investigation or endanger other officers or people. A record of the action taken under this paragraph, including the grounds for refusing a request from the owner or occupier, should be made on the premises search record. This requirement also relates to business and commercial properties if practicable, as well as private addresses.

82. A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search. Examples would include questions to discover who is the owner or occupier of specified premises, to find

¹⁹ If this information is on the warrant then there is no need for it to be also detailed and served on a separate notice.

a key to open a locked drawer or cupboard or to otherwise seek co-operation during the search or to determine whether a particular item is liable to be seized.

Leaving premises

83. If premises have been entered by force the appropriate person should, before leaving them, be satisfied that they are secure either by arranging for the owner or occupier or the their agent to be present or by any other appropriate means.

Seizure of material

84. An appropriate person may seize:

- anything covered by the warrant;
- anything covered by the powers in Part 2 of the CIPA which allow an appropriate person to seize property from premises where it is not reasonably practicable to determine on the premises whether he is entitled to seize it and retain it for sifting or examination in secure conditions elsewhere; and
- anything that the appropriate person has the power to seize not covered by the warrant which is discovered during the course of the search (for example cash under section 294 of POCA). However, this is incidental to the search powers and a warrant must not be applied for to search for other material other than that specified in the application. A search under the powers of that warrant must not continue after it appears that there is no more material covered by the warrant on the premises, even if the appropriate person suspects that there are other items which he may want to seize.

85. Appropriate persons must be aware of section 59 of the CIPA which allows persons with a relevant interest in material which has been seized to make an application to a judicial authority for the return of the material. Appropriate persons must also be aware of the subsequent duty to secure in section 60 of the CIPA.

86. An appropriate person may photograph, image or copy, or have photographed, copied or imaged, any material in respect of confiscation investigations, money laundering investigations and detained cash investigations which he has power to seize. An appropriate person must have regard to his statutory obligation not to retain any original material when a photograph or copy would be sufficient – section 22(4) of PACE and article 24 of the Police and Criminal Evidence Act 1984 (Northern Ireland) Order 1989 apply by virtue of The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and the order made under section 355 of POCA²⁰).

87. Where an appropriate person considers that information which is held in a computer and is accessible from the premises specified in the warrant is relevant to the investigation, he may require the information to be produced from the computer in a form which can be taken away (for example a computer printout or a removable computer disk). Care should be taken to ensure that the person producing the material in this form does not delete evidence from the computer, either deliberately or accidentally.

²⁰ Currently The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003 [SI 2003 No. 174]

Particular record of proceedings in executing a search and seizure warrant

88. Where premises have been searched under a warrant issued under Chapter 2 of Part 8 of POCA, the appropriate person should make or have made a record of the search. The record should include:

- the address of the premises searched;
- the date, time and duration of the search;
- the warrant under which the search was made (a copy of the warrant should be appended to the record or kept in a place identified in the record);
- subject to the provisions relating to pseudonyms of members of staff of the NCA or the main prosecution agencies, the name of the appropriate person and the names of all other persons involved in the search;
- the names of any people on the premises if they are known and, in appropriate cases, their estimated height, weight, build, clothing and distinguishing features;
- a note of the person's self defined ethnic background (if provided);
- any grounds for refusing the owner or occupier's request to have someone present during the search as set out in paragraph 81;
- either a list of any material seized or a note of where such a list is kept and, if not covered by a warrant, the grounds for their seizure;
- whether force was used, and, if so, the reason why it was used;
- details of any damage or injury caused during the search, and the circumstances in which it was caused; and,
- confirmation that the premises were left secured and by what means.
- any other relevant information (if any).

89. The warrant should be endorsed by the appropriate person to show:

- whether any material was seized;
- the date and time at which it was executed;
- subject to the provisions relating to pseudonyms of members of NCA staff, or the main prosecution agencies, the name of the appropriate person who executed it; and
- whether a copy of the warrant, together with a copy of the Notice of Powers and Rights, was handed to the owner or occupier; or whether it was endorsed and left on the premises together with the copy notice and, if so, where.

Search register

90. In the case of searches undertaken by police officers the record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other appropriate officers the record of the search should be maintained in a suitable form.

Specific procedures for seize and sift powers

91. Part 2 of the CIPA provides persons who are lawfully on any premises and exercising powers of search and seizure with limited powers to seize material from the premises so that they can sift through it or otherwise examine it elsewhere. These powers may be exercised for the reasons stated in section 50 of the CIPA; appropriate persons must refer to and have regard to this provision. All appropriate persons conducting searches under the Act are permitted to use these powers. Appropriate persons should be careful that they only exercise these powers where it is essential to do so and that they do not remove any more material than is absolutely necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners, particularly where they are involved in business. Appropriate persons should always give careful consideration to whether removing copies or images of relevant material or data would be a satisfactory alternative to removing the originals. Where originals are taken, appropriate persons should always be prepared to facilitate the provision of copies or images for the owners where that is reasonably practicable.

92. Property seized under section 50 of the CIPA must be kept securely and separately from any other material seized under other powers. Section 51 of the CIPA is not relevant as the search and seizure powers under sections 352 and 353 of POCA do not extend to seizing material from the person. An examination under section 53 of the CIPA to determine what material may be retained in accordance with the CIPA must be carried out as soon as is reasonably practicable, allowing the person from whom the material was seized, or a person with an interest in the material, an opportunity of being present or represented. The appropriate person must ensure that he has the facilities for the sift to be conducted in suitable surroundings and that persons from whom the material was seized or who have an interest in the material or their representative can be present.

93. All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend or their representative, the appropriate person who exercised the search and seizure warrant should give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality, appropriate persons may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it.

94. It is the responsibility of the appropriate person to ensure that, where appropriate, property is returned in accordance with sections 53 to 55 of the CIPA. Material which is not retainable (i.e. because it is legally privileged material, excluded material or falls outside the terms of the warrant) must be separated from the rest of the seized property and returned as soon as reasonably practicable after the examination of all the seized property has been completed. Delay is only warranted if very clear and compelling reasons exist; for example, the unavailability of the person to whom the material is to be returned or the need to agree a convenient time to return a very large volume of material. Legally privileged or excluded

material which cannot be retained must be returned as soon as reasonably practicable and without waiting for the whole examination to be completed. As set out in section 58 of the CIPA, material must be returned to the person from whom it was seized, except where it is clear that some other person has a better right to it.

95. Where an appropriate officer involved in the investigation has reasonable grounds to believe that a person with a relevant interest in property seized under section 50 of the CIPA intends to make an application under section 59 of the CIPA for the return of any legally privileged or excluded material, the appropriate officer in charge of the investigation must be informed and the material seized must be kept secure in accordance with section 61 of the CIPA.

96. The responsibility for ensuring property is properly secured rests ultimately with the appropriate person and the appropriate officer, even if there is a separate person delegated with this specific task. Securing involves making sure that the property is not examined, copied or imaged or put to any other use except with the consent of the applicant or in accordance with the directions of the appropriate judicial authority. Any such consent or directions must be recorded in writing and signed by both the applicant or judicial authority and the appropriate person.

97. Where an appropriate person exercises a power of seizure conferred by section 50 of the CIPA, that appropriate person should at the earliest opportunity and unless it is impracticable to do so, provide the owner or occupier of the premises or the person from whom the property was seized with a written notice:

- specifying what has been seized in reliance on the powers conferred by that section;
- specifying the grounds on which those powers have been exercised;
- setting out the effect of sections 59 to 61 of the CIPA which cover the grounds on which a person with a relevant interest in seized property may apply to a judicial authority for its return and the duty of appropriate officers to secure property in certain circumstances where such an application is made;
- specifying the name and address of the person to whom notice of an application to the appropriate judicial authority in respect of any of the seized property should be given; and
- specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination of the property (for example police station, HMRC office or other building).

98. If the owner or occupier is not present but there is some other person there who is in charge of the premises, the notice should be given to that person. If there is no one on the premises to whom the notice may appropriately be given, it should either be left in a prominent place on the premises or attached to the exterior of the premises so that it will easily be found.

Retention

99. Anything which has been seized under POCA or the CIPA may be retained only for as long as is necessary in connection with the investigation for the purposes of which the warrant was issued or (in the case of confiscation or money laundering investigations) in order to establish its lawful owner.

100. Property must not be retained if a photograph or copy would suffice for the purposes of evidence in the prospective court proceedings following the investigation.

Rights of owners

101. If property is retained under POCA or the CJPA, the owner or occupier of the premises on which it was seized, or the person who had custody or control of it immediately prior to its seizure, should on request be provided with a list or description of the property within a reasonable time.

102. That person or their representative should be allowed supervised access to the property to examine it or have it photographed or copied, or should be provided with a photograph or copy, in either case within a reasonable time of any request and at their own expense, unless the appropriate officer has reasonable grounds for believing that this would prejudice the investigation or any proceedings. A record of the grounds should be made in any case where access is denied.

Access to search warrant application documents

103. If a respondent or person affected by a search and seizure warrant applies for access to the documents that supported the application, the appropriate person has 14 days in which to consider and make representations to the court whether to object to the access. Objections can be made on the basis that allowing access to some or all of the documents would:

- prejudice the prevention or detection of crime;
- prejudice the apprehension or prosecution of offenders; or,
- be contrary to any public interest in maintaining the confidentiality of that information.

104. In order to promote public confidence in the use of the powers, bodies using these powers should make the records available (anonymised if required) to be scrutinised by representatives of the community, and to explain the use of the powers at a local level.

CUSTOMER INFORMATION ORDERS

105. Persons to whom this part of the Code applies should familiarise themselves with the introduction section which sets out general instructions relating to all the orders and warrants.

Definition

106. A customer information order compels a financial institution covered by the application to provide any “customer information” it has relating to the person specified in the application. “Customer information” is defined at section 364 of POCA. A “financial institution” means a person carrying on a business in the regulated sector. Regulated sector is defined at Schedule 9 to POCA, as amended by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 [SI 2007 No. 3287].

Persons who can apply for a customer information order

107. An appropriate officer must have the authorisation of a senior appropriate officer to make an application for a customer information order. A senior appropriate officer for a confiscation investigation is a senior member of staff of the NCA²¹ or a police officer who is not below the rank of superintendent, an HMRC officer who is a senior officer or above, a Home Office immigration officer who is not below such grade as is designated by the Secretary of State as a rank of equivalent seniority or an AFI who falls within a description specified in an order under section 453 of POCA. For money laundering investigations, a senior appropriate officer is a police officer who is not below the rank of superintendent, an HMRC officer who is a senior officer, a Home Office immigration officer who is not below such grade as is designated by the Secretary of State as a rank of equivalent seniority or above or a financial investigator accredited for the function of authorising such applications. For civil recovery and exploitation proceeds investigations, the senior appropriate officer is a senior member of staff of the NCA. If an investigator is accredited to both apply for and authorise the making of an application for a customer information order, he can make such an application without an additional separate authorisation. A police officer who is not below the rank of superintendent, an HMRC officer who is a senior officer or above, a Home Office immigration officer who is not below such grade as is designated by the Secretary of State as a rank of equivalent seniority or a senior member of staff of the NCA can also make such an application without an additional separate authorisation.

Statutory requirements

108. The application must specify a person who is subject to a confiscation investigation, an exploitation proceeds investigation or a money laundering investigation or property (and the holder of such property) or person subject to a civil recovery investigation. It must state that the order is sought for the purposes of that investigation. It must specify the financial institutions from which the appropriate officer wishes to obtain customer information, whether this is done by a list or a description of financial institution. A description of financial institutions may include all financial institutions within a specific geographical area or who specialise in a particular form of account.

²¹ A senior member of NCA staff is the Director General of the NCA or any member of NCA’s staff authorised by the Director General (whether generally or specifically) for this purpose.

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

109. The appropriate officer should carefully consider his existing evidence and information so as to limit the number or scope of financial institutions. This may include researching his own employer's or the NCA's intelligence systems and the Police National Computer. He should consider what benefit the customer information they may obtain may have, either in itself or as the lead to other avenues of investigation. He should also consider whether the information he wishes to gain could not be acquired as effectively and efficiently from material which could be obtained by way of a production order. The appropriate officer should consider the cost both to his employer and the financial institutions.

110. On receiving a request for authorisation for an application for a customer information order, the senior appropriate officer should consider similar issues. He should particularly consider the proportionality of requesting the customer information, against the believed benefit to the investigation. The senior appropriate officer should also consider the broader issues of law enforcement such as the benefit to the community of removing the suspected proceeds from circulation.

Particular action to be taken executing a customer information order

111. Section 363(5) of POCA requires a financial institution to provide any customer information which it has relating to the person specified in the application if it is given notice in writing by an appropriate officer. Section 363(6) gives the appropriate officer power to request in the manner and the time by which the financial institution provides the information. The appropriate officer is expected to impose a reasonable time limit depending on the nature of the institution and the information which is requested. There will be cases where the best practice is to contact the financial institution before the notice is served to discuss a reasonable time limit.

112. A notice given under a customer information order should include the following:

- the name of the financial institution;
- the name of the person (or other identifying factor) about whom customer information is sought;
- the financial institution's right to refuse to comply with any requirement made of it unless the appropriate officer has, if asked to do so, produced evidence of his authority;
- the period of time within which the customer information must be furnished;
- the manner in which such information must be furnished;
- the place at which the information is to be furnished;
- where the appropriate officer believes that the customer information includes information in relation to accounts held in any other name which it appears to the appropriate officer that the specified person may have used, that other name;
- where the appropriate officer believes that the customer information includes information in relation to accounts held in the name of any company or limited liability partnership,

which the specified person is or in which it appears to the appropriate officer that the specified person has or had an interest, the name and all known addresses of that company or limited liability partnership;

- all addresses known by the appropriate officer to have been used by the specified person possibly relating to accounts that may have been or are held by the financial institution;
- the date of birth or approximate age of that person if an individual, or any known identification information in respect of a company or limited liability partnership;
- such other information as the appropriate officer considers would assist the respondent in complying with the requirement; and
- the financial institution's right not to have information furnished used in evidence against it in criminal proceedings other than in the circumstances specified in section 367(2) of POCA.

Particular record of proceedings under a customer information order

113. The appropriate officer should keep a copy of the customer information order and all the notices issued to financial institutions under a customer information order. He should also keep a record of all the information supplied in response to the notices.

114. The appropriate officer should consider the customer information he has obtained and consider whether a production order or account monitoring order would be the next step to obtain further information and material to support the investigation.

ACCOUNT MONITORING ORDERS

115. Persons to whom this part of the Code applies should familiarise themselves with the introduction section which sets out general instructions relating to all the orders and warrants.

Definition

116. An account monitoring order is an order that requires a specified financial institution to provide account information on a specified account for a specified period, up to 90 days in the manner and at or by the times specified in the order. “Account information” is information relating to an account held at a financial institution – this would most commonly be transaction details. There is no bar on an appropriate officer making a repeat application for an account monitoring order immediately after an account monitoring order has expired.

Persons who can apply for an account monitoring order

117. As with the other orders, an application may be made by an appropriate officer; the definition depends on the type of investigation (see section 378 of POCA as amended by paragraph 175 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 116 of Schedule 8, paragraph 13 of Schedule 10 and section 80(7) and (8) of the SCA, paragraph 18 of Schedule 19 to the Coroners and Justice Act 2009 and section 49 of Schedule 19 of the Crime and Courts Act 2013).

Statutory requirements

118. The application must specify a person who is subject to a confiscation investigation, an exploitation proceeds investigation or a money laundering investigation or property and the person who holds that property or person subject to a civil recovery investigation. It must state that the order is sought for the purposes of that investigation. It must specify the financial institution from which the appropriate officer wishes to obtain the account information. The application must state that the order is sought in relation to account information about the specified person. It must specify the account information which is sought, whether by reference to specific accounts or accounts of a general description.

119. The order also sets out the manner and deadline by which the financial institution must produce account information and the period for which the order should last.

Particular action to be taken before an application for an account monitoring order

120. The appropriate officer has to consider the benefit of obtaining information from an account to his investigation, and whether this information could be as easily obtained by using a production order. He should consider whether in relation to a confiscation investigation he should make (or where he is not a suitably accredited financial investigator, asking someone else to make) an application for a restraint order on the account (under section 42 or 191 of POCA).

121. The appropriate officer should also consider what account information he should request. If, for example, the appropriate officer requires information on certain transactions, he should consider whether he could meaningfully limit the information he requires to amounts over a certain threshold or identity of the source of the deposit or destination of a transaction.

122. The period to be specified for compliance with any requirement must be set by the judge in the order. A reasonable time limit to suggest to the judge might be that the information should be provided within 24 hours on all transactions unless it appears that it would not be reasonably practicable for the subject of the account monitoring order to comply with this time limit. There will be cases when the best practice is to contact the subject of the account monitoring order (i.e. the relevant financial institution) before the application is made to discuss types of transaction and the reporting process.

123. Appropriate officers should consider the time period they wish the account monitoring order to cover. The appropriate officer should not treat the 90 day maximum as the standard time limit. He should carefully consider and justify to the judge the requirement for the time period requested.

Particular action to be taken executing an account monitoring order

124. When an account monitoring order is served on a financial institution, the covering letter, in addition to the matters specified in paragraph 24 of the general section, must include the following (unless it is already included in the order):

- the name of the financial institution;
- the identity of the person(s) who hold the account to be monitored, including as much identity information as is known by the appropriate officer;
- the accounts in relation to which the information is required, whether this is a specific account or a general description of accounts;
- the account information required (in as specific detail as possible, for example a general description of the nature of the transactions);
- the period for which the account monitoring order will have effect;
- the period of time within which such information must be furnished to the appropriate officer (for example within 24 hours of a particular transaction taking place);
- the manner in which such information must be furnished;
- such other information as the appropriate officer considers would assist the respondent in complying with the requirements of the account monitoring order;
- the financial institution's right not to have information furnished used in evidence against it in criminal proceedings other than in the circumstances specified in section 372(2) of POCA.

Particular record of proceedings under an account monitoring order

125. The appropriate officer should keep a record of all the account information supplied in response to the order and a copy of the actual order and notices.

DISCLOSURE ORDERS

126. Persons to whom this part of the Codes apply should familiarise themselves with the introduction section which sets out general instructions relating to all the orders and warrants.

127. In applying for these orders, prosecutors are not bound by this Code; rather prosecutors must refer to the Code issued by the Attorney General or the Advocate General for Northern Ireland as appropriate.

Definition

128. A disclosure order under POCA is an order authorising an appropriate officer to give notice in writing to any person requiring him to answer questions, to provide information or to produce documents with respect to any matter relevant to the investigation in relation to which the order is sought. This Code does not provide guidance on the use of disclosure notices under the Serious Organised Crime and Police Act 2005.

129. Once a disclosure order has been made, members of staff of the NCA, officers of HMRC, Home Office immigration officers, police officers and AFIs may use the extensive powers set out in section 357(4) of POCA throughout their investigation. Thus, unlike the other orders which have to be applied for separately on each occasion, a disclosure order gives continuing powers for the purposes of the investigation. The appropriate officer must serve a notice on any person he wishes to question or to ask to provide information or documents. The disclosure order is not available for revenue investigations under Part 6 of POCA or for money laundering investigations or for detained cash investigations.

130. Under section 357(6) of POCA, where a person is given a notice under a disclosure order, that person is not bound to comply with any requirement imposed by the notice unless evidence of the authority to give the notice is provided. Where this occurs, a copy of the disclosure order should be given to the person.

Persons who can apply for a disclosure order

131. In relation to criminal confiscation only prosecutors may apply for disclosure orders on the request of an appropriate officer. The scope of this Code does not extend to the guidance of prosecutors in making these applications. Members of staff of the NCA, officers of HMRC, Home Office immigration officers, police officers or AFIs must identify a suitable prosecutor to make the application on their behalf and explain why, guided by this Code, a disclosure order is necessary in the investigation. Once a disclosure order is granted by the judge in a confiscation investigation, the powers provided by those orders may be exercised by members of staff of the NCA, officers of HMRC, Home Office immigration officers, police officers or AFIs.

132. In relation to civil recovery investigations both prosecutors of the main prosecution agencies and appropriate members of staff of the NCA may apply for disclosure orders in respect of their own investigations. As already stated, the appropriate officers are defined in section 378 of POCA.

133. In relation to exploitation proceeds investigations, a member of staff of the NCA may apply for a disclosure order.

Statutory requirements in applications for civil recovery and exploitation proceeds investigations

134. A member of staff of the NCA has to satisfy the judge that a civil recovery investigation or an exploitation proceeds investigation is ongoing and the order is sought for the purposes of that investigation. The member of staff of the NCA must also satisfy the judge that there are reasonable grounds for suspecting that the property specified in the application is recoverable property or associated property, the person named holds recoverable property or associated property or has held such property (in the case of a civil recovery investigation) or the person has obtained exploitation proceeds from a relevant offence by reason of any benefit derived by that person (in the case of an exploitation proceeds investigation), that the information which may be provided is likely to be of substantial value (whether or not by itself) to the investigation and that there are reasonable grounds for believing that it is in the public interest to require the provision of such information.

Particular action to be taken in making an application

135. An application made by a member of staff of the NCA for a disclosure order for a civil recovery investigation or an exploitation proceeds investigation should state:

- the property or person which is subject to a civil recovery investigation or the name of the person subject to an exploitation proceeds investigation;
- that the order is sought for the purposes of that investigation;
- whether the appropriate officer is likely to require answers to questions and/or information and/or documents;
- if applicable and practicable, the name of the person or persons against whom the power may be used;
- the grounds on which the application is made (including details of the investigation); and
- why a disclosure order is required in preference to the other powers of investigation.

Providing of information and production of documents

136. Production of documents or information in response to a disclosure order should follow, so far as relevant, the processes set out for production orders in 39 to 58 above. The appropriate officer should give notice in writing to anyone whom they wish to provide information or documents. In addition to the general requirements at paragraph 24, this notice should include, where applicable:

- whether the appropriate officer wants the respondent to provide information under section 357(4)(b) of POCA or produce documents under section 357(4)(c) of POCA;
- if the appropriate officer requires information, a description of the information required;

- if the appropriate officer requires documents, the documents or class of documents required.

137. In respect of requests for information under section 357(4)(b) or documents under section 357(4) (c), the appropriate officer should keep a copy of the disclosure order together with all the notices requesting information and/or documents under the disclosure order. The appropriate officer should also keep a record of all the documents and information submitted in response to the notices. Receipts should be sent to the supplier of the material if requested. This paragraph also applies to documents produced at an interview.

Interview

138. The disclosure order also contains a power to ask questions. The preferred course of asking questions is to conduct a formalised interview in accordance with the procedure set out below.

Invitation to interview

139. The appropriate officer should send the interviewee a notice served under the disclosure order which should contain:

- the right of the appropriate officer to interview the interviewee under section 357(4)(a) of POCA;
- the purpose of the interview, which may be as detailed as the appropriate officer considers necessary;
- the interviewee’s right not to have statements made by him used in evidence in criminal proceedings against him other than in the circumstances specified in section 360(2) of POCA;
- his right to be accompanied at any interview by a solicitor and/or a qualified accountant;
- his right, if he is a juvenile²², mentally disordered or otherwise mentally vulnerable, to be accompanied at any interview by an appropriate adult;
- details of the place at which the interview is to take place, and
- where attendance is not required at once, the time and date of the interview.

Legal and Financial advice

140. In this Code, a “solicitor” means a solicitor who holds a current practising certificate, a trainee solicitor, a duty solicitor representative or an accredited representative included on the register of representatives maintained by the Legal Services Commission. A “qualified accountant” means a person who is a member or fellow of the Institute of Chartered Accountants in England and Wales, or the Institute of Chartered Accountants of Scotland, or the Institute of Chartered Accountants in Ireland, or the Association of Chartered Certified Accountants, or an overseas equivalent.

²² If anyone appears to be under the age of 17 then they must be treated as a juvenile for the purposes of this Code in the absence of clear evidence to show that they are older.

141. In urgent cases a person who is not suspected of any unlawful conduct may be prepared to answer questions without the presence of a solicitor and/or qualified accountant. If a person to be interviewed requests access to legal or financial advice before complying with a requirement to be interviewed in a notice served under a disclosure order, the appropriate officer should normally consent and set a reasonable time limit for obtaining such advice. In the exceptional cases set out below the appropriate officer can refuse such a request depending on the circumstances of the case and the information or material which is being requested.

142. A person who requests legal and/or financial advice may not be interviewed or continue to be interviewed until they have received such advice unless the appropriate officer conducting the interview has reasonable grounds for believing that:

- there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- there is an urgent need to prevent the destruction, alteration, interference or harm to evidence connected with the investigation;
- the particularly identified solicitor and/or qualified accountant is suspected of being involved in criminality.

143. Such a decision to proceed with the interview should usually be with the authorisation of a senior officer.

144. In a case falling within the second bullet point in paragraph 142, once sufficient information has been obtained to avert the risk of interference or harm to evidence or of alerting another person so as to prejudice the investigation, questioning should cease until the interviewee has received legal or financial advice.

145. In a case falling within the third bullet point of paragraph 142, the interviewee should be given an opportunity to make alternative arrangements and identify another suitably qualified solicitor and/or accountant to accompany him during the interview.

146. If a solicitor wishes to send a non-accredited or probationary representative to provide advice on his behalf, then that person is also recognised as a “legal adviser” and should be admitted to the interview unless the appropriate officer considers that this will hinder the investigation.

147. In exercising his discretion as to whether to admit a legal adviser who is not a solicitor, the person conducting the interview should take into account in particular whether the identity and status of the non-accredited or probationary representative have been satisfactorily established; whether they are of suitable character to provide legal advice (a person with a criminal record is unlikely to be suitable unless the conviction was for a minor offence and is not recent); and any other matters in any written letter of authorisation provided by the solicitor on whose behalf the person is attending.

148. If the person conducting the interview refuses access to a non-accredited or probationary representative or a decision is taken that such a person should not be permitted to remain at an interview, they should forthwith notify a solicitor on whose behalf the non-accredited or probationary representative was to have acted or was acting, and give them an opportunity to make alternative arrangements. The interviewee should also be informed.

149. The main role of any solicitor or qualified accountant is to observe that the interview is conducted in a fair and proper manner. They may not answer questions on behalf of the interviewee but they may intervene:

- to seek clarification of questions put during the interview;
- to challenge a question put by the appropriate officer which he considers improper;
- to challenge the manner in which a question is put;
- if the client may have a reasonable excuse for failure to comply with the disclosure order, to advise him whether or not to reply to a question; or
- to give the interviewee advice.

150. Any request for legal or financial advice and the action taken on it should be recorded on the record and/or taped. If a person has asked for legal or financial advice and an interview is begun in the absence of a solicitor or qualified accountant (or the solicitor or qualified accountant has been required to leave an interview), a note should be made in the interview record.

151. The solicitor or qualified accountant may read any documents shown to, or produced by, the interviewee at the interview.

Vulnerable interviewees

152. If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person should be treated as such for the purposes of this Code.

153. "Mentally vulnerable" applies to any interviewee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. "Mental disorder" is defined in the Mental Health Act 1983, section 1(2) as "any disorder or disability of the mind". When the custody officer has any doubt about the mental state or capacity of a detainee, that detainee should be treated as mentally vulnerable and an appropriate adult called.

154. Officers should have regard, at all times, and to consider the needs of any person who appears to be blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment and to take action accordingly.

155. An appropriate adult should be present at the interview of a juvenile or person who is mentally disordered or mentally vulnerable.

156. 'The appropriate adult' means, in the case of a:

(a) juvenile:

- the parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person representing that authority or organisation;
- a social worker of a local authority;

- failing these, some other responsible adult aged 18 or over who is not a member of staff of the interviewing body.

(b) person who is mentally disordered or mentally vulnerable:

- a relative, guardian or other person responsible for their care or custody;
- someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police;
- failing these, some other responsible adult aged 18 or over who is not a member of staff of the interviewing body.

157. A person, including a parent or guardian, should not be an appropriate adult if they are:

- suspected of involvement in the case
- a victim
- a witness
- involved in the investigation

158. If a juvenile's parent is estranged from the juvenile, they should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to their presence.

159. In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the interviewee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.

160. A solicitor present in that capacity may not be the appropriate adult.

161. An appropriate adult present at an interview should be informed that they are not expected to act simply as an observer; and that the purpose of their presence is to:

- advise the person being interviewed;
- observe whether the interview is being conducted properly and fairly;
- facilitate communication with the person being interviewed.

162. Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.

163. These interviewees should always be given the opportunity to consult privately with a solicitor and/or qualified accountant with or without an appropriate adult.

Interpreters

General

164. Senior officers are responsible for making sure appropriate arrangements are in place for provision of suitably qualified interpreters for people who:

- are deaf;
- do not understand English.

165. Whenever possible, interpreters should be drawn from the National Register of Public Service Interpreters (NRPSI) or the Council for the Advancement of Communication with Deaf People (CACDP) Directory of British Sign Language/English Interpreters.

Foreign languages

166. A person should not be interviewed in the absence of a person capable of interpreting if:

- they have difficulty understanding English;
- the interviewer cannot speak the person's own language;
- the person wants an interpreter present.

167. The interviewer should make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate.

168. In the case of a person making a statement to an interviewer other than in English:

- the interpreter should record the statement in the language it is made;
- the person should be invited to sign it;
- an official English translation should be made in due course.

Deaf people and people with speech difficulties

169. If a person appears to be deaf or there is doubt about their hearing or speaking ability, they should not be interviewed in the absence of an interpreter unless they agree in writing to being interviewed without one.

170. An interpreter should also be called if a juvenile is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or there is doubt about their hearing or speaking ability, unless they agree in writing to the interview proceeding without one.

171. The interviewer should make sure the interpreter is allowed to read the interview record and certify its accuracy in the event of the interpreter being called to give evidence.

Persons who may be present at interviews

172. Only persons whose presence is sanctioned by this Code should be present. At least two members of staff, one of whom should be an appropriate officer, should be present at all times. There may be more than one person conducting the interview. It is up to the interviewee to arrange the presence of any solicitor and/or qualified accountant. When doing so they should ensure that the person they select is available to attend. Where the provisions of this Code require the presence of an appropriate adult or an interpreter and no such person attends with the interviewee the person(s) conducting the interview should, before commencing or restarting any interview, secure the attendance of such a person.

173. The interviewer may be accompanied by a person to assist in handling documents and carrying out such other support tasks as will assist the person conducting the interview to perform his duties. Such a person has no power to require the interviewee to do anything and need not disclose their name or address provided a record of these is made by the person conducting the interview.

174. If the interviewer has any suspicion, or is told in good faith, that a person is or appears to be (without clear evidence to the contrary), under 17 years of age, mentally disordered or otherwise mentally vulnerable, he should not be interviewed unless an appropriate adult is present.

Conduct of the interview

175. Interviews should be conducted in private with at least two members of staff, one of whom should be an appropriate officer, present at all times. As far as practicable interviews should take place in interview rooms which are adequately heated, lit and ventilated. People being questioned or making statements should not be required to stand.

176. The interviewer should pursue all reasonable lines of enquiry, whether these point towards or away from the interviewee. What is reasonable will depend on the particular circumstances. Interviewers should keep this in mind when deciding what questions to ask in an interview.

177. No interviewer may try to obtain answers or elicit a statement by the use of oppression.

178. At the beginning of the interview and immediately following any break, a person conducting the interview should caution the interviewee as follows:

'You are required by law to answer all the questions I put to you unless you have a reasonable excuse for not doing so. If you fail, without reasonable excuse, to answer a question or if you knowingly or recklessly make a statement which is false you will be committing an offence for which you may be prosecuted. Do you understand?'

179. The interviewer should also inform the interviewee that this is not a criminal caution and any responses will not be used in evidence in criminal proceedings against him other than in circumstances specified in section 360(2) of POCA.

180. The person conducting the interview should:

- inform the interviewee of the authority they have to conduct the interview;
- give their name and that of any other persons present (subject to the provision on pseudonyms of NCA staff and those of the main prosecution agencies);

- inform the interviewee of the purpose for which any person accompanying the person conducting the interview is present;
- ask the interviewee to state his full name and address and date of birth;
- ask any person present with the interviewee to state their name, business address (or home address as relevant) and capacity in which they are present;
- state the date, time of commencement and place of the interview;
- state that the interviewee has the opportunity to request legal and/or financial advice;
- state and obtain confirmation of the reasons for there being no legal representation if this be the case;
- inform the interviewee of their right:
 - to consult in private at any time with any solicitor, qualified accountant or appropriate adult present with them at any interview;
 - to be questioned fairly;
 - to be given an opportunity at the end of the interview to clarify anything they have said or to say anything further if they wish;
 - to be allowed a break in any interview which last for more than two hours.
- inform the interviewee that the interview is being recorded and they will be given a copy of that record;
- state that the interviewee will be given a notice about what will happen to the record, and
- attempt to estimate the likely length of the interview and inform the interviewee.

181. The interviewer should, if asked to do so, produce evidence of their authority to require the interviewee to answer questions under the disclosure order.

182. The person interviewed may ask such further questions as appear to them to be necessary to ascertain the entitlement of any person to be present.

183. The interviewer should ask the interviewee whether they suffer from any condition which may impair their ability to understand what is taking place or if they are due to take any medication before the time at which the appropriate officer estimates that the interview will end. The interviewee should be free to take medication during a routine break in the interview.

184. The interviewer should offer the interviewee the opportunity to ask any questions to clarify the purpose, structure and conduct of the interview.

185. Breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks should be provided at approximately two hour intervals, subject to the interviewer's discretion to delay a break if there are reasonable grounds for believing it would prejudice the outcome of the investigation

186. Any decision to delay a break in an interview should be recorded, with reasons, in the interview record.

187. Where an interview is adjourned for any reason and is to be resumed at the same place later the same day it should be sufficient for a person conducting the interview to inform the interviewee of the time of resumption and no notice in writing requiring attendance at that time shall be necessary.

188. Where an interview is adjourned for any reason and is to be resumed either at a different place or on a different day, a person conducting the interview should serve another notice under the disclosure order on the interviewee requiring him to attend at that place on that day.

189. The interviewer should remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the interviewee's recorded evidence. After a break or at the beginning of a subsequent interview, an interviewer should consider summarising the reason for the break and confirming this with the interviewee.

190. The interviewer should inform the interviewee that they have no further questions and offer the interviewee an opportunity to clarify anything they have said and to say anything further they wish. Any solicitor, qualified accountant or appropriate adult present at the interview along with the interviewee, should be given the opportunity to ask the interviewee any question the purpose of which is to clarify any ambiguity in an answer given by the interviewee or to give the interviewee an opportunity to answer any question which they have refused previously to answer.

191. The interviewee should be asked if he has any complaint to make about anything which has taken place at the interview.

Interview records

192. The record of an interview should contain the following, as appropriate:

- a copy of the invitation to interview letter;
- the date and place and time of the interview;
- the time the interview began and ended, the time of any breaks in the interview and, subject to provisions relating to pseudonyms, the names of all those present;
- any request made for financial or legal advice, and action taken on that request;
- that the person conducting the interview told the interviewee everything they were required to tell them under this Code;
- the name of person(s) excluded from the interview room, and the reason for that decision; and,
- the presence of an interpreter, and the reason for this.

Interviews with a written record

193. The written record should be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and should constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.

194. If a written record is not made during the interview it should be made as soon as practicable after its completion.

195. Written interview records should be timed and signed by the maker.

196. If a written record is not completed during the interview the reason should be recorded in the interview record.

197. Unless it is impracticable, the person interviewed should be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, an interviewer should read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. An interviewer should certify on the interview record itself what has occurred.

198. If the interviewee is unable for any reason to sign the note they may authorise any person present at the interview to sign it on their behalf.

199. If the appropriate adult or the person's solicitor is present during the interview, they should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.

200. A written record should be made of any comments made by the interviewee, including unsolicited comments, which are outside the context of an interview but which might be relevant. Any such record should be timed and signed by the maker. When practicable the suspect should be given the opportunity to read that record and to sign it as correct or to indicate how they consider it inaccurate.

201. Any refusal by a person to sign an interview record when asked should itself be recorded.

202. When an interviewee agrees to read the record and other comments and sign them as correct, he should be asked to endorse the record with, for example, 'I agree that this is a correct record of what was said' and add his signature. If the interviewee does not agree with the record, an interviewer should record the details of any disagreement and ask the interviewee to read these details and sign them to the effect that they accurately reflect their disagreement. Any refusal to sign should be recorded.

Interviews with a recording media record

203. Interviews can also be recorded using recording media. "Recording media" means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied.

204. When the interviewee is brought into the interview room an interviewer should, without delay but in the interviewee's sight, load the recorder with new recording media and set it to record. The recording media should be unwrapped or opened in the suspect's presence.
205. An interviewer should tell the interviewee about the recording process and state on the record that the interview is being recorded using recording media (identifying what that media is) and that the interviewee will be given a notice about what will happen to the copies of the recording.
206. For the purpose of voice identification an interviewer should ask the interviewee and any other people present to identify themselves.
207. If the interviewee is deaf or is suspected of having impaired hearing, an interviewer or the person assisting should make a written note of the interview, at the same time as the recording.
208. If the interviewee objects to the interview being recorded at the outset, during the interview or during a break, an interviewer should explain that the interview is being recorded and that this Code requires the interviewee's objections to be recorded on the recording. When any objections have been recorded or the interviewee has refused to have their objections recorded, an interviewer should say they are switching off the recorder, give their reasons and switch it off. An interviewer or the person assisting should then make a written record of the interview (see provisions above relating to interviews with a written record). If, however, an interviewer reasonably considers they may proceed to question the interviewee with the recording still switched on, an interviewer may do so.
209. If the interviewee indicates he wants to tell an interviewer about matters not directly connected with the case and he is unwilling for these matters to be recorded, he should be given the opportunity to tell an interviewer at the end of the formal interview.
210. When the recorder shows the recording media only has a short time left, the interviewer should tell the interviewee the recording media are coming to an end and finish that part of the interview. If the interviewer(s) leaves the room for a second set of recording media, the interviewee should not be left unattended. An interviewer will remove the recording media from the recorder and insert the new recording media which should be unwrapped or opened in the interviewee's presence. The recorder should be set to record on the new media. To avoid confusion between the recording media, an interviewer should mark the media with an identification number immediately after they are removed from the recorder.
211. When a break is taken, the fact that a break is to be taken, the reason for it and the time should be recorded on the recording.
212. When the break is taken and the interview room vacated by the interviewee, the recording media should be removed from the recorder and the procedures for the conclusion of an interview followed.
213. When a break is a short one and both the interviewee and an interviewer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences should be recorded on the recording.
214. Where the interview is being recorded and the media or the recording equipment fails, the officer conducting the interview should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media should be copied and sealed in the interviewee's presence and the interview recommenced using new

equipment/media as required. Where the content of the interview has been lost in its entirety the media should be sealed in the interviewee's presence and the interview begun again.

215. If the equipment failure can be rectified quickly, for example by inserting new recording media, the recording of the interview may continue. When the recording is resumed the interviewer should explain what happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue with a written record.

216. When recording media is removed from the recorder during the interview, they should be retained.

217. An interviewer should seal the master recording with a master recording label. He should sign the label and ask the interviewee and any third party present during the interview to sign it. If the interviewee or third party refuses to sign the label a senior officer should be called into the interview room and asked to sign it.

218. The interviewee should be handed a notice which explains:

- how the recording will be used;
- the arrangements for access to it.

219. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine.

220. The purpose of sealing the master recording in the interviewee's presence is to show the recording's integrity is preserved. If a single deck/drive machine is used the working copy of the master recording should be made in the interviewee's presence and without the master recording leaving their sight. The working copy should be used for making further copies if needed.

221. A senior officer should make arrangements for master recordings to be kept securely and their movements accounted for. The interviewee or their legal adviser should be informed and given a reasonable opportunity to be present if the seal on the master recording is to be broken. If the interviewee or his legal representative is present they should be invited to re-seal and sign the master recording.

222. When the master recording seal is broken, a record should be made of the procedure followed, including the date, time, place and persons present. Where the interview is not subsequently used in confiscation or civil recovery proceedings the recording media should nevertheless be kept securely. Where no court proceedings result, it is the responsibility of the appropriate officer to establish arrangements for the breaking of the seal on the master recording media, where this becomes necessary.

OBTAINING EVIDENCE FROM ABROAD

223. Section 375A of POCA (inserted by Part 2 of the Crime and Courts Act 2013) makes provision for evidence to be obtained from overseas if a person or property is subject to a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation. Officers should use this process to obtain relevant evidence.

224. An application can be made to a judge by the investigator to make a request for assistance providing that the judge considers there is relevant evidence in a country or territory outside the United Kingdom. Alternatively, a senior officer may make a request for assistance, directly, without making an application to a judge, if he believes that there is relevant evidence in a country or territory outside of the United Kingdom.

225. The investigator should therefore in all cases consider and produce material on his belief that there is evidence overseas and that it would fulfil all the legal requirements of the investigation order or warrant he would apply for if the evidence was in the United Kingdom. The earlier provisions relating to the different orders and warrants therefore apply, although such an order or warrant issued by a judge in the United Kingdom is not required to use the procedure to obtain evidence from abroad.

226. "Evidence" includes documents, information in any other form and material. "Relevant evidence" depends on the type of investigation for which evidence is being requested, as follows:

- for a civil recovery investigation, evidence is relevant for the purposes of identifying property which is, or represents, the proceeds of crime;
- in relation to a detained cash investigation, evidence is relevant for the purposes of investigating the origins of detained cash or whether the cash (or part of the cash) is intended by any person to be used in unlawful conduct;
- in relation to an exploitation proceeds investigation, evidence is relevant if it relates to whether a person is a qualifying offender, whether he has received exploitation proceeds from a relevant offence and the value of those benefits or the available amount in respect of a person.

227. Requests for assistance may be sent by a judge, or the senior investigator, directly to the Government of the country or territory concerned, any authority recognised by that Government as appropriate for receiving requests, or a court or tribunal which is specified within the request in the country or territory.

228. Alternatively, a request may be sent to the Secretary of State, who must forward the request to the court, tribunal, Government or authority in the country or territory concerned.

229. In the case of urgency, a request may be sent via the International Criminal Police Organisation (Interpol or Europol) or any person competent to receive it under any provisions adopted under the EU Treaties, for onward transmission to a court, tribunal, Government or authority in the country or territory concerned.

230. Evidence obtained by means of a request for assistance cannot be used for any other purpose other than for specified purposes, and by specified people, both of which depend on the nature of the investigation that is being carried out (civil recovery, detained cash or

exploitation proceeds). However, the court, tribunal, Government or authority that received the original request and provided the evidence can consent to the use of the evidence for other purposes.