

# **CODE OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002**

## **Recovery of Cash: Search Powers**

Consultation Document  
July 2013

# Code of Practice Issued Under Section 292 of The Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 (POCA) includes a scheme for the recovery of cash in summary proceedings; see Part 5, Chapter 3 of that Act.

## Powers in the Act

POCA gave powers to seize cash derived from or intended for use in crime, and to secure its forfeiture in magistrates' court proceedings. No conviction is required for the forfeiture of the cash to be ordered; cash forfeiture proceedings are civil proceedings and the civil standard of proof applies. There must be reasonable grounds for suspecting that the cash is the proceeds of or intended for use in crime, and that it is not less than the current minimum amount: £1,000.

The provisions are not new as they have been in force in respect of police officers and officers of HM Revenue and Customs (HMRC) since December 2002.

The power to search premises is only exercisable on premises where the appropriate officer has lawful authority to be present under other legislative powers or is there at the invitation of the owner. The power does not confer any right to force entry. The powers to search a person do not extend to requiring a person to undergo an intimate or strip search.

The search powers may only be exercised where prior judicial approval has been obtained or, if that is not practicable, with the approval of a senior officer. There is also recognition in POCA that there may be circumstances where it may not even be possible to obtain the approval of a senior officer. If judicial approval is not obtained prior to a search, and cash is either not seized or is released before 48 hours, the appropriate officer concerned must prepare a written report and submit it to the independent person which in relation to searches in England and Wales is appointed by the Secretary of State (the "Appointed Person"). This report will detail why the appropriate officer considered that he had the power to carry out the search and why it was not practicable to obtain judicial approval of the search. Appropriate officers covered by this Code who also operate in Scotland, namely officers of HM Revenue and Customs and Home Office immigration officers, must report relevant searches to the 'appointed person' appointed by the Scottish Ministers. Similarly, officers of HMRC and Home Office immigration officers must report to the 'appointed person' appointed by the Department of Justice (Northern Ireland) in respect of relevant searches in Northern Ireland.

## New Powers

Section 24 of the UK Borders Act 2007 extends the powers to search, seize, detain and seek the forfeiture of cash in POCA to Home Office immigration officers if they have reasonable grounds for suspecting that the cash is connected to an offence under the Immigration Acts. These are the Immigration Act 1971, the Immigration Act 1988, the Asylum and Immigration Appeals Act 1993, the Asylum and Immigration Act 1996, the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Immigration, Asylum and Nationality Act 2006 and the UK Borders Act 2007.

Section 63 of the Policing and Crime Act 2009 (PCA) amends POCA so that an appropriate officer can require the search of a vehicle if he has reasonable grounds for suspecting there is cash in the vehicle. The power to search can only be exercised where there is an identifiable

person in control of the vehicle and that person is in or in the vicinity of the vehicle. The new provision does not contain a power to force entry into a vehicle; rather that the appropriate officer can require the person accompanying the vehicle to permit entry and allow a search of that vehicle. The power is not exercisable where the vehicle is on certain categories of private property.

## Persons covered by the Code

The Code will apply to officers of HMRC, police officers, suitably accredited financial investigators (AFIs) and Home Office immigration officers.

## The Code

The Code of Practice sets out how the search powers are to be exercised. It should be noted that the Code is in respect of the search powers alone.

The draft Code is based both on the existing Code (<http://tna.europarchive.org/20081105173914/http://www.crimereduction.homeoffice.gov.uk/crimereduction026a.pdf>) and relevant developments in obligations under the Codes made under the Police and Criminal Evidence Act 1984 (PACE) (in particular Code A: Stop and Search and Code B: Searching of premises and seizure of property).

# Code of Practice Issued Under Section 292 of the Proceeds of Crime Act 2002

## Introduction

1. This Code of Practice is made in connection with the exercise of the search powers conferred by section 289 of the Proceeds of Crime Act 2002 (POCA). The officers who can exercise this power are police officers, officers of Her Majesty's Revenue and Customs (HMRC), Home Office Immigration Officers<sup>1</sup> and (in relation to England and Wales and Northern Ireland only) accredited financial investigators<sup>2</sup> (AFI). A general customs official<sup>3</sup> and customs revenue official<sup>4</sup> may only exercise the search powers in relation to a general customs matter<sup>5</sup> or a customs revenue matter<sup>6</sup>.

2. The Code is made under section 292 of POCA. It applies to all searches made under these powers on or after [1 April 2014], the date on which we aim to bring this order into force (even if the search or other exercise of powers began before that date) and replaces the Code made in respect of police officers, customs officers and AFI's use of these search powers issued in April 2008. There is a separate Code of Practice for police officers exercising their powers under section 289 in relation to Scotland, made under section 293 of POCA by Scottish Ministers. There is also a separate Code of Practice for police officers and AFIs in relation to Northern Ireland made under section 293A<sup>7</sup> of POCA by the Department of Justice. This Code applies to officers of HMRC and Home Office Immigration Officers in each of the United Kingdom's three jurisdictions.

3. These 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) – see paragraph 19. They can be exercised by Home Office immigration officers only if the conduct relates to specific immigration matters – see paragraph 20.

4. The Code does not apply to searches carried out under any other legislation or provisions in POCA. If searches conducted under other legislation result in cash being seized under section 294 of POCA, the provisions of this Code do not apply to that search.

5. 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 are, or are likely, to be used. Government

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<sup>1</sup> Section 24 of the UK Borders Act 2007.

<sup>2</sup> An accredited financial investigator (AFI) is an individual who has been trained and accredited under section 3 of POCA, as amended by the Serious Crime Act 2007, 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.

<sup>3</sup> Designated under section 3 of the Borders, Citizenship and Immigration Act 2009 (BCIA).

<sup>4</sup> Designated under section 11 of the BCIA.

<sup>5</sup> Defined at section 1(2) of the BCIA.

<sup>6</sup> Defined at section 7(2) of the BCIA.

<sup>7</sup> Inserted by paragraphs 60 and 61 of Schedule 14 to The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (SI 2010 No. 976).

Departments and other bodies who have AFIs operating these powers 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.

6. An appropriate officer operating these powers does not have to identify himself if he<sup>8</sup> reasonably believes that giving his name might put him or others in danger. In these cases a warrant card number or other identification should be given which proves his status but not his name.

7. Where an appropriate officer fails to comply with any provisions of this Code, he 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.

8. In this Code:

- reference to a person's rank includes a person acting temporarily in that rank.
- "appropriate officer" includes an officer of HMRC, a designated general customs official, a customs revenue official, a Home Office immigration officer, a police officer and an AFI unless otherwise specified.
- "cash" means notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bankers' drafts and bearer bonds and bearer shares found at any place in the United Kingdom<sup>9</sup>. The Secretary of State can amend the definition of 'cash' by order<sup>10</sup> (appropriate officers should ensure that they are aware of the current meaning). The power of search does not extend to any other property (for example, jewellery, pieces of art, etc.)

9. The powers of search are also available in the Channel Tunnel and Control Zones in France and Belgium. This Code provides guidance on the operation of the powers in the Channel Tunnel and Control Zones as if the search was performed in England and Wales.

## General

10. The right to respect for private and family life and the protection of property are safeguarded by the Human Rights Act 1998. Powers of search may involve significant interference with the privacy of those whose premises and persons are searched and therefore need to be fully and clearly justified before they are used. In particular, appropriate officers should consider at every stage whether the necessary objectives can be achieved by less intrusive means. In all cases appropriate officers should exercise their powers fairly, courteously, responsibly, respectfully and without discrimination.

11. The possibility of using reasonable force to give effect to the powers of detention and search of a person, premises or a vehicle should only be considered where this is necessary and proportionate in all the circumstances. Powers to detain and search a person should be used fairly, responsibly, and with respect for people being searched and without discrimination.

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<sup>8</sup> Words importing the masculine gender include the feminine – see section 6 of the Interpretation Act 1978.

<sup>9</sup> Section 289(6) of POCA.

<sup>10</sup> Section 289(7) of POCA.

12. 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.

13. 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.

14. The appropriate officer should take special care and have particular regard to an individual's vulnerabilities and possible difficulties when conducting a search. This is particularly relevant in the case of a search of a person who is a juvenile or persons with a mental or physical disability.

15. A refusal to allow a search of a person, premises or a vehicle may constitute an offence (including but not limited to) of assault, resist or wilful obstruction of an appropriate officer in the exercise of a power. This would be a criminal matter and is not an issue for, or subject to, this Code. Appropriate officers should be aware of other legislation and codes applicable in these circumstances.

## **Scope of the search powers**

16. POCA provides power for appropriate officers to search for cash (subject to the limitations below) where:

- the appropriate officer is lawfully on any premises and has reasonable grounds for suspecting that there is on the premises cash which satisfies the conditions below;
- the appropriate officer has reasonable grounds for suspecting that there is cash in a vehicle which satisfies the conditions below; or
- the appropriate officer has reasonable grounds for suspecting that a person is carrying cash which satisfies the conditions below.

17. The conditions are that:

- the cash is recoverable property (i.e. it is obtained through unlawful conduct or represents property obtained through unlawful conduct) or the cash is intended for use in unlawful conduct; (conduct occurring in any part of the United Kingdom is 'unlawful conduct' if it is unlawful under the criminal law of that part. Conduct which occurs in a country or territory outside the United Kingdom and is unlawful under the criminal law applying in that country or territory, and if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part is also 'unlawful conduct'); and
- the cash does not amount to less than the minimum amount specified in an Order made by the Secretary of State (currently £1,000<sup>11</sup>). There is no maximum amount of cash that can be seized.

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<sup>11</sup> This is set out in a statutory instrument made under section 303 of POCA (The Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 – SI 2006 No. 1699). The statutory instrument should be

18. The powers conferred are civil in nature and exercisable only so far as reasonably required for the purposes of finding relevant cash (as set out in paragraph 16). The powers do not include the power to enter premises (including vehicles<sup>12</sup>).

19. The powers to search for cash are exercisable by an officer of HMRC only if he has reasonable grounds for suspecting that the unlawful conduct that makes the cash recoverable property or for which it is intended for use relates to an assigned matter within the meaning of the Customs and Excise Management Act 1979 (CEMA). Assigned matters are those in respect of which the Commissioners for Revenue and Customs are required, in pursuance of any enactment, to perform any duties and currently include:

- drug trafficking;
- money laundering;
- evasion of VAT, excise and other indirect taxes and duties; and
- evasion of a wide range of import and export prohibitions and restrictions.

However, this is not an exhaustive list of offences.

20. The powers to search for cash are exercisable by a Home Office Immigration Officer only if he has reasonable grounds for suspecting that the unlawful conduct that makes the cash recoverable property or for which it is intended for use relates to an offence in two cases. Firstly, where the offence is relating to the entitlement of one or more persons who are not nationals of the UK to enter, transit across, or be in, the UK. Secondly, the offence is undertaken for the purposes of, or in relation to:

- the British Nationality Act 1981;
- the Hong Kong Act 1985;
- the Hong Kong (War Wives and Widows) Act 1996;
- the British Nationality (Hong Kong) Act 1997;
- the British Overseas Territories Act 2002;
- an order or other instrument made under any of those Acts.

21. The powers to search for cash are exercisable by an AFI only in relation to premises, vehicles or (as the case may be) persons in England, Wales or Northern Ireland; not Scotland. This Code only applies to searches performed by AFIs in England and Wales; the Northern Ireland Code is applicable in that jurisdiction.

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available with the Code. This amount can be amended by a further Order made by the Secretary of State – officers should ensure that they are aware of the current Order and it should be made available with the Code.

<sup>12</sup> The power to search a vehicle can only be exercised where there is an identifiable person in control of the vehicle and that person is in or in the vicinity of the vehicle. The vehicle must be in a public place or within the environs of a dwelling and the officer has reasonable grounds for believing that the identifiable person does not reside in the dwelling and the vehicle is there without the permission of a person who resides in the dwelling. Section 289(1B) to (1D) of POCA.

## **Reasonable grounds for suspicion**

22. In order to exercise the search power an appropriate officer must have reasonable grounds for suspecting that cash is on the premises or in a vehicle or being carried by the person.

23. Whether there are reasonable grounds for suspicion will depend on the circumstances in each case. There should be some objective basis for that suspicion based on facts, information and/or intelligence. The officer should take into account such factors as how the individual, premises or vehicle were identified, previous intelligence on persons, vehicles or premises, previous involvement with the persons, vehicles or premises, and suspected links with criminal activities, whether here or overseas.

24. 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 searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity.

25. 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.

## **Approval to search for cash**

26. Any decision to search for cash under POCA must, if practicable, be approved in advance. This approval must be given by a justice of the peace or, in the case of an officer of HMRC or a Home Office Immigration Officer wanting to use the powers in Scotland, a Sheriff. If that is not practicable in any case then approval should be given by a senior officer. Prior approval is only likely to be impracticable because of the immediacy of the circumstances of the case. This is more likely to be the case in relation to the search of a person or vehicle than the search of premises, but officers should assess each case on its merits. There can be no assumption that approval is impracticable for all searches. Appropriate officers should carefully consider and record the reasons for any decision not to obtain such approval.

## **Seeking judicial approval**

27. In order to obtain approval from a justice of the peace or (in the case of an officer of HMRC or Home Office immigration officer) a sheriff, an appropriate officer will need to make contact with the clerk of a magistrates' court or sheriff court to arrange a hearing which can be held without notice and in private. The usual reason to hold an application without notice and in private would be so as not to alert persons connected to the cash that such action is contemplated. Being so alerted may have the effect of the person moving the cash and thereby frustrating the operation of the powers. However, if there is no concern that the cash would be moved, the person connected to the cash should normally be notified of the intention of making an application for prior approval to search for cash. The appropriate officer will need to:

- identify himself to the justice of the peace or sheriff (giving name, seniority, any warrant or other identifying number, and home station or place of work);

- lodge his written application (having checked that the information on which the application relies is accurate, complete, recent and not provided maliciously or irresponsibly);
- explain to the justice of the peace or sheriff the reasonable grounds for suspicion that he has for undertaking the search;
- identify the person, property or vehicle to be searched;
- answer any relevant questions that the justice of the peace or sheriff may have.

28. Section 290 of POCA requires the appropriate officer to obtain prior approval from a justice of the peace or sheriff before the exercise of the search powers under section 289. The appropriate officer will need to explain to the justice of the peace or sheriff that the search is necessary because he has reasonable grounds to suspect that there is cash that is recoverable property, or is intended for use in unlawful conduct, and that the amount is not less than the minimum amount. If, after obtaining prior approval, when it comes time to conduct the search, the grounds on which the appropriate officer obtained the prior approval no longer apply, he cannot go on to exercise his powers (section 289(2)).

## Seeking senior officer approval

29. If it is not practicable to seek judicial approval, appropriate approval may be given by a senior officer:

- where a search is undertaken by a constable, a police officer of the rank of Inspector or above (or a sergeant authorised to perform the functions of the higher rank under section 107(2) of PACE);
- where a search is undertaken by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to a police officer of at least the rank of Inspector;
- where a search is undertaken by a Home Office Immigration Officer, an official of the Secretary of State who is a civil servant of the rank of at least Assistant Director<sup>13</sup> or above;
- where a search is undertaken by an AFI, the AFI falls within a description specified in an order made by the Secretary of State under section 453 of POCA.

30. The officer should explain to the senior officer the reasonable grounds for suspicion that he has for undertaking the search. The senior officer should only give approval where he is satisfied that the necessary grounds exist. The senior officer should make a written record of such grounds. Any oral approval should be supported by written approval as soon as that is reasonably practicable. The written approval should set out why it was necessary to give an oral approval in the first instance.

31. A prior approval to search given by the justice of the peace or the senior officer will continue in force until the end of the period of one month starting with the day on which it was given, unless another period is specified by the justice of the peace or senior officer.

32. If an application for prior approval is refused (either by a justice of the peace or a senior officer) the appropriate officer must not undertake a search or make a fresh application for a search of the same person(s), premises or vehicle(s) unless he has new reasonable grounds for suspicion. The appropriate officer, on any new application, should inform the justice of the peace or the senior officer of the prior refusal and the reasons thereto.

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<sup>13</sup> A change of name of this grade can be made by the Secretary of State by order.

33. If prior approval by a senior officer for a search is impracticable, a search may be conducted without approval. It is unlikely that approval by a senior officer will be impracticable unless, for example, there is some problem in making contact with the senior officer. If a search is conducted without any prior approval, the appropriate officer should explain to a senior officer the reasons for the search and not obtaining prior approval as soon as that is reasonably practicable and, in any event, no later than 24 hours following the exercise of the power. The senior officer should make a written record of those reasons.

34. If prior approval has been obtained for one search power it does not apply to the other search powers. For example, if prior judicial or senior officer approval was obtained for the search of a person and during that search the appropriate officer decides to undertake the search of a vehicle that the person is in control of, separate prior approval is required for that power. If prior judicial approval is not obtained, but senior officer approval is obtained, then the provisions of section 290 of POCA will apply.

## Reports to the “Appointed Person”

35. If a search under section 289 of POCA is conducted without prior judicial approval (even if senior officer approval has been obtained) the appropriate officer must prepare a written report in the following circumstances:

- if no cash is seized by virtue of section 294 of POCA; or
- any cash seized is not detained for more than 48 hours.

Cash may not be detained for more than 48 hours except by order of a justice of the peace or sheriff; the application for an order is commonly known as a ‘detention hearing’. The 48 hour period does not include weekends, Christmas day, Good Friday or any day that is a bank holiday<sup>14</sup>.

36. The written report must detail why it was not practicable to obtain prior judicial approval and the circumstances which led the appropriate officer to believe that the search powers were exercisable. These factors could include why the appropriate officer was on the premises when the search took place, the reasonable grounds for his suspicion and why there was a need for a search without prior judicial approval. The report should state that the senior officer gave his approval together with the senior officer’s reasons for that approval, or if there was no senior approval, this should be noted in the report together with the reasons for no approval being obtained. In circumstances where there was no senior officer approval, the appropriate officer should explain why he did not obtain senior officer approval before exercising the search powers and the reasons for the search as soon as it was reasonably practicable to do so.

37. For cases where the power was exercised in England and Wales (by officers of HMRC, Home Office immigration officers, police officers and AFIs), the report must be submitted to the appropriate independent person appointed by the Secretary of State<sup>15</sup>. Reports should be made to:

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<sup>14</sup> When calculating the period of 48 hours, no account is taken of weekends, Christmas Day, Good Friday or any day that is a bank holiday (as per the Banking and Financial Dealings Act 1971, and the Scotland Act 1998 which assigns to Scottish Ministers the responsibility for setting bank holidays).

<sup>15</sup> The appropriate officer must keep a copy of the report in a safe and secure place.

The Appointed Person  
c/o Cyber and Financial Crime Unit  
Home Office  
5<sup>th</sup> Floor, Fry Building  
2 Marsham Street  
LONDON SW1P 4DF

38. For cases where the power was exercised in Scotland (by officers of HMRC or Home Office immigration officers), the report must be submitted to the appropriate independent person appointed by the Scottish Ministers. The Code issued by Scottish Ministers is relevant to police officers operating in Scotland. Reports should be made to:

The Appointed Person for Scotland  
c/o Scottish Government  
IW15  
St. Andrew's House  
Regent Road  
EDINBURGH  
EH1 3DG

39. For cases where the power was exercised in Northern Ireland (by officers of HMRC, Home Office immigration officers, police officers and AFIs), the report must be submitted to the appropriate independent person appointed by the Department of Justice. Reports should be made to:

The Appointed Person for Northern Ireland  
c/o Department of Justice  
B4.20 Castle Buildings  
Stormont Estate  
BELFAST  
BT4 3SG

40. The written report should be submitted as soon as is reasonably practicable and, in any event, no later than 14 days following the exercise of the power. Following submission of the written report, the appropriate officer should also submit to the appointed person within 14 days, any supplementary information which the appointed person reasonably requires them to submit within 14 days. The appropriate officer should co-operate, facilitate and assist the appointed person, wherever possible, so that the appointed person can discharge his responsibilities under section 47I of POCA.

## **Search of a person**

41. Where the power to search a person is exercised under section 289 of POCA the appropriate officer may (so far as they think necessary or expedient for the purposes of seizing cash) require the person:

- to permit a search of any article with the person; or
- to permit a search of the person.

42. A refusal to allow a search of a person, premises or vehicle may constitute an offence (including but not limited to) of assault, resist or wilful obstruction of an appropriate officer in the exercise of a power. This would be a criminal matter and is not an issue for, or subject to, this

Code. Appropriate officers should be aware of other legislation and codes applicable in these circumstances.

43. The appropriate officer may detain the person to carry out the search but the intrusion on the liberty should be for no longer than is necessary, unless the person is being arrested or detained under another power.

## **Steps prior to search of a person**

44. If the appropriate officer has reasonable grounds for suspecting that the person has cash concealed on his person, he should take the following steps:

- the appropriate officer gives the person their name or other identifier (subject to paragraph 6);
- the person is given the name and location of the office or station to which the appropriate officer is attached;
- the person is informed that there are reasonable grounds for suspecting that they are carrying cash on their person which is not less than the minimum amount and is recoverable property or is intended for use in unlawful conduct;
- the person is informed that they can be searched under section 289 of POCA for the purposes of finding such cash and that failure to comply could amount to a criminal offence;
- the appropriate officer gives or shows the person any document authorising the search (if applicable);
- the appropriate officer asks the person to confirm or deny whether they have cash on their person; and
- allow the person the opportunity to produce and hand over the cash.

45. These steps do not necessarily have to be followed in the order presented. The appropriate officer will have flexibility depending on the circumstances of an individual case, but all of the steps should be undertaken prior to the search.

46. Appropriate officers not in uniform should show their warrant cards or other suitable form of identification.

47. Before the search takes place the officer should inform the person of their entitlement to a copy of the record of the search.

48. If the person to be searched does not appear to understand what is being said (for example see paragraph 14) or the officer has doubts as to the person's ability to speak and/or understand English or that the person is deaf or has difficulty with hearing or speaking, the appropriate officer should take reasonable steps to ensure that the person understands. Where desirable and practicable someone who can act as an interpreter should be identified, but if no such person can be identified, the search may still proceed. In all cases, the appropriate officer should record any difficulties he encountered and the reasons for proceeding.

## Conduct of searches – persons

49. The power to search a person should be used fairly, courteously, responsibly, respectfully and without discrimination for the person concerned. The person should be searched by a person of the same sex unless the contrary has been specifically agreed by the person to be searched. This agreement should be obtained in writing. The co-operation of the person to be searched should be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate. If the appropriate officer believes he will be in danger undertaking the search, he should take appropriate precautions.

50. An appropriate officer who has reasonable grounds for suspicion may detain the person only for so long as is necessary to carry out the search. Before carrying out a search the officer may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be eliminated. However, reasonable grounds for suspicion cannot be founded retrospectively, for example by questioning during a person's detention or by a person's refusal to answer any questions put.

51. If, as a result of questioning before a search, or other circumstances which come to the attention of the appropriate officer, there ceases to be reasonable grounds for suspecting that cash is recoverable property or intended for use in unlawful conduct, no search of the person may take place. In the absence of any other lawful power to detain, the person in such circumstances is free to leave and should be so informed.

52. There is no power to detain a person under POCA so grounds can be identified for a search. If reasonable grounds for suspicion emerge during an encounter with a person, the appropriate officer may search the person, even though no grounds existed when the encounter began. If an officer detains someone for the purpose of a search, they should inform the person as soon as the detention begins.

53. The length of time for which a person may be detained is only for so long as is necessary for the exercise of the search. The thoroughness and extent of a search will depend on the type and amount of cash that is suspected of being carried. If the person is being detained under some other power, this provision does not apply.

54. This search power does not extend to requiring a person to undergo an intimate search or strip search. An intimate search is one involving a physical (and not just a visual) examination of a person's body orifices. A strip search is any search that is not an intimate search but involves the removal of an article of clothing that:

- is being worn (wholly or partly) on the trunk, and
- is being so worn either next to the skin or next to an article of underwear.

If a search reveals an item suspected of containing cash which is next to the skin (for example a money belt) an appropriate officer can only invite the person to remove it. If the person refuses there is no power to force the person to remove it.

55. A person must not be asked to remove any article of clothing in public other than an outer coat, jacket or gloves. A search in public of a person's clothing that has not been removed

must be restricted to a superficial examination of outer garments. This does not, however, prevent an appropriate officer from placing his hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonable in the circumstances. Particular sensitivity should be exercised where the person being searched is wearing items of clothing which the person says are, or the appropriate officer believes are, of religious significance.

56. If on reasonable grounds it is considered necessary to conduct a more thorough search<sup>16</sup> this must be undertaken out of the view of the public. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear may only be conducted by an appropriate officer of the same sex as the person searched. The search may not be made in the presence of anyone of the opposite sex unless the person being searched specifically agrees. This agreement should be obtained in writing.

57. If the appropriate officer discovers cash during a search he should give the person who has possession of it an opportunity to provide an explanation for its ownership, origins, purpose and destination. If, in a particular case, the questioning covers whether the person has committed an offence, it is likely to constitute questioning that requires a caution – in England and Wales this would be under PACE, Code C: Code of Practice for the detention, treatment and questioning of persons by police officers.

## **Recording requirements – searches of a person**

58. An appropriate officer who has carried out a search in the exercise of any power to which this Code applies should make a written record of it at the time, unless there are exceptional circumstances that would make this wholly impracticable. If such a record is not made at the time then the appropriate officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the notes. There may be situations in which it is not practicable to obtain all the information necessary to complete a record, but the appropriate officer should make every reasonable effort to do so and, if necessary, complete a partial record.

59. A copy of a record made at the time should be given to the person who has been searched immediately. If a record is not made at the time the person should be told of the reasons and also how they can apply for a copy of the record once it is made. The appropriate officer should ask for the name, address and date of birth of the person searched, but there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.

60. Unless it is impracticable to do so or it would jeopardise a wider ongoing operation or investigation, the following information should always be included in the search record even if the person does not wish to provide any personal details:

- the name, address and date of birth of the person searched, (if provided) and, in appropriate cases, his estimated height, weight, build, clothing and distinguishing features;
- a note of the person's self defined ethnic background (if provided);
- the date, time, duration and place that the person was first detained;
- the date, time and place the person was searched (if different);

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<sup>16</sup> An intimate search or strip search is not permitted.

- the grounds for conducting the search (and of the prior justice of the peace or senior officer approval given). If a search is conducted without prior judicial approval, the reason for not obtaining such;
- the outcome of the search (for example seizure of cash, no further action);
- a list/description of seized cash (if any) preferably signed by the person;
- details of any damage or injury caused during the search and the circumstances in which it was caused;
- the identity of the appropriate officer or other identifier (subject to paragraph 6).
- Any other relevant information (if any)

61. A record is required for each person searched. The record of the grounds for making a search should explain, with sufficient detail, the reasons for suspecting the person concerned is carrying cash, by reference to the person's behaviour and/or other circumstances. If a person is detained with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

62. When an appropriate officer makes a record of the stop electronically and is unable to produce a copy of the form at the time, the appropriate officer should explain how the person can obtain a full copy of the record of the stop or search and give the person a receipt which contains:

- a unique reference number and guidance on how to obtain a full copy of the report;
- the name of the officer who carried out the stop or search (subject to paragraph 6); and
- the power used to detain and search him.

63. 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.

64. 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 in response to a reasonable request. If applicable, records of searches of premises may also be made available.

## **Search of premises**

### **General**

65. No right of entry is conferred by section 289 of POCA. To search premises for cash an appropriate officer must already be lawfully on the premises and, if possible, have prior approval<sup>17</sup>. This could include a search of premises undertaken with the consent of a person entitled to grant entry to the premises. It could also include a search carried out where an appropriate officer has exercised a power of entry conferred by a search warrant or power of entry conferred under other legislation such as PACE, CEMA, the Immigration Acts or section

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<sup>17</sup> Section 290 of POCA.

14(2) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 and circumstances subsequently led him to believe that there is cash on the premises.

66. A refusal to allow a search of a person, premises or a vehicle may constitute an offence (including but not limited to) of assault, resist or wilful obstruction of an appropriate officer in the exercise of a power. This would be a criminal offence and is not an issue for, or subject to, this Code. Appropriate officers should be aware of other legislation and codes applicable in these circumstances.

67. For the purposes of this Code, the term 'premises' is as defined in section 23 of PACE. This includes any place and, in particular, includes any vehicle, but note that there is a separate power under section 289(1A) of POCA providing a power to search vehicles. The power to search vehicles has the additional provision that the person in control of the vehicle is required to grant access for the purposes of a search. However, if the vehicle is in a public place or within the environs of a dwelling and the appropriate officer has reasonable grounds for believing that the person does not reside in the dwelling and the vehicle is there without the permission of another person who resides in the dwelling, the search of the vehicle is to be conducted under section 47F of POCA (see paragraphs 86 to 100).

68. If the appropriate officer proposes to search premises with the consent of a person who is entitled to grant entry to the premises, the consent should be secured in writing before the search takes place. It is for the appropriate officer to make any necessary enquiries in order to be satisfied that the person is in a position to give consent. The appropriate officer should record his enquiries, together with any responses thereto, in writing.

69. Before seeking consent the appropriate officer in charge of the search should explain to the person the purpose of the proposed search and its extent. This information should be as specific as possible. The person concerned should be clearly informed and should clearly understand that they are not obliged to give consent, that any consent given can be withdrawn at any time, including before the search starts or while it is underway. The appropriate officer should record what he informed the person, together with any responses thereto, in writing.

70. Before undertaking a search the appropriate officer should make reasonable enquiries to:

- establish if anything is known about the likely owner(s) or occupier(s) of the premises and the nature of the premises themselves;
- establish if the premises have been searched previously and when this occurred;
- obtain any other relevant information.

71. An appropriate 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 consent was not actually in a position to do so, before the search is completed. If the search ends because of those reasons, the appropriate officer should record this in writing.

## **Steps prior to search of premises**

72. If the appropriate officer has reasonable grounds for suspecting that cash is on premises, the appropriate officer should take the following steps:

- the appropriate officer gives the person their name or other identifier (subject to paragraph 6);
- the person is given the name and location of the office or station to which the appropriate officer is attached;
- the person is informed that there are reasonable grounds for suspecting that the premises contains cash which is not less than the minimum amount and is recoverable property or is intended for use in unlawful conduct;
- the person is informed that the appropriate officer has the power to search the premises under section 289 of POCA for the purposes of finding such cash and that failure to comply could amount to a criminal offence;
- the appropriate officer gives or shows the person any document authorising the search (if applicable);

These should ideally be related to both the owner and occupier of the premises (if they are different people).

73. These steps do not necessarily have to be followed in the order presented. The appropriate officer will have flexibility depending on the circumstances of an individual case, but all the steps should be undertaken prior to the search of the premises.

74. Appropriate Officers not in uniform should show their warrant cards or other suitable form of identification.

75. Before the search takes place the appropriate officer should inform the person of his entitlement to a copy of the record of the search.

## **Conduct of searches – premises**

76. A search should be made at a reasonable hour, 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.

77. Premises may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the object of the search has been found and no search may continue once the appropriate officer in charge of the search is satisfied that cash is not on the premises. (This does not prevent a further search, with appropriate prior approval, if new information comes to light justifying such a search.)

78. Searches should be conducted with due consideration for the property and privacy of the owner or occupier of the premises and with no more disturbance than is necessary.

79. The person 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 witness the search unless the appropriate officer in charge of the search has reasonable grounds for believing that the presence of the person asked for would significantly 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. However, if the appropriate officer is seeking to conduct a search with the consent of the person

(rather than under any other power), the person is entitled to refuse consent until a friend, neighbour or other person arrives to witness the search.

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

## **Recording requirements – search of premises**

81. An appropriate officer should make a written record of the search at the time, unless there are exceptional circumstances that would make this wholly impracticable. If a record is not made at the time then the appropriate officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the notes. There may be situations in which it is not practicable to obtain all the information necessary to complete a record, but the appropriate officer should make every reasonable effort to do so and, if necessary, complete a partial record.

82. The following information should always be included in the search record even if the person does not wish to provide any personal details:

- the address of the premises searched (and if relevant and possible the part of those premises searched. Where a vehicle is searched, the location of the vehicle )<sup>18</sup>;
- the date, time and duration of the search;
- the grounds for conducting the search (and of any prior justice of the peace or senior officer approval given). If a search is conducted without prior judicial approval, the reason for not obtaining such approval;
- the names and dates of birth 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);
- if appropriate, the written consent to undertake the search together with what the person was informed and their responses thereto;
- the name and details of any witness;
- any grounds for refusing the owner's or occupier's request to have someone present during the search (if the consent of the person is not being used to conduct the search);
- details of any damage or injury caused during the search and the circumstances in which it was caused;
- the outcome of the search (for example seizure of property, no further action );
- a list/description of seized property (if any) preferably signed by the person;
- the identity of the appropriate officer or other identifier (subject to paragraph 6); and
- any other relevant information (if any).

83. Unless it is impracticable to do so or it would jeopardise a wider ongoing operation or investigation, a copy of a record of the grounds for making the search should be given immediately to the person in charge of the premises searched. If a record is not made at the time the person should be informed how they can apply for a copy of the record once it is made. If the search is not carried out due to the grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

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<sup>18</sup> This relates to vehicles searched under the power to search premises by section 47D of POCA and not the separate power to search vehicles under section 47F of POCA.

84. 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.

85. In order to promote public confidence in the use of the powers, bodies using these powers should make the records available to be scrutinised by representatives of the community, and to explain the use of the powers at a local level in response to a reasonable request.

## **Search of Vehicles**

### **General**

86. An appropriate officer has no power to enter a vehicle; rather where the appropriate officer has reasonable grounds for suspecting that the vehicle contains cash that may be seized under section 289 of POCA, the appropriate officer can require the person who is in control of the vehicle, either in or in the vicinity of it, to permit entry to and a search of the vehicle.

87. This search power can only be exercised where the vehicle is in a public place or within the environs of a dwelling and the appropriate officer has reasonable grounds for believing that the person does not reside in the dwelling and the vehicle is there without the permission of another person who resides in the dwelling.

88. A refusal to permit entry to the vehicle may constitute an offence of obstruction. This offence might also engage in respect of the powers to search a person and premises. This criminal offence does not fall within the scope of this Code. Appropriate officers should be aware of other legislation and codes applicable in these circumstances.

### **Steps prior to search of a vehicle**

89. If the appropriate officer reasonably suspects that a vehicle contains cash, the appropriate officer should take the following steps:

- the appropriate officer gives the person (in control of the vehicle – see paragraph 86) their name or other identifier (subject to paragraph 6);
- the person is given the name and location of the office or station to which the appropriate officer is attached;
- the person is informed that there are reasonable grounds for suspecting that the vehicle contains cash which is not less than the minimum amount and is recoverable property or is intended by any person for use in unlawful conduct;
- the person is informed that the vehicle can be searched under section 289 of POCA for the purposes of finding such cash and that failure to comply could amount to a criminal offence;
- the appropriate officer gives or shows the person any document authorising the search.
- allow the person the opportunity to produce and hand over any cash.

90. These steps do not necessarily have to be followed in the order presented. The appropriate officer will have flexibility depending on the circumstances of an individual case, but all the steps should be undertaken prior to the search of the vehicle.

91. Appropriate officers not in uniform should show their warrant cards or other suitable form of identification.

92. Before the search takes place the appropriate officer should inform the person in control of the vehicle of his entitlement to a copy of the record of the search.

## **Conduct of searches – vehicles**

93. The person in control of the vehicle should be informed that the appropriate officer has reasonable grounds for suspecting that there is cash in the vehicle. They should be informed of those grounds and their legal obligation to permit the search and that refusal could amount to a criminal offence such as resist or wilful obstruction.

94. Vehicles may be searched only to the extent necessary to achieve the object of the search. A search may not continue once cash has been found and no search may continue once the appropriate officer in charge of the search is satisfied that cash is not in the vehicle. (This does not prevent a further search, with appropriate prior approval, if new information comes to light justifying such a search.)

95. Searches should be conducted with due consideration for the vehicle and the person in control of it. Searches should be conducted with no more disturbance than is necessary. The appropriate officer should, before leaving the vehicle, be satisfied that it is secure by arranging for the person in control of the vehicle to be present or by any other appropriate means.

## **Recording requirements – search of vehicles**

96. An appropriate officer should make a written record of the search, unless there are exceptional circumstances that would make this wholly impracticable. If a record is not made at the time then the appropriate officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the notes. There may be situations in which it is not practicable to obtain all the information necessary to complete a record, but the appropriate officer should make every reasonable effort to do so and, if necessary, complete a partial record.

97. The following information should always be included in the search record even if the person does not wish to provide any personal details:

- The location of the vehicle searched<sup>19</sup>;
- the date, time and duration of the search;
- the grounds for conducting the search (and of any prior justice of the peace or senior officer approval given). If a search is conducted without prior judicial approval, the reason for not obtaining such approval;
- the names and dates of birth of any people in control of the vehicle if they are known and, in appropriate cases, their estimated height, weight, build, clothing and distinguishing features;

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<sup>19</sup> This relates to vehicles searched under the power to search premises by section 47F of POCA and not the separate power to search vehicles under section 47D of POCA.

- a note of the person's self defined ethnic background (if provided);
- if appropriate, the written consent to undertake the search together with what the person was informed and their responses thereto;
- details of any damage or injury caused during the search and the circumstances in which it was caused;
- the outcome of the search (for example seizure of property, no further action);
- a list/description of seized property (if any) preferably signed by the person;
- the identity of the appropriate officer or other identifier (subject to paragraph 6); and
- any other relevant information (if any).

98. Unless it is impracticable to do so or it would jeopardise a wider ongoing operation or investigation, the person in control of the vehicle should be provided with a copy of this report. If a record is not made at the time the person should be told how they can apply for a copy of the record once it is made. If the search is not carried out due to the grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

99. 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.

100. In order to promote public confidence in the use of the powers, bodies using these powers should make the records available to be scrutinised by representatives of the community, and to explain the use of the powers at a local level in response to a reasonable request.