



Home Office

# **DRAFT CODE OF PRACTICE ISSUED UNDER SECTION 195S OF THE PROCEEDS OF CRIME ACT 2002**

Search, Seizure and Detention of  
Property (Northern Ireland)

December 2015

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Property (Northern Ireland)

Presented to Parliament pursuant to Section 195S(3) of the  
Proceeds of Crime Act 2002

December 2015



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# Contents

Abbreviations used in this code	3
Introduction	3
Extension of powers in relation to restraint orders	4
Search and seizure powers	5
General	5
Scope of the search and seizure powers	6
Seizure	7
Search	8
Limitation on exercise of powers by officers of Revenue and Customs	9
Limitation on exercise of powers by immigration officers	9
Reasonable grounds for suspicion	10
Approval to seize and search for property	10
Seeking judicial approval	11
Seeking senior officer approval	12
Issues of approval	12
Refusal of prior approval	12
Prior approval impracticable	12
Reports to the “appointed person”	13
Search of a person – section 195E	14
Steps prior to search of a person	15
Conduct of searches – persons	16
Recording requirements – searches of a person	18
Search of private premises (including vehicles located on those premises)	
section 195D	20
General	20
Steps prior to search of premises	21
Conduct of searches – premises	22
Leaving the premises	23
Recording requirements – search of premises	23
Search of Vehicles – section 195F (where section 195D does not apply)	24
General	24
Steps prior to search of vehicles	25
Conduct of searches – vehicles	26
Recording requirements – search of vehicles	26
Seizure and detention of property - sections 195J to 195P	28
Seizure	28
Detention	29
Continued detention under section 195A	30

# Code of Practice issued under section 195S(3) of the Proceeds of Crime Act 2002

## Search, Seizure and Detention of Property (Northern Ireland)

**Officers must be aware of their mandatory obligations under the legislation and act in accordance with these duties. This is an absolute requirement regardless of any interpretation of this code or any other document or guidance.**

### **Abbreviations used in this Code**

CEMA Customs and Excise Management Act 1979  
HMRC Her Majesty's Revenue and Customs  
NCA National Crime Agency  
POCA Proceeds of Crime Act 2002

POCA has been amended since it was enacted. In relation to this code, the amendment made by section 13 of the Serious Crime Act 2015 is relevant.

### **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.
3. This code of practice is made in connection with the exercise of the following powers under POCA:
  - seizure powers conferred by section 195C on appropriate officers;
  - search powers conferred by sections 195D to 195F on appropriate officers;
  - the function of senior officers in giving appropriate approval under section 195G;
  - the function of appropriate officers in making a report to the “appointed person” on any exercise of the search or seizure powers without judicial approval under section 195H, and
  - powers to detain property conferred by sections 190A, 195A and 195J to 195P.

4. In relation to sections 195B to 195S, “appropriate officer” means:
  - an officer of Revenue and Customs;<sup>1</sup>
  - an immigration officer.
5. In relation to section 190A, “appropriate officer” means the persons already listed, but in addition:
  - a NCA officer; or
  - a member of staff of a relevant director.<sup>2</sup>
6. The exercise of these powers by:
  - officers of Revenue and Customs; and
  - immigration officers are limited to exercise within the scope of their normal functions. See paragraphs 26 and 27 for details.
7. The code is made by the Secretary of State under section 195S. It applies to any exercise of the powers covered by the code on or after 1 March 2016. There are separate codes of practice providing guidance on the use of equivalent powers in England & Wales. These are issued under section 47S (by the Secretary of State).
8. The code should be made available for reference by officers using the powers and by members of the public.
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 proceedings.
10. If an officer is exercising additional and separate functions or powers, for example, a search for cash under section 289, the officer should have regard to any connected code in relation to the exercise of those functions or powers.

### **Extension of powers in relation to restraint orders**

11. Section 190A extended the powers in relation to restraint orders so that orders may include provision authorising an appropriate officer to detain property that:
  - has been or may be seized under certain seizure powers, or
  - has been or may be produced in compliance with a production order under section 345,if that property is also subject to a restraint order. The seizure powers in question are:
  - section 195C;
  - section 352;

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<sup>1</sup> 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.

<sup>2</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

## Search and seizure powers

12. Sections 195C to 195F provide appropriate officers with certain search and seizure powers to prevent the dissipation of realisable property<sup>3</sup> which may be used to satisfy a confiscation order made under Part 4 of POCA. By section 195C(2), cash and exempt property may not be seized (see further paragraph 21). Section 195B sets out a number of pre-conditions for the exercise of the seizure powers under section 195C. The powers in sections 195C to 195F may only be exercised with “appropriate approval”<sup>4</sup> (being prior approval from a lay magistrate, or if that is not practicable, approval from a senior officer), unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.<sup>5</sup>
13. Section 215A gives magistrates’ courts the power to authorise, in certain circumstances, an appropriate officer to sell seized personal 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 under the European Convention of Human Rights (ECHR) 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 with the personal property of those whose property is seized and detained, 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, responsibly, with respect and without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender or disability and in accordance with any statutory duties on them. Officers should ensure that in the exercise of their functions, they have regard to the need to safeguard and promote the welfare of all persons under the age of 18 years and that the decision to search a child must be in the best interests of the child and in compliance with obligations under Article 3 of the UN Convention on the Rights of the Child.
15. 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.
16. The appropriate officer should consider whether any consultation could jeopardise an ongoing wider operation or investigation. In such circumstances consultation may not be necessary, but generally it is best practice to consult.
17. The expectation is that the provisions of this code will apply to all searches, seizures and detentions carried out under this code. However any decision not to follow the code should be carefully considered and noted.

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<sup>3</sup> See section 83 of POCA for the definition of realisable property.

<sup>4</sup> Section 195G

<sup>5</sup> Section 195C (6)(a), 195D(2), 195E(4) and 195F(6).

18. The appropriate officer should take special care and have particular regard to an individual's vulnerabilities and possible difficulties when conducting a search. This is particularly relevant in the case of a search of a person who is a juvenile or persons with a mental or physical disability.
19. A refusal to allow a search of a person, premises or a vehicle may in some instances constitute an offence (including but not limited to) of wilful obstruction of an appropriate officer in the exercise of a power or execution of a duty.<sup>6</sup> This would be a criminal matter and is not an issue for, or subject to, this code. Appropriate officers should be aware of other legislation and codes applicable in these circumstances.

### **Scope of the search and seizure powers**

20. Section 195B provides seven pre-conditions for appropriate officers using the seizure power in section 195C. However, as the powers to conduct searches under sections 195D to 195F allow searches for property which may be seized under section 195C, these pre-conditions are also relevant in relation to the search powers. The appropriate officer must be satisfied that one of these is met:

- first condition – 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 are reasonable grounds to suspect that the person has benefited from conduct constituting the offence, and a restraint order is not in force in respect of any realisable property (the person is to be regarded as “the defendant” in sections 195C to 195S);<sup>7</sup>
- second condition – 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 (the person is to be regarded as “the defendant” in sections 195C to 195S);<sup>8</sup>
- third condition – proceedings for an indictable offence have been started in Northern Ireland and have not been concluded, there is reasonable cause to believe that the defendant has benefited from conduct constituting the offence, and a restraint order is not in force in respect of any realisable property (but this condition is not met if there has been undue delay in continuing the proceedings, or the prosecutor does not intend to proceed);<sup>9</sup>
- fourth condition – 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 (but this condition is not met if there has been undue delay in continuing the proceedings, or the prosecutor does not intend to proceed);<sup>10</sup>
- fifth condition – an application by the prosecutor has been made under section 169,<sup>11</sup> 170,<sup>12</sup> 177<sup>13</sup> or 178<sup>14</sup> and not concluded, or the appropriate officer

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<sup>6</sup> See section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of Revenue and Customs)

<sup>7</sup> Section 195B(2), (11) and (12).

<sup>8</sup> Section 195B(3), (11) and (12).

<sup>9</sup> Section 195B(4) and (9).

<sup>10</sup> Section 195B(5) and (9).

<sup>11</sup> No confiscation order made: reconsideration of case.

<sup>12</sup> No confiscation order made: reconsideration of benefit.

<sup>13</sup> Defendant absconds: convicted or committed.



believes that such an application is to be made, and there is reasonable cause to believe that the person has benefited from criminal conduct (but this condition is not met if there has been undue delay in continuing the application, or the prosecutor does not intend to proceed);<sup>15</sup>

- sixth condition – an application by the prosecutor has been made under section 171<sup>16</sup> and not concluded, or the appropriate 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 (but this condition is not met if there has been undue delay in continuing the application, or the prosecutor does not intend to proceed);<sup>17</sup>
- seventh condition – an application by the prosecutor has been made under section 172<sup>18</sup> and not concluded or the appropriate 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 (but this condition is not met if there has been undue delay in continuing the application, or the prosecutor does not intend to proceed).<sup>19</sup>

## Seizure

21. If an appropriate officer is satisfied that at least one of the pre-conditions in section 195B is met, the appropriate officer may seize any realisable property<sup>20</sup> under section 195C(1) if the appropriate officer 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 defendant, or
- the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.

22. However, the officer may not seize under section 195C:

- “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<sup>21</sup>. The Secretary of State can amend the definition of 'cash' by order<sup>22</sup> (officers should ensure that they are aware of the current meaning); or
- “exempt property”, which means such tools, books, vehicles and other items of equipment as are necessary to the defendant for use personally in their employment, business or 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 defendant and their family.<sup>23</sup>

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<sup>14</sup> Defendant absconds: neither convicted nor acquitted.

<sup>15</sup> Section 195B(6) and (10).

<sup>16</sup> Confiscation order made: reconsideration of benefit.

<sup>17</sup> Section 195B(7) and (10).

<sup>18</sup> Confiscation order made: reconsideration of available amount.

<sup>19</sup> Section 195B(8) and (10).

<sup>20</sup> By section 231, realisable property is any free property held by the defendant, and any free property held by the recipient of a tainted gift. See also sections 227 to 229.

<sup>21</sup> Sections 195C(3) and 289(6)

<sup>22</sup> Section 289(7)

<sup>23</sup> Section 195C(4)

23. In cases where the appropriate officer needs to have “reasonable grounds for suspecting”, they should liaise with senior officers and prosecutors (where appropriate), and should take into account all relevant issues such as:
- the likely or actual criminal charge(s);
  - the likely defence of the person;
  - any evidence already obtained or filed;
  - the likelihood of obtaining a confiscation order or a recalculation of the amount specified in an existing order;
  - an estimate of the person’s benefit from their criminal conduct (and should not seize property whose value exceeds that amount).
24. The appropriate officer will need to assess the risk of dissipation of property 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 care should be taken with low level offenders and potentially low value proceeds from the likely criminal charge(s).

## Search

25. The powers of search supporting the power to seize property are as follows:
- premises<sup>24</sup> – under section 195D, if the appropriate officer is lawfully on premises (which includes a vehicle located on those premises) the officer may carry out a search of the premises if they have reasonable grounds for suspecting that property may be found there, which the appropriate officer intends to seize under section 195C. The provision does not give an officer a power of entry.
  - persons – under section 195E, the appropriate officer may carry out a search of a person (not an intimate search or strip search),<sup>25</sup> if the appropriate officer has reasonable grounds for suspecting that the person is carrying property that may be seized under section 195C.
  - vehicles – under section 195F, the appropriate officer may carry out a search of a vehicle (which does not fall within the power in section 195D) if the officer has reasonable grounds for suspecting that the vehicle contains property which may be seized under section 195C, 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. This provision does not give the appropriate officer a power of entry; rather the appropriate officer can require the person who it appears to the officer to be in control of the vehicle to permit entry to and a search of the vehicle. This power only applies where the vehicle is in a place to which the public has access, or is within the environs of a dwelling, and the appropriate 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 instead (section 289(1)).
26. The powers are exercisable only so far as is reasonably required for the purposes of identifying property to be seized under section 195C. The appropriate officer will need to have in mind the right to respect for private and family life and the protection of property, in particular under the Human Rights Act 1998.

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<sup>24</sup> The definition of ‘premises’ is the same as in Article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

<sup>25</sup> See further paragraph 64 below.

### **Limitation on exercise of powers by officers of Revenue and Customs**

27. The powers to search for property to be seized under sections 195D to 195F, and the power of seizure under section 195C, are exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence<sup>26</sup> relates to an assigned matter within the meaning of the Customs and Excise Management Act 1979.<sup>27</sup> So far as the officer is exercising a function relating to an matter other than an excluded matter<sup>28</sup>. An “assigned matter” is any matter in relation to which the Commissioners or officers of Revenue and Customs) have a power or duty, except for any matter relating to a devolved tax within the meaning of the Scotland Act 1998,<sup>29</sup> and currently includes:

- income tax, capital gains tax and other indirect taxes;
- VAT, excise and other indirect taxes and duties;
- Child benefit and tax credits;
- Investigation of money laundering

However, this is not an exhaustive list of assigned matters.

### **Limitation on exercise of powers by immigration officers**

28. The powers to search for property to be seized under sections 195D to 195F, and the power of seizure under section 195C, are exercisable by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence either:

- 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
- 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
- any instrument made under any of those Acts.<sup>30</sup>

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<sup>26</sup> Defined in in section 195C(7).

<sup>27</sup> Section 195C(6A)

<sup>28</sup> 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

<sup>29</sup> See section 1(1) of the Customs and Excise Management Act 1979.

<sup>30</sup> Section 195C(6B), 8(a) to (f).

## Reasonable grounds for suspicion

29. All appropriate officers should recognise that searches are more likely to be effective, legitimate and secure public confidence when their reasonable grounds for suspicion are based on a range of objective factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to officers and they are well informed about local crime patterns. Local senior officers have a duty to ensure that those under their command who exercise search powers have access to such information, and the officers exercising the powers have a duty to acquaint themselves with that information.
30. 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, which are relevant to the likelihood that the object in question will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts and information and/or intelligence. The appropriate officer should take into account such factors as how the person(s), premises or vehicle were identified, previous intelligence regarding the person(s), vehicle(s) or premises, previous law enforcement involvement with the person(s), vehicle(s) or premises, and suspected links with criminal activities, whether in the UK or overseas. Appropriate officers should therefore be able to explain the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned.
31. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour. For example, a person's race, religion or age, could not be used alone or in combination with other personal factors as the reason for searching that person. Reasonable 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.
32. This means that unless an appropriate officer has information or intelligence which provides a description of a person suspected of carrying property, the following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for searching any individual, including any vehicle:
  - A person's physical appearance with regard, for example to any of the "relevant protected characteristics" set out in the Equality Act 2010, section 149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation;
  - The fact that the person is known to have a previous conviction; and
  - Generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity.
33. 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 seize and search for property

34. The powers to seize property under section 195C, or to conduct searches under sections 195D to 195F for property to be seized, may only be exercised with “appropriate approval” unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.<sup>31</sup> “Appropriate approval” means the prior approval of a lay magistrate or, if that is not practicable, that of a senior officer<sup>32</sup>.
35. 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 person or vehicle than the search of premises, but appropriate officers should assess each case on its merits. There should be no assumption that approval is impractical for all searches. Appropriate officers should carefully consider and record the reasons for any decision not to obtain such approval.
36. The lay magistrate determines whether the appropriate officer has established grounds for exercise of these powers (see paragraph 33), in relation to each power concerned. If, after obtaining prior approval and when it comes time to conduct the search or seizure, the grounds on which the appropriate officer obtained the prior approval would no longer apply, the appropriate officer may not exercise the powers.

## Seeking judicial approval

37. In order to obtain approval from a lay magistrate, an appropriate officer will need to make contact with the equivalent justice executive for a 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 usual reason to hold an application without notice and in private would be so as not to alert persons connected to the property that seizure is being contemplated. Being so alerted may have the effect of the person(s) moving the property and thereby frustrate the operation of the powers. However, if there is no concern that the property could be moved, the person connected to the property should normally be notified of the intention to make an application for prior approval. The appropriate officer will need to:
- identify themselves to the lay magistrate (giving their 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 Director;<sup>33</sup>
  - lodge their written application (having checked that the information on which the application relies is accurate, complete, recent and not provided maliciously or irresponsibly);
  - explain to the lay magistrate the reasonable grounds for suspicion for exercising the powers;
  - identify the person(s), premises or vehicle(s) to be searched, or the property to be seized; and
  - answer any relevant questions that the lay magistrate may have.

<sup>31</sup> Sections 195C(6)(a), 195D(2), 195E(4) and 195F(6).

<sup>32</sup> See section 195G: “senior officer” is defined in subsection (3) of that section.

<sup>33</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

### **Seeking senior officer approval**

38. If it is not practicable to seek prior judicial approval, appropriate approval may be given by a “senior officer”. A “senior officer” is:
- in relation to 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;
  - in relation to an immigration officer, an immigration officer of a rank designated by the Secretary of State as equivalent to a police officer of at least the rank of inspector;
  - in relation to a NCA officer, the Director General of the NCA, or any other NCA officer authorised by the Director General (whether generally or specifically) for this purpose.
39. The appropriate officer should explain to the senior officer the reasonable grounds for suspicion. 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. The written approval should set out why it was necessary to seek and then give an oral approval in the first instance.

### **Issues of approval**

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

### **Refusal of prior approval**

41. If an application for prior approval is refused (either by a lay magistrate or a senior officer) the appropriate officer should not undertake a search or seizure, or make a fresh application to do so, unless there are new reasonable grounds for suspicion. The appropriate officer, on any new application, should inform the lay magistrate or the senior officer of the prior refusal and the reasons for that refusal. They should also detail any prior approval that did not lead to a search and/or seizure.

### **Prior approval impracticable**

42. If prior approval by a senior officer is impracticable, the appropriate officer can proceed without approval<sup>34</sup>. 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 or seizure is conducted without any prior approval from a senior officer, the appropriate officer should explain to a senior officer the reasons for the search or seizure and for not obtaining prior approval as soon as that is reasonably practicable and, in any event, no later than 24 hours following

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<sup>34</sup> Sections 195C(6)(a), 195D(2), 195E(4) and 195F(6).



the exercise of the power. The senior officer should make a written record of those reasons.

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

### **Reports to the “appointed person”**

44. If a search or seizure under sections 195C, 195D, 195E or 195F is conducted without prior judicial approval (irrespective of whether senior officer approval has been obtained) – the appropriate officer must prepare a written report in the following circumstances:
- a search is undertaken and no property is seized; or
  - property is seized, but the property is detained for no more than 48 hours.
45. The written report must detail why it was not practicable to obtain prior judicial approval and the circumstances which led the appropriate officer to believe that the powers were exercisable. These factors could include:
- Why the appropriate officer was lawfully 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.
46. 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.
47. A report is required in relation to each exercise of the powers. In some cases, multiple searches from one investigation are carried out simultaneously in different locations, or multiple persons are searched at the same time, or a single search may be carried out by several officers. For the purposes of reporting to the “appointed person” in such cases, officers should consider whether a single report or multiple reports is the most appropriate way of making the report to the “appointed person”. The information should be presented in the way which is most helpful to the “appointed person”, but which is transparent about the facts pertaining to the case, and the decision making process. Where appropriate, cross-references to linked reports or relevant information appearing elsewhere in the report should be highlighted to bring it to the attention of the “appointed person”.
48. For simultaneous searches at multiple locations, the justification for searching each location without prior judicial approval should be considered in relation to each location separately. For simultaneous searches of multiple persons, the justification for searching each person without prior judicial approval should be considered separately. However, there may be an overarching justification underlying the decision to conduct the searches, for example, to prevent the destruction of evidence at other locations owned by the same person; or in the case of a group of persons suspected of a common enterprise. In such cases, one report might be more

appropriate. However, the justification for searching each location or each person without prior judicial approval should be set out separately. If there is no thread of common justification relating to the searches, separate reports would be more appropriate.

49. Where a single search is carried out by several officers, a single report to the “appointed person” would be appropriate. Such a situation may arise as the result of a decision by one officer that prior judicial approval is not practicable, and other officers are asked to assist because of the size of the search. In such cases the officer who took the decision to proceed should make the report. It is less likely that several different officers working on an investigation will have come to separate independent decisions about carrying out a search, but if that were the case, then each officer should make their own report. If there were separate justifications, because of different strands of investigation carried out by different officers, then those justifications should be set out separately in the report or reports.
50. The written report should be submitted to the “appointed person” in Northern Ireland (the person appointed by the Department of Justice). Written reports should be sent to:
- The Appointed Person for Northern Ireland  
c/o Department of Justice  
Organised Crime Branch  
Block B Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SG
51. The written report should be submitted as soon as is reasonably practicable and, in any event, no later than 14 days following the exercise of the power. Following submission of the written report, the appropriate officer should also submit an supplementary information which the “appointed person” reasonably requires the appropriate officer to submit, within 14 days of the request for the supplementary information. The appropriate officer should co-operate, facilitate and assist the “appointed person”, wherever possible, so that the “appointed person” can effectively discharge their role and responsibilities.
52. 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 195E**

53. Where the power to search a person under section 195E is exercised, the appropriate officer may, so far as the appropriate 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.



54. A refusal to permit a search may in some instances constitute an offence (including but not limited to) of wilful obstruction of an appropriate officer in the execution of a duty or exercise of a power.<sup>35</sup> 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.
55. The appropriate 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.

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

56. If the appropriate officer has reasonable grounds for suspecting that a person is carrying property that may be seized under section 195C, the appropriate officer should take the following steps:
- the appropriate 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<sup>36</sup>;
  - the person should be given the name and location of the office or station to which the appropriate officer is attached;
  - the person should be informed about which of the seven pre-conditions the appropriate officer relies on to exercise their powers (see paragraph 19 above);
  - the person should be informed that there are reasonable grounds for suspecting that they are carrying property which may be seized;
  - the person should be given a clear explanation of the grounds for the reasonable suspicion for suspecting that they are carrying property which may be seized;
  - the person should be informed that they can be searched under section 195E of POCA for the purposes of seizing property which belongs to the person under investigation and (where applicable) that failure to comply may amount to a criminal offence;
  - the appropriate officer should give or show the person any document authorising the search (if applicable);
  - the appropriate officer should ask the person to confirm or deny whether they have property belonging to the person under investigation on their person;
  - the appropriate officer should allow the person the opportunity to produce and hand over the property; the person should be informed of their entitlement to a copy of the record of the search.
57. These steps do not necessarily have to be followed in the order presented. The appropriate 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.
58. Appropriate officers not in uniform should show their warrant cards or other suitable form of identification.

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<sup>35</sup> See section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of Revenue and Customs)).

<sup>36</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

59. If the person to be searched does not appear to understand what is being said or the appropriate 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 appropriate officer should take reasonable steps to ensure that the person understands. Where desirable and practicable someone who can act as an interpreter should be identified, but if no such person can be identified, the search may not proceed if the officer cannot determine whether the person understands. In all cases, the appropriate officer should record any difficulties encountered and the reasons for proceeding with any search or abandoning one.

### **Conduct of searches – persons**

60. The power to search a person should be used fairly, courteously, responsibly, respectfully and without discrimination for the person concerned. Every reasonable effort should be made to minimise the embarrassment that a person being searched may experience. The person should be searched by a person of the same sex unless the contrary has been specifically agreed by the person to be searched. This agreement should be obtained in writing. The co-operation of the person to be searched should be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate. If the appropriate officer believes they will be in danger undertaking the search, they should take appropriate precautions.
61. An appropriate officer who has reasonable grounds for suspicion may detain the person for so long as is necessary to carry out the search<sup>37</sup>. Before carrying out the search the appropriate 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; the suspicion should exist prior to the questioning.
62. If, as a result of questioning before a search or other circumstances come to the attention of the appropriate officer, there ceases to be reasonable grounds for suspecting that the person is carrying property that may be seized under section 195C, 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.
63. 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 "appropriate officer" may search the person, even though the grounds did not exist when the encounter began. If an appropriate officer detains someone for the purpose of a search, they should inform the person as soon as the detention begins.
64. 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 aspect of the code may not apply.

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<sup>37</sup> Section 195E(3).

65. 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 appropriate officer 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).
66. The search power under section 195E does not extend to requiring a person to undergo an intimate search or a strip search<sup>38</sup>. 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<sup>39</sup>.
67. 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 which is next to the skin (for example a money belt, the appropriate officer can only invite the person to remove it. If the person refuses there is no power to force the person to remove it.
68. A person should 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 should be restricted to a superficial examination of outer garments. This does not, however, prevent an appropriate 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. Subject to the restrictions on the removal of headgear, a person's hair may also be searched in public. Particular sensitivity should be exercised where the person being searched is wearing items of clothing which the person says, or the appropriate officer believes, are of religious significance.
69. If, on reasonable grounds, it is considered necessary to conduct a more thorough search, this should be undertaken out of the view of the public. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear may only be conducted by an appropriate officer of the same sex as the person searched. The search may not be made in the presence of anyone of the opposite sex unless the person being searched specifically agrees. This agreement should be obtained in writing.
70. If the appropriate officer discovers an item reasonably suspected of being or containing property to be seized, 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 outside the scope of this code that requires a caution.

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<sup>38</sup> Section 195E(5).

<sup>39</sup> See section 164(5) of the Customs and Excise Management Act 1979.

## Recording requirements – searches of a person

71. An appropriate officer should make a written record of the search, unless there are exceptional circumstances that could make this impracticable. If such a written record is not made at the time then the appropriate officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the 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 appropriate officer should make every reasonable effort to do so and, if necessary, complete a partial record.
72. For the purposes of completing the search record, the appropriate officer should ask for the name, address and date of birth of the person searched, but there is no requirement to record the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched. The person is under no obligation to provide this information and they should not be asked to provide it for the purpose of completing the record.
73. 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 lay magistrate 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 property, no further action);
  - a list/description of seized property (if any) preferably signed by the person;
  - any explanation given by the person as to the ownership, origins, purpose and destination of any property 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<sup>40</sup> of the NCA and members of staff of a relevant Director; and
  - any other relevant information.

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<sup>40</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

74. 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 property that may be seized by reference to the person's behaviour and/or other circumstances. If a person is detained with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.
75. A copy of any written record made at the time should be given immediately to the person who has been searched unless it is impracticable to do so or would jeopardise a wider ongoing operation or investigation. If a record is not made at the time, the person should be told of the reasons and also how they can apply for a copy of the record once it is made. The appropriate officer should ask for the name, address and date of birth of the person searched, but there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.
76. When an appropriate officer makes a record of the search electronically and is unable to produce a copy of the form at the time of the search, the appropriate officer should explain how the person can obtain a full copy of the record of the 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 search, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director<sup>41</sup>; and
  - the power used to detain and/or search them.
77. In the case of searches undertaken by appropriate 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.
78. 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.

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<sup>41</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

## **Search of private premises (including vehicles located on those premises) – section 195D**

### **General**

79. No right of entry is conferred by section 195D. To search private premises for property to be seized, an appropriate officer should already have lawful authority to be on the premises (for example, when an officer of Revenue and Customs is exercising such powers under CEMA) and, unless it was not practicable to obtain it, have prior approval<sup>42</sup> to conduct the search. This could include a search of premises undertaken with the consent of a person entitled to grant entry to the premises. It could also include a search carried out where an appropriate officer has exercised a power of entry conferred by a search warrant or power of entry conferred under some other legislation.
80. A refusal to allow a search of premises may in some instances constitute an offence (including but not limited to) of wilful obstruction of an appropriate officer in the execution of a duty or exercise of a power<sup>43</sup>. This would be a criminal offence and is not an issue for, or subject to, this code. Appropriate officers should be aware of other legislation and codes applicable in these circumstances.
81. The term “premises” has the same meaning as in in Article 25 of the Police and Criminal Evidence (Northern Ireland) Order 1989. This includes any place and, in particular, would include any vehicle located on the premises, but note that there is a separate power under section 195F providing a power to search vehicles when the vehicle is not situated on private premises. See paragraph 101 onwards for further detail regarding the separate power to search vehicles under section 195F.
82. If the appropriate officer proposes to search premises with the consent of a person who is entitled to grant entry to the premises, the consent should be secured in writing before the search takes place. It is for the appropriate officer to make any necessary enquiries in order to be satisfied that the person is in a position to give consent. The appropriate officer should record their enquiries, together with any responses, in writing.
83. Before seeking consent the appropriate officer in charge of the search should explain to the person the purpose of the proposed search and its extent. This information should be as specific as possible. The person concerned should be clearly informed and should clearly understand that they are not obliged to give consent and that any consent given can be withdrawn at any time, including before the search starts or while it is underway. The appropriate officer should record what information they provided to the person, together with any responses, in writing.
84. Before undertaking a search the appropriate officer should make reasonable enquiries to:
- establish if anything is known about the likely owner(s) or occupier(s) of the premises or someone else entitled to grant entry and the nature of the premises themselves;
  - establish if the premises have been searched previously and when this occurred;
  - obtain any other relevant information.

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<sup>42</sup> Sections 195D(2) and 195G

<sup>43</sup> See section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of Revenue and Customs)



85. An appropriate 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 appropriate officer should record this in writing.

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

86. If the appropriate officer has reasonable grounds for suspecting that premises may contain property that may be seized under section 195C, the appropriate officer should take the following steps:
- the appropriate 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<sup>44</sup>;
  - the person should be given the name and location of the office or station to which the appropriate officer is attached;
  - the person should be informed that there are reasonable grounds for suspecting that property that may be seized is located on the premises;
  - the person should be given a clear explanation of the grounds for reasonable suspicion;
  - the person should be informed about which of the seven pre-conditions to the power of seizure the officer is relying on in relation to the exercise of the power to search (paragraph 19);
  - the person should be informed that the premises can be searched under section 195D for the purposes of seizing property which belongs to the defendant (or person under investigation if criminal proceedings have yet been commenced) and (where applicable) that failure to agree to the search may amount to a criminal offence;
  - the appropriate officer should give or show the person any document authorising the search (if applicable);
  - the appropriate officer should ask the person to confirm or deny whether there is property which belongs to the defendant or person under investigation located on the premises; and
  - the appropriate officer should allow the person the opportunity to produce and hand over the relevant property;
  - the person should be informed of their entitlement to a copy of a record of the search.
87. The appropriate officer should ideally provide this information 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.

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<sup>44</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

88. These steps do not necessarily have to be followed in the order presented. The appropriate officer will have flexibility depending on the circumstances of an individual case, but all of the steps should be undertaken prior to the search of the premises.
89. Appropriate officers not in uniform should show their warrant cards or other suitable form of identification.
90. If the person does not appear to understand what is being said or the appropriate officer has doubts as to the person's ability to speak and/or understand English or that the person is deaf or has difficulty with hearing or speaking, the appropriate officer should take reasonable steps to ensure that the person understands. Where desirable and practicable someone who can act as an interpreter should be identified, but if no such person can be identified, the search may not proceed if the appropriate officer cannot determine whether the person understands. In all cases, the appropriate officer should record any difficulties encountered and the reasons for proceeding with any search, or for abandoning one.

### **Conduct of searches – premises**

91. 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 appropriate officer should record their reasons for doing so in writing.
92. 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 to 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 property is liable to be seized.
93. Premises may be searched only to the extent necessary to achieve the object of the search, having regard to the size and nature of what is sought. A search may not continue once the object of the search has been found and no search may continue once the appropriate officer is satisfied that the relevant property that may be seized is not on the premises. This does not prevent a further search, with appropriate prior approval if practicable, if new information comes to light justifying such a search.
94. 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.
95. 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 should be allowed to witness the search unless the appropriate officer has reasonable grounds for believing that the presence of the person asked for would significantly hinder the search, any connected investigation or endanger other officers or people. A record of the action taken, including the grounds for refusing a request, should be made on the premises search record. This requirement also relates to business and commercial premises if practicable, as well as private



addresses.

## **Leaving the premises**

96. The appropriate person should, before leaving the premises, be satisfied that they are secure either by arranging for the owner or occupier or person entitled to grant access or their agent to be present or by any other appropriate means.

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

97. An appropriate officer should make a written record of the search at the time, unless there are exceptional circumstances that could make this impracticable. If such a written record is not made at the time then the appropriate officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the written record. There may be situations where it is not practicable to obtain all the information necessary to complete a written record, but the appropriate officer should make every reasonable effort to do so and, if necessary, complete a partial record.
98. 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 on the premises);<sup>45</sup>
  - the date, time and duration of the search;
  - the grounds for conducting the search;
  - the prior approval of the lay magistrate 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);
  - 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 property, no further action );
  - confirmation that the premises were left secure and by what means;
  - any explanation given by the person as to the ownership, origins, purpose and destination of any property found;
  - a list/description of seized property (if any) preferably signed by the person;
  - 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<sup>46</sup> staff of a relevant Director; and

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<sup>45</sup> This relates to vehicles which are located on premises which are searched under the power to search premises under section 195D, and not the separate power to search vehicles under section 195F.

<sup>46</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

- any other relevant information.
99. When an appropriate officer makes a record of the search electronically and is unable to produce a copy of the form at the time of the search, the appropriate officer should explain how the person can obtain a full copy of the record of the 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 appropriate officer who carried out the search (subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;<sup>47</sup> and
  - the power used to search the premises.
100. 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 grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.
101. In the case of searches undertaken by other appropriate 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.
102. 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 195F (where section 195D does not apply)**

### **General**

103. An appropriate officer has no power to forcibly enter a vehicle. Where a vehicle is not on private premises which an appropriate officer has lawful authority to be present on (for example it is on the street) and so section 195D does not apply, but an appropriate officer has reasonable grounds for suspecting that the vehicle contains property that may be seized under section 195C, and it appears to the appropriate 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.
104. This search power is only exercisable where the vehicle is in a place to which the public has access, or is within the environs of a dwelling, and the appropriate 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 under section 195D is relevant instead.

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<sup>47</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

105. A refusal to permit entry to the vehicle may in some instances constitute an offence (including but not limited to) wilful obstruction of an appropriate officer in the execution of a duty or exercise of a power<sup>48</sup>. This would be a criminal offence and is not an issue for, or subject to, this code. Appropriate officers should be aware of other legislation and codes applicable in these circumstances.

### **Steps prior to search of vehicles**

106. If the appropriate officer has reasonable grounds for suspecting that the vehicle contains property that may be seized under section 195C, the appropriate officer should take the following steps:

- the appropriate 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;<sup>49</sup>
- the person should be given the name and location of the office or station to which the appropriate officer is attached;
- the person should be informed that there are reasonable grounds for suspecting that the vehicle contains property that may be seized;
- the person should be informed about which of the seven pre-conditions the officer relies on to exercise their powers (paragraph 19);
- the person should be given a clear explanation of the grounds for the reasonable suspicion that the vehicle contains property that may be seized;
- the person should be informed that the vehicle can be searched under section 195F for the purposes of seizing property which belongs to the defendant (or person under investigation) and (where applicable) that failure to comply could amount to a criminal offence;
- the appropriate officer should give or show the person any document authorising the search (if applicable);
- the appropriate officer should ask the person to confirm or deny whether there is property which belongs to the defendant (or person under investigation) in the vehicle; and
- the appropriate officer should allow the person the opportunity to produce and hand over the property;
- the appropriate officer should inform the person in control of the vehicle of their entitlement to a copy of the record of the search.

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

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

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<sup>48</sup> See section 31 of the Commissioners for Revenue and Customs Act 2005 (in relation to officers of Revenue and Customs).

<sup>49</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

109. If the person does not appear to understand what is being said, or the appropriate officer has doubts as to the person's ability to speak and/or understand English or that the person is deaf or has difficulty with hearing or speaking, the appropriate officer should take reasonable steps to ensure that the person understands.
110. 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 appropriate officer should record any difficulties encountered and the reasons for proceeding with any search or abandoning one.

### **Conduct of searches – vehicles**

111. Vehicles may be searched only to the extent necessary to achieve the object of the search, bearing in mind the size and the nature of the property sought. A search may not continue once the object of the search has been found and no search may continue once the appropriate officer is satisfied that the property sought is not in the vehicle. This does not prevent a further search with prior approval if practicable if new information comes to light justifying such a search.
112. Searches should be conducted with due consideration for the vehicle and the person in control of it. Searches should be conducted with no more disturbance than is necessary. The appropriate officer should, before leaving the vehicle, be satisfied that it is secure by arranging for the person in control of the vehicle to be present or by any other appropriate means.

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

113. An appropriate officer should make a written record of the search, at the time of the search, unless there are exceptional circumstances that could make this impracticable. If a such written record is not made at the time then the appropriate officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the 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 appropriate officer should make every reasonable effort to do so and, if necessary, complete a partial record.
114. 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 registration number of the vehicle;
  - the date, time and duration of the search;
  - the name of the appropriate 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<sup>50</sup>;
  - the grounds for conducting the search;
  - the prior approval of the lay magistrate or senior officer. If a search is conducted without prior judicial approval, the reason for not obtaining such approval;

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<sup>50</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

- 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 person(s) 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(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 property seized;
- confirmation that the vehicle was left secured and by what means;
- any other relevant information.

115. When an appropriate officer makes a record of the search electronically and is unable to produce a copy of the form at the time of the search, the appropriate officer should explain how the person can obtain a full copy of the record of the 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 appropriate officer who carried out the search (subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director<sup>51</sup>; and
- the power used to search the vehicle.

116. 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 written 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 grounds for suspicion being eliminated as a result of speaking to any person, a written record should still be made.

117. In the case of searches undertaken by other appropriate officers the record of the search shall 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.

118. 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.

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<sup>51</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

## Seizure and detention of property – sections 195J to 195P

### Seizure

119. An appropriate officer may seize realisable property under section 195C if the appropriate officer has reasonable grounds for suspecting that the property which belongs to a defendant (or person under investigation if criminal proceedings have not yet been started) may otherwise be made unavailable for satisfying any confiscation order that has been made or may be made against that person, or that the value of the property may otherwise be diminished as a result of the conduct by any person. An appropriate officer may, therefore, decide that it is not appropriate to seize property because of an explanation from any person which removes the reasonable grounds for suspicion.
120. 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 appropriate officer should take into account such factors as how any person, premises or vehicle from whom or which property was seized were identified, previous intelligence on those 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.
121. Reasonable suspicion could 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 another personal factor 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.
122. 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.
123. The following information should always be included in the seizure record even if any person present at the seizure does not wish to provide any personal details:
- the location of the seizure;
  - the date and time of the seizure;
  - the name of the appropriate officer and the names of any other persons involved in the seizure, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director<sup>52</sup>;
  - the grounds for conducting the seizure;
  - the prior approval of the lay magistrate or senior officer. If a seizure is conducted without prior judicial approval, the reason for not obtaining such approval;
  - the names and details of any witnesses;
  - a list/description of seized property;

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<sup>52</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.



- any explanation given by person(s) present at the seizure as to the ownership, origins, purpose and destination of any property seized;
- any other relevant information.

124. When an appropriate officer makes a record of the seizure electronically and is unable to produce a copy of the form at the time of the seizure, the appropriate officer should explain how any person present at the seizure with an interest in the property can obtain a full copy of the record of the seizure 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 appropriate officer who carried out the search (subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director<sup>53</sup>; and
- a reference to section 195C of POCA.

## Detention

125. Any property seized in accordance with section 195C (the power to seize the material/property) may be retained only for so long as there is a legal basis for detention, whether under POCA or any other legislation. In relation to legal basis for detention dealt with by this code, under section 195J property can initially be detained for 48 hours<sup>54</sup>. Property can then only continue to be detained if:

- pending the making of a restraint order (section 195K) – if there is no existing restraint order in relation to the property, and an application for a restraint order is made during the 48 hour initial detention period<sup>55</sup>, which includes provision under section 41A authorising detention of the property (or there is an outstanding related appeal following refusal of such an application);
- pending the variation of a restraint order (section 195L) – if there is an existing restraint order in relation to the property, but it does not include provision under section 190A authorising detention of the property, and an application is made during the 48 hour initial detention period<sup>56</sup> to vary the existing restraint order to include provision under section 190A authorising the detention of the property (or there is an outstanding related appeal following refusal of such an application); or
- if an application is made to a magistrates' court to authorise further detention of the property under section 195M – if there is no existing restraint order in relation to the property, and no application for a restraint order making provision under section 190A authorising detention of the property, a magistrates' court may extend the period of 48 hours under section 195J. An order under section 195M can be discharged or varied<sup>57</sup>. If an application for an order under section 195M is refused, an appeal can be made to the Crown Court<sup>58</sup>, and property may be detained pending such an appeal<sup>59</sup>.

<sup>53</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A) in relation to Northern Ireland it means the Director of the Serious Fraud Office.

<sup>54</sup> The period of 48 hours is to be calculated in accordance with section 47H(7), i.e. it does not include a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland, which is either expressly used or by royal proclamation.

<sup>55</sup> Or that period as extended under section 195M.

<sup>56</sup> Or that period as extended under section 195M.

<sup>57</sup> Section 195N.

<sup>58</sup> Section 195O

<sup>59</sup> Section 195P

126. In all other cases the property should be released unless there is another power authorising its detention.
127. The logistics of securing property will vary according to the circumstances in each case, for example this may involve the placing of property in sealed bags or containers and restricting 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).
128. An appropriate officer should take reasonable steps to release any detained property if it is decided that the property no longer meets the test of being property that should be seized under section 195C.
129. An appropriate officer should consider the proportionality of detention. 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 detain the property rather than seek a consent order for its sale or to take steps to release it. Conversely, this also includes calculating the value of the property against the likely amount to be found under any confiscation order – steps should be taken to release property should it exceed the probable value of such a future order.
130. In addition to the appropriate officer's continuing consideration of detention, a senior officer should undertake a formal review every three months of the continued detention. The senior officer should be satisfied that the provisions in section 195C are still met in relation to the property. The senior officer should make a written record of the formal review.
131. 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 completed within a reasonable time of any request and at the person's expense, unless the appropriate officer in charge of an investigation has reasonable grounds for believing this would prejudice the investigation of any offence or criminal proceedings.
132. A written record of the grounds for granting or denying access should be made.

### **Continued detention under section 190A**

133. If property which is subject to a restraint order has already been seized under a relevant seizure power (but not section 195C) or has been produced to an appropriate officer in compliance with a production order, it can continue to be detained under the terms of the restraint order. A relevant seizure power is defined at paragraph 11 of this code and includes powers under POCA and PACE. The appropriate officer should notify the defendant of the continued detention of the property and include –
- A list of the property to be retained,
  - the power to retain the seized property under the restraint order and the terms of section 190A,
  - the identity of the appropriate officer retaining the property, and
  - any other relevant information (if any).



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