

CODE OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002

Recovery of Cash:
Search Powers

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

Abbreviations used in this Code

AFI	accredited financial investigator
HMRC	Her Majesty's Revenue and Customs
NCA	National Crime Agency
POCA	the Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 has been amended since it was made. In relation to this code, the following amendments are particularly relevant.

Section 289 has been amended by the Serious Crime Act 2007, the Policing and Crime Act 2009 (section 63 of which inserted subsections (1A) to (1E)), the Finance Act 2013 and the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010¹; the effect being to add new powers to search persons and vehicles as well as extend the existing powers, and also to make changes in relation to the officers who may exercise these powers.

Section 292 has been amended by the Serious Crime Act 2007, the Finance Act 2013 and the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010²; the effect being to adjust the officers whose exercise of powers this code applies to.

Section 293A was inserted by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, and requires a code of practice to be produced by the Department of Justice in Northern Ireland.

Introduction

1. The purpose of this code is to guide officers in relation to the exercise of certain powers, and should not be regarded as a complete or authoritative statement of the law. Only the courts can give an authoritative interpretation of the legislation, and the contents of this code may be affected by subsequent judicial decisions and changes to the legislative provisions referred to.
2. In this code:
 - a reference to a statutory provision is to a provision of POCA, unless otherwise stated;
 - “cash” means notes and coins in any currency, postal orders, cheques of any kind (including travellers’ cheques), bankers’ drafts, bearer

¹ SI 2010/976.

² SI 2010/976.

bonds and bearer shares found at any place in the United Kingdom³. The Secretary of State can amend the definition of 'cash' by order⁴ (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 or pieces of art);

- "judicial officer" is, in relation to England, Wales or Northern Ireland, a justice of the peace; in relation to Scotland, a sheriff;
 - "officer" includes an officer of HMRC, an immigration officer, a constable and an AFI unless otherwise specified.
3. This code of practice is made in connection with the exercise of the search powers conferred by section 289 by the following officers only, in the areas set out for each type of officer:
 - a) officers of HMRC⁵ across the United Kingdom;
 - b) immigration officers⁶ across the United Kingdom;
 - c) constables in England and Wales; and
 - d) accredited financial investigators⁷ (AFIs) in England and Wales.
 4. There are separate codes of practice relating to the exercise of the powers in section 289 by:
 - a) constables in Scotland, the relevant code is made by Scottish Ministers under section 293, and
 - b) constables and AFIs in Northern Ireland, the relevant code is made by the Department of Justice for Northern Ireland under section 293A.
 5. The code is made by the Secretary of State under section 292. It applies to all searches made under the powers in section 289 on or after [XXXX], (even if a search or exercise of other related powers began before that date) and replaces the code made in respect of constables', customs officers' and AFIs' use of the search powers issued in April 2008. The code applies also to the application by officers for prior appropriate approval (from either a judicial officer or a senior officer) in order to exercise the search powers, under section 290.
 6. The exercise of these powers by:
 - a) officers of HMRC and
 - b) by immigration officers,

³ Section 289(6).

⁴ Section 289(7).

⁵ An officer of Revenue and Customs is a member of staff appointed by the Commissioners for Her Majesty's Revenue and Customs, see section 2 of the Commissioners for Revenue and Customs Act 2005.

⁶ Section 24 of the UK Borders Act 2007 provides that Chapter 3 of Part 5 POCA (recovery of cash in summary proceedings) applies to an immigration officer as it applies in relation to a constable.

⁷ An AFI is an individual who is accredited and monitored under section 3 as a financial investigator. Accreditation may be limited to specified purposes. Some references to an AFI in POCA refer only to an AFI falling within a category specified in an order made by the Secretary of State under section 453, depending upon the particular power under POCA being exercised.

are limited to exercise within the scope of their normal functions. See paragraphs 19 and 20 for details.

7. The code does not apply to searches carried out under any other provisions in POCA, or other legislation. If such searches result in cash being seized under section 294, the provisions of this code do not apply to that search retrospectively. However, if an officer is exercising an additional and separate function or power, for example, investigation powers under Part 8 of POCA, the officer must have regard to any code connected to the exercise of that function or power.
8. The code should be made available for reference by officers using the powers and by members of the public. It should be available in particular at police premises and at ports where the powers are, or are likely, to be used. Government departments and other bodies who have AFIs operating these powers should also make arrangements for the code to be available, if practicable, at their public offices.
9. Where an officer fails to comply with any provision of this code, they would not by reason only of that failure be 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 code in determining any question(s) in the proceedings⁸.
10. The powers of search are also available in the Channel Tunnel and Control Zones in France and Belgium⁹. 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

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

⁸ Section 292(6) and (7).

⁹ See the Channel Tunnel Act 1987, the Channel Tunnel (International Arrangements) Order 1993 (SI 1993/1813) and the Channel Tunnel (Miscellaneous Provisions) Order 1994 (SI 1994/1405).

- before the action is taken, or
 - in particularly urgent cases, as soon as possible thereafter.
13. The officer should consider whether any consultation could jeopardise an ongoing wider operation or investigation. In such circumstances consultation may not be advisable, but generally 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 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 by a person to allow a search of a person, premises or a vehicle may in some instances, constitute an offence (including but not limited to) wilful obstruction of an officer in the exercise of a power¹⁰. 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 search powers

16. Section 289 provides powers for officers to search for cash (subject to the limitations below) where:
- the officer is lawfully on any premises (which will include a vehicle located on those premises¹¹) and has reasonable grounds for suspecting that there is on the premises cash which satisfies the conditions in paragraph 17;
 - the officer is not lawfully on any premises, but has reasonable grounds for suspecting that there is cash in a vehicle which satisfies the conditions in paragraph 17, and it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle; or
 - the officer has reasonable grounds for suspecting that a person is carrying cash which satisfies the conditions in paragraph 17.

17. The conditions in section 289(1) are that:

¹⁰ See section 89 of the Police Act 1996 (in relation to constables), section 453A of POCA (in relation to AFIs) and section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of HMRC)..

¹¹ The definition of 'premises' is the same as in section 23 of the Police and Criminal Evidence Act 1984, and includes a vehicle: see section 316 POCA.

- the cash is recoverable property¹² or is intended by any person for use in unlawful conduct;¹³ and
- the cash does not amount to less than the minimum amount specified in an Order made by the Secretary of State (currently £1,000¹⁴). There is no maximum amount of cash that can be seized.

Limitations relating to searches of vehicles and persons

18. Where an officer is not lawfully on premises on which a vehicle is located, the search powers in relation to a vehicle only apply where the vehicle is in a place to which the public has access, or is within the environs of a dwelling, and the officer has reasonable grounds for believing that the person does not reside in that dwelling, and that the vehicle is there without the permission of the person who resides there. Otherwise the vehicle is on private property and the power to search premises is relevant instead¹⁵.

19. The powers conferred are civil in nature and exercisable only so far as is reasonably required for the purposes of finding relevant cash (as set out in paragraph 16). The powers do not include the right to enter premises (including vehicles). In relation to vehicles, the officer may require the suspect to permit entry to the vehicle and permit a search of the vehicle where the officer is not lawfully on premises which include a vehicle, and in relation to a person suspected of carrying cash, the officer may require the person to permit a search of any article he has with him as well as permit a search of his person¹⁶.

20. A refusal by a person to permit a search of their person, of premises or of a vehicle may in some instances constitute an offence, including but not limited to wilful obstruction of an officer in the exercise of their duty or of a power¹⁷. 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.

Limitation on exercise of powers by officers of HMRC

¹² Cash is recoverable property if it is obtained through unlawful conduct or represents property obtained through unlawful conduct because the original property has been disposed of (see sections 304-305).

¹³ 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' (see section 241).

¹⁴ The Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 (SI 2006/1699). The statutory instrument should be made available along with the Code. This amount may be amended by a further Order made by the Secretary of State (under section 303 POCA) –officers should ensure that they are aware of the current Order.

¹⁵ See section 289(1B), (1C).

¹⁶ See sections 289 (1D) and (3).

¹⁷ See section 89 Police Act 1996 (in relation to police officers), section 453A POCA (in relation to AFI's) and section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of HMRC).

21. The powers to search for cash are exercisable by an officer of HMRC only if:

- a) the officer has reasonable grounds for suspecting that the unlawful conduct through which the cash was obtained, or for which the cash is intended to be used, relates to an “assigned matter” within the meaning of the Customs and Excise Management Act 1979; and
- b) so far as the officer is exercising a function relating to a matter other than an “excluded matter”¹⁸.

22. An “assigned matter” is any matter in relation to which the Commissioners or officers of HMRC have a power or duty, except for any matter relating to a devolved tax within the meaning of the Scotland Act 1998¹⁹, and currently includes:

- 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 assigned matters.

Limitation on exercise of powers by immigration officers

23. The powers to search for cash are exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that the unlawful conduct through which the cash was obtained, or for which the cash is intended to be used, is conduct which both constitutes an offence and:

- a) relates to the entitlement of one or more persons who are not nationals of the UK to enter, transit across, or be in, the UK (including conduct which relates to conditions or other controls on any such entitlement); or
- b) 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;

¹⁸ An “excluded matter” is defined in section 289(5A), and is a matter specified in section 54(4)(b) of, or in any of paragraphs 3, 5, 7, 10, 12 and 14 to 30 of Schedule 1 (former Inland Revenue matters) to the Commissioners for Revenue and Customs Act 2005.

¹⁹ See section 1(1) of the Customs and Excise Management Act 1979.

- the British Overseas Territories Act 2002; or
- any instrument made under any of those Acts.²⁰

Limitations on exercise of powers by AFIs

24. The powers to search for cash are exercisable by an AFI in relation to premises, vehicles or (as the case may be) persons in England, Wales or Northern Ireland, but not Scotland. However, this code only applies to searches performed by AFIs in England and Wales; the code issued by the Department of Justice for Northern Ireland in relation to the search powers under section 289 is applicable in that jurisdiction.

Reasonable grounds for suspicion

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

26. 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 regarding the persons, vehicles or premises, previous law enforcement involvement with the persons, vehicles or premises, and suspected links with criminal activities, whether in the UK or overseas.

27. Reasonable suspicion would not be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour. For example, a person's race, religion or age, could not be used alone or in combination with other personal factors as the reason for searching that person. Reasonable suspicion could not be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity.

28. 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. However, reasonable suspicion could not be founded retrospectively.

Approval to search for cash

29. Section 290 requires the officer to obtain prior "appropriate approval" before the exercise of any of the search powers under section 289, unless in the circumstances it is not practicable to obtain that approval before exercising the power. "Appropriate approval" means approval from a judicial officer or (if that is not practicable in any case) from a "senior

²⁰ See section 24 of the UK Borders Act 2007.

officer”. A “judicial officer” is, in relation to England, Wales or Northern Ireland, a justice of the peace; in relation to Scotland, a sheriff.

30. The officer will need to explain that the search is necessary because they have 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 and when it comes to the time to conduct the search, the grounds on which the officer obtained the prior approval would no longer apply, the officer may not exercise the powers (section 289(2)).
31. 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 should be no assumption that approval is impracticable for all searches. Officers should carefully consider and record the reasons for any decision not to obtain prior approval.

Seeking judicial approval

32. In order to obtain approval from a judicial officer, an officer will need to make contact with the justice’s chief executive for a magistrates’ court in England or Wales, the clerk of a magistrates’ court in Northern Ireland, or the clerk of a sheriff court in Scotland 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 frustrate 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 to make an application for prior approval to search for cash. The officer will need to:

- identify themselves to the judicial officer (giving name, seniority, any warrant or other identifying number, and home station or place of work) - however an officer does not have to identify themselves if they come within the provisions in POCA relating to the use of pseudonyms by officers of the NCA or members of staff of a relevant Director²¹;
- lodge their written application (having checked that the information on which the application relies is accurate, complete, recent and not provided maliciously or irresponsibly);

²¹ See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales, it means the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office; in relation to Northern Ireland it means the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.

- explain to the judicial officer the reasonable grounds for suspicion that they have for undertaking the search;
- identify the person, premises or vehicle(s) to be searched;
- answer any relevant questions that the judicial officer may have.

Seeking senior officer approval

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

- in relation to a search undertaken by a constable, a police officer of at least the rank of inspector;
- in relation to a search undertaken by an officer of HMRC, an officer of HMRC of a rank designated by the Commissioners for HMRC as equivalent to a police officer of at least the rank of inspector;
- in relation to a search undertaken by an immigration officer, an official of the Secretary of State who is a civil servant at or above the grade which is designated by the Secretary of State as being equivalent to the rank of police inspector;
- in relation to a search undertaken by an AFI, an AFI who falls within a description specified in an order made by the Secretary of State under section 453 for this purpose. These officers are commonly/operationally known as SAOs (senior appropriate officers) and not AFIs.

34. The officer should explain to the senior officer the reasonable grounds for suspicion for undertaking the search. The senior officer should only give approval when satisfied that the relevant conditions are met. The senior officer should make a written record of the decision and the basis for making that decision. An oral approval should be supported by written approval as soon as that is reasonably practicable. In addition, the written approval should set out why it was necessary to seek and then give oral approval in the first instance.

35. A prior approval to search given by a judicial officer will continue in force for the period specified in the order, set according to the circumstances of the case. A senior officer approval should only continue in force for the time period identified relating to the urgency of the case – if the search is not urgent then prior approval should be sought from a judicial officer.

36. If an application for prior approval is refused (either by a judicial officer or a senior officer) the officer should not undertake a search or make a fresh application for a search of the same person(s), premises or vehicle(s) unless there are new reasonable grounds for suspicion. The officer, on

any new application, should inform the judicial officer or the senior officer of the prior refusal and the reasons thereto. They should also detail any prior approval granted that did not lead to a search.

Prior approval impracticable

37. 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 from a senior officer, the officer should explain to a senior officer the reasons for the search and for 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 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 officer decides to undertake the search of a vehicle that the person is in control of, separate prior approval is required for that search.

Reports to the “appointed person”

39. If a search under section 289 is conducted without prior judicial approval (irrespective of whether senior officer approval has been obtained) the officer must prepare a written report in the following circumstances:
- if no cash is seized; or
 - any cash seized is detained for no more than 48 hours.
40. Cash may not be detained for more than 48 hours²² except by order of a judicial officer (section 295(1)); the application for an order is commonly known as a ‘detention hearing’.
41. The written report must detail which led the officer to believe that the search powers were exercisable and that it was not practicable to obtain prior judicial approval. These factors could include why the officer was on the premises when the search took place, the reasonable grounds for suspicion and why there was a need for a search without prior judicial approval. If senior officer approval is obtained, the report should also state which senior officer gave their approval together with the senior officer’s reasons for that approval. If no senior officer approval was obtained, this should be set out in the report together with the reasons for the approval not being obtained as well as which senior officer was subsequently informed and when they were informed of the search.

²² When calculating the period of 48 hours, no account is taken of Saturday, Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971, or is prescribed as a court holiday in a sheriff court in Scotland in the sheriff court district where the cash is seized: section 295(1).

42. For cases where the powers were exercised in England and Wales, the report must be submitted to the person appointed by the Secretary of State. Reports must be made to:

The Appointed Person
c/o Strategic Centre for Organised Crime - Pursue – POCA Reform
Home Office
2 Marsham Street
LONDON SW1P 4DF

43. For cases where the powers were exercised in Scotland, the report must be submitted to the person appointed by the Scottish Ministers. Reports should be made to:

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

44. For cases where the powers were exercised in Northern Ireland, the report must be submitted to the appropriate 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

45. 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 any supplementary information which the appointed person reasonably requires the officer to submit, within 14 days of the request for the supplementary information. The officer should co-operate, facilitate and assist the appointed person, wherever possible, so that the appointed person can effectively discharge their role and responsibilities.

46. The appropriate officer and appointed person should keep a copy of the report in a safe and secure place in accordance with the Data Protection Act 1998.

Search of a person – section 289(3)

47. Where the power to search a person is exercised under section 289(3) the officer may (so far as they think necessary or expedient for the purposes of searching for cash to which the power applies) require the person:

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

48. A refusal to permit a search may in some instances constitute an offence (including but not limited to) wilful obstruction of an officer in the exercise of his duty or a power²³. 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.

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

Steps prior to search of a person

50. If the officer has reasonable grounds for suspecting that the person has relevant cash concealed on their person, the officer should take the following steps:

- the officer should give the person their name or other identifier, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;
- the person should be given the name and location of the office or station to which the officer is attached;
- the person should be 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 should be given a clear explanation of the reasonable grounds for suspecting that the cash is recoverable property or is intended for use in unlawful conduct;
- the person should be informed that they can be required to permit a search under section 289 for the purposes of finding such cash and (where applicable) warned that failure to comply could amount to a criminal offence;

²³ See section 89 Police Act 1996 (in relation to police officers), section 453A POCA (in relation to AFI's) and section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of HMRC).

- the officer should give or show the person any document authorising the search (if applicable);
 - the officer should ask the person to confirm or deny whether they have relevant cash on their person; and
 - the officer should allow the person the opportunity to produce and hand over the relevant cash.
51. 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 of the steps should be undertaken prior to the search.
52. Officers not in uniform should show their warrant cards or other suitable form of identification.
53. Before the search takes place the officer should inform the person of their entitlement to a copy of the record of the search.
54. 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 that 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 not proceed. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search.

Conduct of searches - persons

55. The power to search a person must be used fairly, courteously, responsibly, respectfully and without discrimination against 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 officer believes they will be in danger undertaking the search, they should take appropriate precautions.
56. An 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 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.

57. If, as a result of questioning before a search, or other circumstances coming to the attention of the officer, there cease to be reasonable grounds for suspecting that the person is carrying relevant cash that 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.

58. 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, 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.

59. The length of time for which a person may be detained must 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 and amount of relevant cash that is suspected of being carried. If the person is being detained under some other power, this aspect of the code may not apply.

60. A person may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the relevant cash has been found and no search may continue once the officer is satisfied that the relevant cash is not on the person. This does not prevent a further search if new information comes to light justifying such a search.

61. This search power under section 289 does not extend to requiring a person to undergo an intimate search or strip search (see section 289(8)). 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.²⁴

62. If a search reveals an item reasonably suspected of containing relevant cash 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 which is next to the skin (for example a money belt) 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.

²⁴ See section 164(5) of the Customs and Excise Management Act 1979.

63. 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 their 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, or the officer believes, are of religious significance.
64. If on reasonable grounds it is considered necessary to conduct a more thorough search 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 should 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.
65. If the officer discovers relevant cash during a search they 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.

Recording requirements – searches of a person

66. An officer who has carried out a search under section 289 should make a written record of the search at the time, unless there are exceptional circumstances that would make this 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 written record. There may be situations in which it is not practicable to obtain all the information necessary to complete a written record, but the officer should make every reasonable effort to do so and, if necessary, complete a partial record.
67. A copy of any written record made at the time should be given immediately 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.
68. 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, their 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 names and details of any witnesses;
- the grounds for conducting the search;
- whether the prior approval of a judicial officer or senior officer was obtained. 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 cash, no further action);
- a list/description of seized cash (if any) preferably signed by the person;
- any explanation given by the person as to the ownership, origins, purpose and destination of any relevant cash found;
- details of any damage to property or injury to person caused during the search and the circumstances in which it was caused;
- the identity of the officer or other identifier and others present, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;
- any other relevant information (if any).

69. A record is required for each person searched. The record of the grounds for making a search should explain, with sufficient detail, the reasonable grounds for suspecting the person concerned was carrying relevant 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 reasonable grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

70. When an officer makes a record of the stop or search 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 the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director; and
- the power used to stop and search them.

71. In the case of searches undertaken by constables the record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search should be maintained in a suitable form, i.e. the record should be easily accessible, retrievable and subject to reasonable rules for storage, in particular in relation to the length of time before the record is destroyed.

72. In order to promote public confidence in the use of the powers, bodies using these powers should make the records available (anonymised as necessary) 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 premises (including vehicles located on those premises) – section 289(1)

General

73. No right of entry is conferred by section 289 in order to search premises for relevant cash. An officer must already be lawfully on the premises and, if possible, have prior approval to conduct the search²⁵. This could include a search of premises undertaken with the consent of a person entitled to grant entry to the premises, such as the owner or lawful occupier. It could also include a search carried out where an officer has legitimately exercised a power of entry conferred by a search warrant or power of entry conferred under some other legislation.

74. A refusal to allow a search of premises may in some instances constitute an offence (including but not limited to) wilful obstruction of an officer in the exercise of a duty or power²⁶. 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.

75. The term 'premises' has the same meaning as in section 23 of PACE. This includes any place and, in particular, includes any vehicle, but note that

²⁵ Prior approval is covered in section 290; see the relevant earlier section of this code.

²⁶ See section 89 Police Act 1996 (in relation to police officers), section 453A POCA (in relation to AFI's) and section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of HMRC).

there is a separate power under section 289(1A) to (1E) providing a power to search vehicles where the vehicle is not situated on premises which the officer is lawfully on. See the section below on searches of vehicles using this power.

76. 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 their enquiries, together with any responses, in writing.

77. 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 and 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 information they gave to the person, together with any responses, in writing.

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

- establish if anything is known about the owner or occupier 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.

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

Steps prior to search of premises

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

- the officer should give the person who is entitled to grant entry to the premises their name or other identifier, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;

- the person should be given the name and location of the office or station to which the officer is attached;
- the person should be 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 should be given a clear explanation of the reasonable grounds for suspicion;
- the person should be informed that the officer has the power to search the premises under section 289(1) for the purposes of finding such cash and (where applicable) warned that failure to comply could amount to a criminal offence;
- the officer should give or show the person any document authorising the search (if applicable);
- the officer should ask the person to confirm or deny whether there is cash on the premises which is either recoverable property or is intended by any purpose for use in unlawful conduct; and
- should allow the person the opportunity to produce and hand over the relevant cash.

The officer should ideally provide this information to both the owner and the occupier (if they are different people).

81. 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 premises.

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

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

84. If the person 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 that 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 not proceed if the officer cannot determine whether the person understands. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search.

Conduct of searches – premises

85. 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 takes place at an unreasonable hour, the officer should record their reasons for doing so in writing.
86. A person is not required to be cautioned prior to being asked questions that are necessary solely for the purpose of furthering the proper and effective conduct of a search. Examples would include questions to discover who is the owner, or occupier, or person entitled to grant access of specified premises, to find a key to open a locked drawer or cupboard, or to otherwise seek co-operation during a search or to determine whether cash is liable to be seized.
87. Premises may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the relevant cash has been found and no search may continue once the officer in charge of the search is satisfied that relevant 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.
88. Searches must 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.
89. The person should be asked whether they would like a friend, neighbour or other person to witness the search, however a search need not be unreasonably delayed for this purpose (unless the officer is relying on the person's consent to conduct the search, in which case the person is entitled to refuse consent until a friend, neighbour or other person arrives to witness the search). The person nominated by the owner or occupier should be allowed to witness the search unless the officer has reasonable grounds for believing that the presence of that person would significantly hinder the search or endanger other officers or people. A record of the action taken, including the grounds for refusing a request from the owner or occupier, should be made on the premises search record.

Recording requirements – search of premises

90. 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 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 record. 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.

91. 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 because it is on the premises, the location of the vehicle);
- the date, time and duration of the search;
- the name of the officer and the names of any other persons involved in the search, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;
- the grounds for conducting the search;
- the prior approval of a judicial officer or senior officer. 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;
- if appropriate, the written consent to undertake the search together with what information was given to the person about the search and their responses;
- the name and details of any witness;
- any grounds for refusing the person's request to have someone present during the search (if the consent of the person is not the basis for conducting the search);
- any explanation given by the person as to the ownership, origins, purpose and destination of any relevant cash found;
- confirmation that the premises were left secured and by what means;
- details of any damage to property or injury to persons caused during the search and the circumstances in which it was caused;
- a list/description of seized cash (if any) preferably signed by the person;
- any other relevant information (if any).

92. 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 who gave consent to entry to the premises searched, or if consent was not required to the person in charge of the premises searched, being the owner or occupier as appropriate. 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 reasonable grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.
93. In the case of searches undertaken by constables the record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search should be maintained in a suitable form, i.e. the record should be easily accessible, retrievable and subject to reasonable rules for storage, in particular in relation to the length of time before the record is destroyed.
94. In order to promote public confidence in the use of the powers, bodies using these powers should make the records available (anonymised as 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.

Search of Vehicles – section 289(1D)

General

95. An officer has no power to enter a vehicle. Where the officer is not lawfully on premises on which a vehicle is located, but has reasonable grounds for suspecting that a vehicle contains relevant cash that may be seized under section 294, and it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle, the officer may require that person to permit entry to, and a search of, the vehicle.
96. In these circumstances, the search power applies only where the vehicle is in a place to which the public has access, or is within the environs of a dwelling, and the officer has reasonable grounds for believing that the person does not reside in that dwelling, and that the vehicle is there without the permission of the person who does reside there. Otherwise the vehicle is on private property and the power to search premises is relevant instead²⁷.
97. A refusal to permit entry to the vehicle may in some instances constitute an offence (including but not limited to) wilful obstruction of an officer in the

²⁷ See section 289(1B), (1C).

exercise of a power²⁸. 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.

Steps prior to search of a vehicle

98. If the officer has reasonable grounds for suspecting that a vehicle contains relevant cash, the officer should take the following steps:

- the officer should give the person in control of the vehicle their name or other identifier, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;
- the person should be given the name and location of the office or station to which the officer is attached;
- the person should be 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 should be given a clear explanation of the grounds for suspecting that the vehicle contains relevant cash;
- the person should be given a clear explanation of the grounds for reasonable suspicion that the cash is recoverable property or is intended for use in unlawful conduct;
- the person should be informed that the vehicle can be searched under section 289 for the purposes of finding such cash and (where applicable) warned that failure to comply could amount to a criminal offence;
- the officer should give or show the person any document authorising the search (if applicable);
- the officer should ask the person to confirm or deny whether there is relevant cash in the vehicle;
- the officer should allow the person the opportunity to produce and hand over any relevant cash;
- the officer should inform the person in control of the vehicle of their entitlement to a copy of the record of the search.

²⁸ See section 89 Police Act 1996 (in relation to police officers), section 453A POCA (in relation to AFI's) and section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of HMRC).

99. 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.
100. Officers not in uniform should show their warrant cards or other suitable form of identification.
101. 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 that 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 not proceed if the officer is in any doubt as to the person's understanding. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search.

Conduct of searches – vehicles

102. 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 is satisfied that relevant cash is not in the vehicle. (This does not prevent a further search, with prior approval, if new information comes to light justifying such a search).
103. Searches must be conducted with due consideration for the vehicle and the person in control of it. Searches must 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

104. 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 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 record. 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.
105. 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;

- the date, time and duration of the search;
- the name of the officer and the names of any other persons involved in the search, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;
- the grounds for conducting the search;
- the prior approval of a judicial officer or senior officer. If a search is conducted without prior judicial approval, the reason for not obtaining such approval;
- the names and dates of birth of any persons in control of the vehicle if they are known;
- the names and details of any witnesses;
- if appropriate, the written consent to undertake the search together with what information was given to the person(s) in control of the vehicle and their responses;
- details of any damage to property or injury to persons caused during the search and the circumstances in which it was caused;
- 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(s) in control of the vehicle;
- any explanation given by the person(s) in control of the vehicle as to the ownership, origins, purpose and destination of any relevant cash found;
- confirmation that the vehicle was left secured and by what means;
- any other relevant information.

106. Unless it is impracticable to do so or it would jeopardise a wider ongoing operation or investigation, the person(s) in control of the vehicle should be provided with a copy of the record. 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 reasonable grounds for suspicion being eliminated as a result of speaking to any person, a written record should still be made.

107. In the case of searches undertaken by constables the record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search

should be maintained in a suitable form, i.e. the record should be easily accessible, retrievable and subject to reasonable rules for storage, in particular in relation to the length of time before the record is destroyed.

108. In order to promote public confidence in the use of the powers, bodies using these powers should make the records (anonymised as required) 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.