

CODE OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002

Search and Seizure and Detention of Property (Northern Ireland)

Consultation Document
July 2013

Code of Practice Issued under Section 195S of the Proceeds of Crime Act 2002 (as inserted by section 57 of the Policing and Crime Act 2009)

Confiscation orders are available following a criminal conviction. The purpose of confiscation proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. The court calculates the value of that benefit and orders the offender to pay an equivalent sum (or less where a lower sum is available for confiscation). Confiscation was first introduced in England and Wales by the Drug Trafficking Offences Act 1986 and the provisions in the Proceeds of Crime Act (POCA) came into force in 2003. Confiscation has therefore been in operation for over 25 years and under POCA for 10 years.

Powers within the Act

Section 54 of the Policing and Crime Act 2009 (PCA) specifically amends the restraint order provisions of POCA relating to Northern Ireland to provide that property can continue to be retained that has been seized under a specified power if that property is also subject to a restraint order. Property which was seized, for example, as evidence under the Police and Criminal Evidence (Northern Ireland) Order 1989, and which is subject to a restraint order may continue to be retained even when the evidential purpose for retention no longer exists and in normal circumstances it should be returned.

A restraint order has the effect of freezing property that may be liable to confiscation. It provides that the specified persons are prohibited from dealing with or disposing of specified property, but it does not provide for a power to seize and retain property. A prosecutor and a suitably accredited financial investigator can apply to the Crown Court for a restraint order.

Section 57 of the PCA provides for new search and seizure powers in Northern Ireland to prevent the dissipation of personal property that may be used to satisfy a confiscation order. Sections 54 and 57 provides for powers to retain property that may be used to satisfy a confiscation order. These provisions insert a number of new sections into POCA.

Section 57 of the PCA provides for the seizure of property if there are reasonable grounds to suspect that it may otherwise be made unavailable for satisfying a confiscation order or that the value of the property may be diminished. Cash and property necessary for business or domestic use cannot be seized (there already exists a cash seizure and forfeiture scheme in POCA). There are three powers of search: of premises, of people and of vehicles.

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 appropriate officer. POCA also recognises that there may be circumstances where it may not even be possible to obtain the approval of a senior appropriate officer. If judicial approval is not obtained prior to a search, and property is either not seized or is released before 48 hours, the officer concerned must prepare a written report and submit it to the independent person appointed by the Secretary of State (the "Appointed Person"). The report must detail why the 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. If

judicial approval has been obtained for the search and/or the property continues to be detained then a report to the Appointed Person is not required.

The judicial approval for continued detention (which is required in all cases) may be in the form of a restraint order being issued, a restraint order being varied to allow for the continued detention or by a magistrates' court issuing a detention order.

Application for release of property can be made to the appropriate court and the agency retaining the property must release it if the reasons for its seizure no longer apply.

Persons covered by the Code

The Code will apply to officers of Revenue and Customs, Home Office immigration officers and a member of staff of the National Crime Agency (NCA). A separate Code relating to police officers, accredited financial investigators and members of staff of a relevant Director (see section 453 of POCA) is to be issued by the Department of Justice (Northern Ireland).

The Code

New section 195S of POCA requires the Secretary of State to publish a Code of Practice setting out how the powers of search, seizure and retention of property are to be exercised.

The draft Code is based on the draft Code for the parallel powers in England and Wales under section 47S of POCA. That draft Code is based on the Codes made under PACE (in particular Code A: Stop and Search and Code B: Searching of premises and seizure and retention of property). A draft skeleton of that Code was included in Legislative Scrutiny: Policing and Crime Bill, May 2009 (Cm 7628).

Code of Practice Issued under Section 195S of the Proceeds of Crime Act 2002

Introduction

1. This Code of Practice is made in connection with the exercise of the following powers under the Proceeds of Crime Act 2002 (POCA), which were inserted by the Policing and Crime Act 2009 (PCA)–

- seizure power conferred by section 195C¹ of POCA,
- search powers conferred by sections 195D to 195H² of POCA, and
- detention of property powers conferred by sections 190A³, 193A⁴ and 195J to 195P⁵ of POCA.

2. This Code relates to an officer of Her Majesty's Revenue and Customs (HMRC), the Commissioners for Her Majesty's Revenue and Customs, a Home Office immigration officer and a member of staff of the National Crime Agency (NCA). The persons covered by this Code are henceforth referred to as "officer". A separate Code relating to police officers, accredited financial investigators and members of staff of a relevant Director (see section 453 of POCA) is issued by the Department of Justice (Northern Ireland) under section 195T of POCA..

3. The Code is made under section 195S of POCA⁶. It applies to all searches, seizures and detentions made under these powers on or after [1 April 2014],. There are two separate Codes of Practice for the exercise of these powers in relation to Northern Ireland and separate guidance in Scotland may be issued by the Lord Advocate.

4. The Code does not apply to searches carried out under any other legislation or provisions in POCA. If an officer is exercising a search, seizure or detention under or using other powers, he⁷ must act in accordance with any other relevant Code of Practice.

5. The Code should be available at premises for consultation by officers and members of the public.

6. An officer operating these powers does not have to identify himself if he 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 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.

¹ Inserted in POCA by section 57 of the PCA.

² Inserted in POCA by section 57 of the PCA.

³ Inserted in POCA by section 54 of the PCA.

⁴ Inserted in POCA by section 54 of the PCA.

⁵ Inserted in POCA by section 57 of the PCA.

⁶ Inserted in POCA by section 57 of the PCA.

⁷ Words importing the masculine gender include the feminine – see section 6 of the Interpretation Act 1978.

8. In this Code:

- reference to a person's rank includes a person acting temporarily in that rank.
- "officer" includes an officer of HMRC, a designated general customs official, a customs revenue official, a Home Office immigration officer and a member of staff of the NCA, unless otherwise specified.

Part 5 of the Policing and Crime Act 2009

9. The PCA introduced new powers into POCA.

10. Section 54 of the PCA amends the POCA restraint order provisions to provide that an officer can continue to retain property that has been or may be seized under certain provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 or POCA if that property is also the subject of a restraint order.

11. Section 57 of the PCA provides an officer with certain search and seizure powers. These are available where there are reasonable grounds for suspecting that seizure will prevent the dissipation of realisable property⁸ which may be subsequently used to satisfy a confiscation order that has been made or may be made. The powers may also be used where there are reasonable grounds to suspect that the value of the property may be diminished. Section 195B of POCA sets out a number of pre-conditions for the exercise of these powers and section 195C(2) of POCA sets out that cash and exempt property may not be seized. The powers may only be exercised with "appropriate approval"⁹, unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.¹⁰

12. Section 57 of the PCA provides three powers to search: the power to search premises¹¹; the power to search people¹²; and the power to search vehicles.¹³

13. Section 60 of the PCA gives magistrates' courts the power to authorise an officer to sell seized property in order to satisfy a confiscation order. This power is outside the scope of this Code.

General

14. 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, seizure and detention 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, officers should consider at every stage whether the necessary objectives can be achieved by less intrusive means. In all cases, officers should exercise their powers fairly, courteously, responsibly, respectfully and without discrimination.

⁸ Realisable property is defined in section 231 of POCA and covers any free property held by the person or by the recipient of a tainted gift. Free property is property not subject to the forfeiture, detention and other orders specified in section 230 of POCA. Tainted gift is defined in section 225 of POCA

⁹ Section 195G of POCA

¹⁰ Section 195C(6)(a), 195D(2), 195E(4) and 195F(6) of POCA

¹¹ Section 195D of POCA

¹² Section 195E of POCA

¹³ Section 195F of POCA

15. The possibility of using reasonable force to give effect to the powers of detention and search of a person, premises or vehicles 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, courteously, responsibly, and with respect for people being searched and without discrimination.

16. 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.

17. The 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 this Code will apply to all searches carried out under this Code.

18. The 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.

19. 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 officer in the exercise of a power. This would be a criminal matter and is not an issue for, or subject to, this Code. Officers should be aware of other legislation and codes applicable in these circumstances.

Scope of the powers

20. Section 195B of POCA provides seven pre-conditions for officers using the search and seizure powers.¹⁴ The officer must be satisfied that one of these is met:

- a criminal investigation has been started in Northern Ireland with regard to an indictable offence, a person has been arrested for the offence, proceedings for the offence have not yet been started against the person in Northern Ireland, there is reasonable cause to believe that the person has benefited from conduct constituting the offence and a restraint order is not in force in respect of any realisable property.¹⁵
- a criminal investigation has been started in Northern Ireland with regard to an indictable offence, a person has been arrested for the offence, proceedings for the offence have not yet been started against the person in Northern Ireland and a restraint order is in force in respect of any realisable property.¹⁶
- proceedings for an indictable offence have been started in Northern Ireland and have not been concluded, there is reasonable cause to believe that the person

¹⁴ Section 195B of POCA

¹⁵ Section 195B(2) of POCA but see also section 195B(11) and (12) of POCA

¹⁶ Section 195B(3) of POCA but see also section 195B(11) and (12) of POCA

has benefited from conduct constituting the offence and a restraint order is not in force in respect of any realisable property.¹⁷

- proceedings for an indictable offence have been started in Northern Ireland and have not been concluded and a restraint order is in force in respect of any realisable property.¹⁸
- an application by the prosecutor has been made under sections 169¹⁹, 170²⁰, 177²¹ or 178²² of POCA and not concluded or the officer believes that such an application is to be made and there is reasonable cause to believe that the person has benefited from criminal conduct.²³
- an application by the prosecutor has been made under section 171²⁴ of POCA and not concluded or the officer believes that such an application is to be made and there is reasonable cause to believe that the court will decide that the person's benefit is to be increased.²⁵
- an application by the prosecutor has been made under section 172²⁶ of POCA and not concluded or the officer believes that such an application is to be made and there is reasonable cause to believe that the court will decide that the person's available amount is to be increased.²⁷

Seizure

21. Following the officer being satisfied that one of the seven pre-conditions in section 195B of POCA is met, he may seize²⁸ any realisable property²⁹ if he has reasonable grounds for suspecting that:

- the property may otherwise be made unavailable for satisfying any confiscation order that has been made or may be made against the person, or.
- the value of the property may be diminished as a result of the direct or indirect conduct of the person.

However, the officer cannot seize:

- "cash" which means notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bankers' drafts, bearer bonds and bearer shares found at any place in the United Kingdom³⁰. The Secretary of State can amend the definition of 'cash' by order³¹ (officers should ensure that they are aware of the current meaning).
- "exempt property" which means such tools, books, vehicles and other items of equipment as are necessary to the person for use personally in their employment, business or

¹⁷ Section 195B(4) of POCA but see also section 195B(9) of POCA

¹⁸ Section 195B(5) of POCA but see also section 195B(9) of POCA

¹⁹ No confiscation order made: reconsideration of case

²⁰ No confiscation order made: reconsideration of benefit

²¹ Defendant absconded and convicted or committed

²² Defendant absconded and neither convicted nor acquitted

²³ Section 195B(6) of POCA but see also section 195B(10) of POCA

²⁴ Confiscation order made: reconsideration of benefit

²⁵ Section 195B(7) of POCA but see also section 195B(10) of POCA

²⁶ Confiscation order made: reconsideration of available amount

²⁷ Section 195B(8) of POCA but see also section 195B(10) of POCA

²⁸ Section 195C(1) of POCA

²⁹ See footnote 8

³⁰ Section 289(6) of POCA

³¹ Section 289(7) of POCA

vocation. It also includes such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the person and their family.³²

22. In cases where the officer must have “reasonable cause to believe”, he would take into account all relevant issues such as:

- the likely criminal charges;
- the likely defence of the person;
- liaising with senior appropriate officers (where appropriate);
- liaising with prosecutors (where appropriate);
- the evidence already obtained or filed;
- the likelihood of obtaining a confiscation order or a recalculation of the amount on an existing order.
- an estimate of the person’s benefit from their criminal conduct (and should not seize property whose value exceeds that amount).

23. The officer will need to assess the risk of dissipation or the value being diminished. This should be assessed individually and may include, for example, an assessment of the degree, nature and history of criminality, the amount of unexplained wealth and the history of dissipating or concealing assets. Particular consideration should be taken with low level offenders and potentially low value proceeds from the likely criminal charge(s).

Search

24. The powers of search to support the power to seize property are as follows:

- premises – the officer is lawfully on any premises and may carry out a search if he has reasonable grounds for suspecting that property may be found there, and if found, he intends to seize it under section 195C of POCA.³³
- persons – the officer may carry out a search of a person (not an intimate search or strip search)³⁴ if he has reasonable grounds for suspecting that the person is carrying property that may be seized under section 195C of POCA;³⁵
- vehicles – the officer has reasonable grounds for suspecting that a vehicle contains property which may be seized under section 195C of POCA.³⁶ This provision does not give the officer power to enter a vehicle; rather the officer can require the person who appears to him to be in control of the vehicle to permit entry to and a search of the vehicle.

³² Section 195C(4) of POCA

³³ Section 195D of POCA

³⁴ See paragraph 58 below

³⁵ Section 195E of POCA

³⁶ Section 195F of POCA

25. The powers are exercisable only so far as is reasonably required for the purposes of finding property to be seized under section 195C of POCA. The officer will have in mind the right to respect private and family life and the protection of property, for example under the Human Rights Act 1998.

26. The power to search for property to be seized under section 195C of POCA is exercisable by an officer of HMRC only if that officer has reasonable grounds for suspecting that conduct constituting the relevant offence³⁷ 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.

27. The power to search for property to be seized is exercisable by a Home Office immigration officer only if he has reasonable grounds for suspecting that unlawful conduct that makes the property liable to seizure 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.

Authority to search for property

28. A decision to search for property to be seized under section 195C of POCA may only be exercised with “appropriate approval” unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.³⁸ Appropriate approval is the prior approval of a justice of the peace or, if that is not practicable, that of a senior appropriate officer.³⁹

29. Prior approval is only likely to be impractical 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

³⁷ Defined in section 195C(7) of POCA

³⁸ Sections 195C(6)(a), 195D(2), 195E(4) and 195F(6) of POCA

³⁹ Defined in section 195G(3) of POCA

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 impractical for all searches –officers should carefully consider and document any decision not to obtain such approval.

30. If prior judicial approval is not obtained, even if senior officer approval has been obtained, and no property is seized or any seized property is not detained for more than 48 hours, an officer must prepare a written report⁴⁰ and submit it to an independent person appointed by the Secretary of State (the Appointed Person). If seized property is detained for more than 48 hours, it will be the subject of judicial oversight.⁴¹ A report to the Appointed Person is not necessary in cases which have been subject to judicial oversight.

Seeking judicial approval

31. To seek judicial approval the officer will need to contact the clerk to the magistrates' court to arrange a hearing. Although there is a presumption that the hearing will be held with all parties present, it can be held without notice and in private; the normal reason for this would be to avoid alerting the person(s) connected to the property to be seized that such action is being contemplated. Being so alerted may have the effect of the person(s) moving the property and thereby frustrating the operation of the powers. The officer will need to:

- identify themselves to the justice of the peace (giving their name, seniority, any warrant or other identifying number, and home station or place of work);
- lodge their written application (having checked the information on which the application relies is accurate, complete, recent and not provided maliciously or irresponsibly);
- explain to the justice of the peace the reasonable grounds of suspicion that they have for undertaking the search;
- identify the person(s), premises or vehicle(s) to be searched; and
- answer any relevant questions that the justice of the peace may have.

32. Section 195G of POCA is the safeguard for the exercise of powers under sections 195C, 195D, 195E and 195F of the Act. The justice of the peace is being asked to approve the position that if the officer has reasonable grounds to suspect there is property which could be seized under these powers when the search is to take place, the officer would be exercising his powers with prior approval. If the officer obtains prior approval but when it comes to the time of the search he has no reasonable grounds to suspect there was property which could be seized under these powers, the officer cannot go on to exercise his search powers.

Seeking senior officer approval

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

⁴⁰ The report must detail why the officer believed the power was exercisable and why it was not practicable to obtain judicial approval.

⁴¹ 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).

- 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 Director⁴² or above;

34. The officer should explain to the senior officer the reasonable grounds for suspicion that he has for undertaking the search. The senior officer must 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.

35. 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.

36. If an application for prior approval is refused (either by a justice of the peace or a senior officer) the 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 officer, on any new application, should inform the justice of the peace or the senior officer of the prior refusal and the reasons thereto.

37. If prior approval by a senior officer for a search is impracticable, a search may be conducted without approval.⁴³ 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 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.

38. If prior approval has been obtained for one search power, that approval does not apply to 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 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 judicial prior approval is not obtained, but senior officer approval is obtained, then the provisions of section 195H of POCA will apply.

Reports to the “Appointed Person”

39. If a search under sections 195D, 195E or 195F of POCA is conducted without prior judicial approval (even if senior officer approval has been obtained) - the officer must prepare a written report in the following circumstances:

- property is seized under section 195C of POCA and any of the seized property is not detained for more than 48 hours, or
- the officer exercises powers under sections 195D, 195E and 195F of POCA and no property is seized under section 195C of POCA.

⁴² A change of name of this grade can be made by the Secretary of State by order.

⁴³ Sections 195C6(a), 195D(2), 195E(4) and 195F(6) of POCA

40. Property may not be detained for more than 48 hours without judicial oversight. 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.

41. The written report must detail why it was not practicable to obtain prior judicial approval and the circumstances which led the officer to believe that the search powers were exercisable. These factors could include why the 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 his 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 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.

42. The written report must be submitted to the appointed person (the person appointed by the Department of Justice).⁴⁴ Written reports must be sent to:

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

43. 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 officer should also submit within 14 days, to the appointed person, any supplementary information which the appointed person reasonably requires them to submit within 14 days. The officer should co-operate, facilitate and assist the appointed person, wherever possible, so that the appointed person can discharge his responsibilities under section 195I of POCA.

Search of a person

44. During the exercise of the power to search a person⁴⁵, the officer may, so far as the officer thinks necessary or expedient for the purposes of seizing property, require the person:

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

45. 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 officer in the exercise of a power. This would be a criminal matter and is not an issue for, or subject to, this Code. Officers should be aware of other legislation and codes applicable in these circumstances.

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

⁴⁴ The officer must keep a copy of the report in a safe and secure place.

⁴⁵ Section 195E of POCA

Steps prior to search of a person

47. If the officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 195C of POCA (see paragraphs 20 and 21), the officer should take the following steps:

- the 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 officer is attached;
- the person is informed about which of the seven pre-conditions the officer relies on to exercise their powers (see paragraph 20 above);
- the person is informed that there are reasonable grounds for suspecting that they are carrying property which may be seized;
- the person is given a clear explanation of the grounds for the reasonable suspicion;
- the person is informed that they can be searched under section 195E of POCA for the purposes of seizing such property and that failure to comply could amount to a criminal offence;
- the officer gives or shows the person any document authorising the search.

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

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

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

51. If the person to be searched does not appear to understand what is being said or the officer has doubts as to the person's ability to speak and/or understand English or the person is deaf or has difficulty with hearing or speaking, the 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 officer should record any difficulties he encountered and the reasons for proceeding.

Conduct of searches - persons

52. 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 fully established that the person is unwilling to co-operate. If the officer believes he will be in danger undertaking the search, he should take appropriate precautions.

53. An officer who has reasonable grounds for suspicion may detain the person for so long as is necessary to carry out the search.⁴⁶ Before carrying out the 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.

54. If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, there ceases to be reasonable grounds for suspecting that the person is carrying property that may be seized under section 195C of POCA, no search of the person may take place. In the absence of any other lawful power to detain, the person is free to leave and should be so informed.

55. There is no power to detain a person under POCA so that grounds can be identified for a search. If reasonable grounds for suspicion emerge during an encounter with a person, the officer may search the person with prior approval⁴⁷, even though the grounds did not exist when the encounter began. If an officer detains someone for the purpose of a search, he should inform the person as soon as the detention begins.

56. The length of time for which a person may be detained should be 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 of property suspected of being carried. If the person is being detained under some other power, this provision does not apply.

57. A person 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 officer in charge of the search is satisfied that the property is not on the person. (This does not prevent a further search, with prior approval, if new information comes to light justifying such a search).

58. The search power under section 195E of POCA does not extend to requiring a person to undergo an intimate search or a 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.

59. If a search reveals an item reasonably suspected of being or containing property to be seized but this is in an article of clothing being worn on the trunk and next to the skin or next to an article of underwear, the officer can only invite the person to remove it. If the person refuses there is no power to force the person to remove it.

60. 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 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.

⁴⁶ Section 195E(3) of POCA

⁴⁷ See section 195G of POCA. However see also sections 195C(6)(a) and 195E(4) of POCA.

Particular sensitivity should be exercised where the person being searched is wearing items of clothing which the person says are, or the officer believes are, of religious significance.

61. If, on reasonable grounds, it is necessary to conduct a more thorough search⁴⁸, 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 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.

Recording requirements – searches of a person

62. An officer who has carried out a search in the exercise of any power to which this Code applies should make a written record of the search, unless there are exceptional circumstances that would make this wholly impracticable. If such a written record is not made at the time then the 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 officer should make every reasonable effort to do so and, if necessary, complete a partial record.

63. A copy of a record made at the time should immediately be given to the person who has been searched. 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 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.

64. 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);
- 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 approval;
- 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;
- details of any damage or injury caused during the search and the circumstances in which it was caused;
- the identity of the officer or other identifier (subject to paragraph 6); and

⁴⁸ An intimate search or strip search is not permitted

- any other relevant information (if any).

65. 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 was carrying property that may be seized by reference to his 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.

66. When an officer makes a record of the stop electronically and is unable to produce a copy of the form at the time, the 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.

67. A record of the search should be maintained in a suitable form.

68. 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 the search of premises may also be made available.

Search of premises

General

69. No right of entry is conferred by section 195D of POCA. To search premises for property to be seized (see paragraphs 20 and 21), an officer must already be lawfully on the premises and, if possible, have prior approval⁴⁹. 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 officer has exercised a power of entry conferred by a search warrant or power of entry under some other legislation and circumstances subsequently lead the officer to have reasonable grounds to suspect property may be found there and, if found, to seize it.

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

71. For the purposes of this Code,⁵⁰ the term “premises” is as defined in article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989. This includes any place and, in particular, includes any vehicle, but note that there is a separate power under section 195F 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

⁴⁹ Section 195G of POCA. However see also section 195C(6)(a) and 195D(2) of POCA.

⁵⁰ Section 195D(3) of POCA

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 195F of POCA. Section 195F of POCA is covered by paragraphs 90 to 104 below.

72. If the 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 officer to make any necessary enquiries in order to be satisfied that the person is in a position to give consent. The officer should record his enquiries, together with any responses thereto, in writing.

73. Before seeking consent the 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 officer should record what he informed the person, together with any responses thereto, in writing.

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

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

75. 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 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.

Steps prior to search of premises

76. If the officer has reasonable grounds for suspecting that premises may contain property that may be seized under section 195C of POCA (see paragraphs 20 and 21), the officer should take the following steps:

- the 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 officer is attached;
- the person is informed about which of the seven pre-conditions the officer relies on to exercise their powers (see paragraph 20);
- the person is informed that there are reasonable grounds for suspecting that the premises may contain property that may be seized;
- the person is given a clear explanation of the grounds for the reasonable suspicion;

- the person is informed that the premises can be searched under section 195D of POCA for the purposes of seizing property and (assuming only the persons consent is not being used) that failure to comply could amount to a criminal offence;
- the officer gives or shows the person any document authorising the search.

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

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

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

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

Conduct of searches - premises

80. 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 officer should record his reasons in writing.

81. 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 officer in charge of the search is satisfied that the property that may be seized 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.)

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

83. 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 occupier or owner should be allowed to witness the search unless the 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 occupier or owner, should be made on the premises search record. However, if the 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.

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

Recording requirements – search of premises

85. An 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 written record is not made at the time then the 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 where it is not practicable to obtain all the information necessary to complete a record, but the officer should make every reasonable effort to do so and, if necessary, complete a partial record.

86. 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)⁵¹;
- 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 occupier's or owner'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 officer or other identifier (subject to paragraph 6); and
- any other relevant information (if any).

87. 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.

⁵¹ This relates to vehicles searched under the power to search premises by section 195D of POCA and not the separate power to search vehicles under section 195F of POCA.

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.

88. A record of the search should be maintained in a suitable form.

89. 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

90. An officer has no power to enter a vehicle; rather where the officer has reasonable grounds for suspecting that the vehicle contains property that may be seized under section 195C of POCA, the 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.

91. This search power can only be exercised where the vehicle is in a public place or within the environs of a dwelling and the 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. If the vehicle does not fall within the power under section 195F of POCA, the officer should consider the search power available under the power to search premises (section 195D of POCA). This is set out at paragraphs 69 to 89 above.

92. 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. Officers should be aware of other legislation and codes applicable in these circumstances.

Steps prior to search of vehicles

93. If the officer has reasonable grounds for suspecting that the vehicle contains property that may be seized under section 195C of POCA (see paragraphs 20 and 21), the officer should take the following steps:

- the officer gives the person (in control of the vehicle – see paragraph 90) 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 officer is attached;
- the person is informed about which of the pre-seven conditions the officer relies on to exercise their powers (see paragraph 20);
- the person is informed that there are reasonable grounds for suspecting that the vehicle contains property that may be seized;
- the person is given a clear explanation of the grounds for the reasonable suspicion;

- the person is informed that the vehicle can be searched under section 195F of POCA for the purposes of seizing property and that failure to comply could amount to a criminal offence;
- the officer gives or shows the person any document authorising the search.
- allow the person the opportunity to produce and hand over any property.

94. These steps do not necessarily have to be followed in the order presented. The 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.

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

96. Before the search takes place the 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

97. The person in control of the vehicle should be informed that the officer has reasonable grounds for suspecting that there may be property that may be seized 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.

98. Vehicles 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 officer in charge of the search is satisfied that the property that may be seized is not in the vehicle. (This does not prevent a further search if, with prior approval, new information comes to light justifying such a search.)

99. 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 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

100. An 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 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 officer should make every reasonable effort to do so and, if necessary, complete a partial record.

101. 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 searched⁵²;
- the date, time and duration of the search;

⁵² This relates to vehicles searched under the power to search vehicles by section 47F of POCA and not the separate power to search premises under section 47D of POCA.

- 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;
- 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 officer or other identifier (subject to paragraph 6); and
- any other relevant information (if any).

102. 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.

103. A record of the search should be maintained in a suitable form.

104. 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.

Seizure and detention of property

Seizure

105. An officer who is searching any person, premises or vehicle may seize realisable property under section 195C of POCA. The officer must have reasonable grounds for suspecting that the property may not be available in the future for satisfying a confiscation order that has been made or may be made, or that the value of the property may otherwise be diminished. An officer may, therefore, decide that it is not appropriate to seize property because of an explanation from any person.

106. Whether an officer has reasonable grounds for suspicion will depend on the circumstances in each case. There should be some objective basis for the officer's suspicion. This could be based, for example, on facts, information and/or intelligence. The officer may take into account such factors as to how the individual, premises or vehicle were identified,

previous intelligence on persons, premises or vehicles and any previous law enforcement involvement with the persons, premises or vehicles.

107. Reasonable grounds for suspicion would usually be linked to accurate and current facts, information and/or intelligence. However, it can sometimes exist without specific facts, intelligence and/or information.

Retention

108. Anything seized in accordance with section 195C of POCA may be retained only for so long as there is a legal basis for detention, whether under POCA or any other legislation. Under these powers, property can initially be detained for 48 hours and then can only continue to be detained if:

- an application for a restraint order is made which includes provision to detain the property (or there is an outstanding related appeal following such an application);
- a restraint order is already in force which provides for the detention of the property;
- an application is made to vary an existing restraint order to provide for the detention of the property; or
- an application is made to a magistrates' court to authorise further detention of the property.

In all other cases the property must be released unless there is another power authorising its detention.

109. The logistics of securing property will vary according to the circumstances, for example in many cases this will involve the placing of property in sealed bags or containers and strict control of access. In all cases, the property should be properly secured, insured and stored so as to retain its value so far as is possible (although some property will inevitably depreciate in value over time).

110. An officer must release any detained property if he decides the property no longer meets the test of being property that should be seized under section 195C of POCA – see paragraphs 20 and 21.

111. An officer should consider the proportionality of retention. This includes the calculation of the likely costs of storage and insurance as against the value of the property (particularly depreciating assets) in order to assess whether it is reasonable to continue to retain the property rather than seek a consent order for its sale or to release it. Conversely, this also includes calculating the value of the property against the likely amount to be set on any related confiscation order – property should be released if it exceeds the probable value of any future order.

112. In addition to ongoing consideration of the detention, a senior officer should undertake a formal review every three months of the continued detention. He should be satisfied that the property is still property that should be seized under section 195C of POCA (see paragraphs 20 and 21).

113. The senior officer should consider the likelihood of a confiscation order (or amendment to an existing order) being made. The senior officer should also consider the person's estimated benefit from their criminal conduct as part of the decision making process. He should also

make an assessment of the risk of dissipation or value being diminished; this should be done in the light of the original circumstances of the seizure and any new factors such as the length of time of detention of the property, developments in the criminal investigation or proceedings and any new information relating to the person.

114. The senior officer should make a written record of the formal review.

115. The person who had custody or control of the property immediately before seizure or their representative should be allowed supervised access to the property. This is to enable them to examine it or have it photographed or copied, or they should be provided with a photograph or copy. In either case this should be done within a reasonable time of any request and at the person's expense, unless the officer in charge of an investigation has reasonable grounds for believing this would prejudice the investigation of any offence or criminal proceedings.

116. A written record of the grounds for granting or denying access should be made.

117. If an application is made for release of detained property (whether by an application for variation or discharge of an order or by way of an appeal) an officer should consider the terms of the application together with general considerations conducted by a senior officer at the three month review (see paragraph 112). The officer should refer his decision to a senior officer. If the decision is taken not to oppose the application, the property must be released as appropriate and the relevant court informed. If the application is to be contested, the officer should prepare written reasons for opposing release of the property and the justification for the ongoing detention of the property.