



Home Office

# **Code of Practice issued under the Proceeds of Crime Act 2002**

## **Investigations (England and Wales)**

June 2015

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Act 2002**

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**OGL**

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# Code of Practice Issued Under Section 377 of the Proceeds of Crime Act 2002 (England and Wales)

## Abbreviations used in this code

AFI	Accredited Financial Investigator
HMRC	Her Majesty's Revenue and Customs
NCA	National Crime Agency
POCA	Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 (POCA) has been amended since it was made. In relation to the statutory provisions referred to in this code, the following legislation which has amended Part 8 of POCA is of particular relevance:

- the Serious Crime Act 2007;
- the Coroners and Justice Act 2009;
- the Crime and Courts Act 2013;
- the Finance Act 2013; and
- the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.<sup>1</sup>

## Introduction

1. The purpose of this code is to guide law enforcement officers in the exercise of their functions when conducting investigations under Part 8 of POCA. The code 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, references to statutory provisions are to provisions of POCA, unless otherwise stated.
3. This code of practice is made by the Secretary of State under section 377, and applies to all actions undertaken in England and Wales by the persons listed in paragraph 5 as part of an investigation under Part 8 of POCA on or after 1st June 2015, notwithstanding that the investigation may have begun before that time. This code replaces the revised code of practice entitled "Code of Practice issued under section 377 of the Proceeds of Crime Act 2002" laid before Parliament on 18th February 2008 in relation to England & Wales, however the previous version of the code remains in force in relation to Northern Ireland.
4. The code applies to the following investigations conducted under Part 8 of POCA:
  - (a) confiscation investigations;<sup>2</sup>

<sup>1</sup> SI 2010/976.

<sup>2</sup> Section 341(1).

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- (b) civil recovery investigations;<sup>3</sup>
  - (c) detained cash investigations;<sup>4</sup>
  - (d) money laundering investigations;<sup>5</sup> and
  - (e) exploitation proceeds investigations.<sup>6</sup>
5. The code applies to the following persons exercising functions in relation to the investigations listed in the previous paragraph:
- (a) the Director General of the National Crime Agency;
  - (b) National Crime Agency officers;
  - (c) accredited financial investigators;
  - (d) constables;
  - (e) officers of Revenue and Customs; and
  - (f) immigration officers<sup>7</sup>.
6. However, in relation to the powers conferred on an officer of Revenue and Customs which are exercisable in connection with:
- (a) a production order made or to be made in relation to a confiscation investigation or a money laundering investigation;
  - (b) a search and seizure warrant issued or to be issued in relation to a confiscation investigation or a money laundering investigation;
  - (c) a customer information order, and
  - (d) an account monitoring order,
- the powers are exercisable by the officer only so far as the officer is exercising a function relating to a matter other than an excluded matter.<sup>8</sup>
7. The powers of investigation dealt with by this code are the powers relating to:
- (a) production orders;
  - (b) search and seizure warrants;
  - (c) disclosure orders;
  - (d) customer information orders; and
  - (e) account monitoring orders.
8. There is a separate code of practice in respect of the exercise in England and Wales of investigation powers conferred on prosecutors under Part 8 of POCA issued by the Attorney General. There is also a separate code in relation to investigations in Scotland under Chapter 3 of Part 8 of POCA made by Scottish Ministers (see section 410). There are special powers for the NCA in Part 6 of POCA relating to investigations where tax is suspected of arising or accruing as a result of a person's or a company's criminal conduct, and this code does not apply to the exercise of these powers.

<sup>3</sup> Section 341(2) and (3) and 341A.

<sup>4</sup> Section 341(3A).

<sup>5</sup> Section 341(4).

<sup>6</sup> Section 341(5).

<sup>7</sup> Section 377(1).

<sup>8</sup> An excluded matter 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 to, the Commissioners for Revenue and Customs Act 2005: section 375C(3).



## Appropriate officers and appropriate persons

9. The “appropriate officer” in each case depends on the type of investigation, and are set out in section 378. The following are appropriate officers:

- (a) in relation to a confiscation investigation:
  - i. a National Crime Agency officer;
  - ii. an accredited financial investigator;
  - iii. a constable;
  - iv. an officer of Revenue and Customs; or
  - v. an immigration officer.
- (b) in relation to a civil recovery investigation:
  - i. a National Crime Agency officer;
  - ii. (or the relevant Director, but they are not covered by this code, rather they are covered by the code made under section 377A);
- (c) in relation to a detained cash investigation:
  - i. a constable;
  - ii. an accredited financial investigator;<sup>9</sup>
  - iii. an officer of Revenue and Customs; or
  - iv. an immigration officer;
- (d) in relation to a money laundering investigation:
  - i. an accredited financial investigator;
  - ii. a constable;
  - iii. an officer of Revenue and Customs; or
  - iv. an immigration officer; and
- (e) in relation to an exploitation proceeds investigation:
  - i. a National Crime Agency officer.

The powers of investigation may be applied for or executed by the persons specified in the legislation in relation to each power. Often this is the appropriate officer, but search and seizure warrants may be executed only by an “appropriate person”. An appropriate person is:<sup>10</sup>

- (a) for a warrant sought for the purposes of a civil recovery investigation:
  - i. a National Crime Agency officer; or
  - ii. a member of the staff of the Director of Public Prosecutions or the Director of the Serious Fraud Office;

<sup>9</sup> This is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State under section 453: section 378(3B).

<sup>10</sup> See sections 352(5) and (7) and 353(10 and (11).

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- (b) for a warrant sought for the purposes of a detained cash investigation, a confiscation investigation or a money laundering investigation:
    - i. a constable;
    - ii. an AFI;
    - iii. an officer of Revenue and Customs; or
    - iv. an immigration officer;
  - (c) for a warrant sought for the purposes of an exploitation proceeds investigation:
    - i. a National Crime Agency officer.
10. Where a person fails to comply with any provision of this code, they should 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's provisions in determining any question(s) in the proceedings.
11. The code should be available for reference by appropriate officers, appropriate persons and members of the public. It should be available in particular at police premises. Government departments and other bodies who have AFIs conducting investigations should also make arrangements for the code to be available, if practicable, at their public offices.
12. If an appropriate officer is also exercising an additional and separate function or power, for example, a search for cash under section 289, the appropriate officer must have regard to any connected code.
13. Appropriate officers must be aware of the legislation and the detail of the particular provisions which they operate under. They must seek legal advice and/or guidance where necessary in advance of using the powers.

## **General provisions relating to all orders and warrants**

### **Action to be taken before an application is made**

14. The right to respect for private and family life and the protection of property are safeguarded by the Human Rights Act 1998. Powers of investigation may involve significant interference with the privacy and property of those whose premises are searched; on whom personal information is obtained; or whose personal information, material or documents are seen and/or seized. The powers therefore need to be fully and clearly justified before they are used. In particular, those exercising the powers must consider at every stage whether the necessary objectives can be achieved by less intrusive means – this may be in approaching the potential respondent to ascertain whether they will provide the required information without the need for a court order or to give them prior notice that an application is to be made. The giving of prior notice of an application may mean that the respondent is ready to comply and allows them the opportunity to make representations about the detail of the order or notice due to the nature of the investigation or what they will be required to produce. In all cases, those exercising the powers must exercise them fairly, courteously, responsibly, respectfully and without discrimination.
15. With particular reference to search and seizure warrants, if there is reason to believe that the use of the powers covered by this code might have an adverse effect on

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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 (in the case of an application for a warrant) or appropriate person (in the case of execution of a warrant) would need to consider whether any consultation could jeopardise an ongoing wider operation or investigation. In such circumstances consultation may not be advisable, but it is best practice to consult. However any decision not to follow the code should be carefully considered and noted. The expectation is that the provisions of the code will apply to all searches carried out under this code.
  17. The appropriate officer or person should take special care and have particular regards to the possible difficulties of an individual in responding to an order made in connection with the investigation or a search and seizure warrant.
  18. A refusal to allow a search of 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.<sup>11</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.
  19. Applications for the purposes of confiscation investigations, detained cash investigations and money laundering investigations are made to a judge entitled to exercise the jurisdiction of the Crown Court. Applications for the purpose of civil recovery investigations or exploitation proceeds investigations are made to a judge of the High Court. Before a judge may grant any of orders or warrants sought, the statutory requirements particular to that order or warrant need to be met, and therefore before applying for an order or warrant, the appropriate officer or relevant authority needs to be satisfied that those requirements are fully met.
  20. Appropriate officers must be aware of the definition and scope of the different types of investigations under Part 8, and in this regard should have particular reference to sections 341 and 341A. They should also be aware of the limits to some of the individual powers in relation to the different investigations. It is of particular note that disclosure orders are not available in detained cash or money laundering investigations,<sup>12</sup> and only production orders and search and seizure warrants are available in detained cash investigations.
  21. 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 establishing suspicion. 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. Reasonable suspicion should normally be linked to accurate and current intelligence or information. It can sometimes exist without specific information or intelligence

<sup>11</sup> 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).

<sup>12</sup> Section 357(2).

and on the basis of some level of generalisation stemming from the behaviour of a person. However, reasonable suspicion could not be founded retrospectively.

22. In respect of each order or warrant, there is a requirement that there must be reasonable grounds for believing that the material or information is likely to be of substantial value (whether or not by itself) to the investigation.
23. There is also a requirement that there must be reasonable grounds for believing that it is in the public interest that the material or information is provided. For example, an account monitoring order against a bank should not normally be sought unless this may lead to the identification of monies greater than the anticipated cost to the bank in complying with the order.
24. POCA requires appropriate officers to obtain authorisation from a senior appropriate officer (see section 378) when making an application for (or the variation of) a customer information order (see section 369(7) of POCA).<sup>13</sup> However, appropriate officers should also, where practicable, obtain internal authorisation in respect of applications for the other orders and warrants. The appropriate officer should therefore obtain the authorisation of a senior appropriate officer (at least the rank of inspector in the police or police staff equivalent, or the equivalent rank of seniority within the department or agency for which the appropriate officer works).
25. A disclosure order in relation to a civil recovery or exploitation proceeds investigation can only be obtained in the High Court by an NCA officer in either case, or by the relevant Director in the case of a civil recovery investigation (the relevant Director being the Director of Public Prosecutions or the Director of the Serious Fraud Office). An NCA officer who seeks such an order should obtain authorisation from a senior appropriate officer that an application may be made. A disclosure order for the purposes of a confiscation investigation can only be obtained by a prosecutor in the Crown Court, but the prosecutor must be in receipt of a request to do so from an appropriate officer. An appropriate officer who seeks such an order should obtain authorisation from a senior appropriate officer that an application may be made<sup>14</sup>. Prosecutors are covered under a separate code issued under section 377A by the Attorney General, but the powers that arise from a disclosure order may be exercised by appropriate officers covered by this code.

### **Action to be taken in making an application**

26. All of the applications for the powers of investigation may be made to a judge in chambers without notice to the other parties. In deciding whether an application should be made without notice an obvious and common reason would be so as not to alert the individual(s) connected to an investigation that it is ongoing. On notice proceedings might enable the person to move material or information and thereby frustrate the investigation. However, where an order is directed at a financial institution (who would be the respondent), the institution should normally be notified of the intention to make an application for an investigation order – the application hearing could then be held in the presence of, or by giving notice to, the institution. Specific guidance on contacting the respondent to an order are further given at paragraph 59 for production orders and paragraph 139 for account monitoring orders.

<sup>13</sup> Unless they are themselves a senior appropriate officer.

<sup>14</sup> See section 357.

27. Appropriate officers must familiarise themselves with any mandatory requirements or alternative methods (e.g. electronic application method) under applicable rules of court. An application in respect of a civil recovery investigation or an exploitation proceeds investigation must be made to a judge of the High Court in accordance with the relevant civil procedure rules and Practice Direction(s).
28. Appropriate officers must familiarise themselves with the requirements in POCA, but the following should be included in an application for an order or warrant:
  - the name of the person who is under investigation or (if possible) who holds or owns the property which is under investigation, and confirmation that any information sought is for the purposes of the investigation. If the application is for an order against a different person or property to the main focus of the investigation, they should also be named or specified in the application and there should be an explanation of the connection to the investigation. In respect of applications for a disclosure order it may not be possible to name each potential recipient of a notice and so they should be named as far as practicable in the evidence in support of the application;
  - the grounds on which the application is made; and
  - confirmation that none of the material or information sought is subject to legal professional privilege or excluded material (with the exception that a lawyer may be required to provide the name and address of their client under a disclosure order). This does not apply to customer information orders and account monitoring orders as the type of information requested should not be that which would come within legal professional privilege or excluded material.
29. The information and evidence produced in support of an application must show that there are reasonable grounds for suspicion directly relating to the relevant matter under investigations. Officers should seek to limit the scope of what they request in an application to matters directly relevant to their investigation. Officers must be aware that their application and any information and evidence produced in its support will be subject to analytical scrutiny by the judge.
30. Where there is any sensitive information and there are concerns that disclosure would create a real risk of serious prejudice to an important public interest, legal advice should be sought about the need for disclosure of that information. There may be the possibility of a public interest immunity application to the court so that the sensitive information need not be disclosed. The appropriate officer should be in a position to deal with any questions the judge may have about the accuracy of the information provided or any other related matters.
31. The person applying should be in a position to satisfy the judge that they are an appropriate officer (see section 378 of POCA) who may apply for the order or warrant<sup>15</sup>.
32. Officers should seek reasons (if not given) from the judge for the reasons for their decision on an application whether it is approved or rejected.

<sup>15</sup> For example, this could be a warrant card or documentation confirming the status of an AFI.

## Action to be taken in serving an order or warrant

33. In all cases, the investigatory powers must be exercised fairly, courteously, responsibly, with respect for the persons and property of those concerned and without discrimination.
34. In deciding the method of service of the order, warrant or (in the case of a disclosure order or a customer information order) notice, the appropriate officer should take into account all the circumstances of the investigation, including the possible need to prove that service was effected, and the person or body on whom the order, notice or warrant needs to be served. Search and seizure warrants are executed by an “appropriate person”<sup>16</sup> who should also have regard to these matters when executing the warrant.
35. When serving the order, warrant or notice under the order, a covering letter should be provided which includes the following information (unless it is already included in the order, warrant or the notice):
  - the name of the person who is the subject of the order, warrant or notice or the name by which they are known;
  - a warning in plain language that failure without reasonable excuse to comply with the requirement may be an offence and could result in prosecution;
  - in the case of a disclosure order, a statement setting out the effect of section 359(1) and (3), and in the case of a customer information order, a statement setting out the effect of section 366(1) and (3); namely, that a warning be given in plain language that failure without reasonable excuse to comply with the requirement, or knowingly or recklessly providing a false or misleading statement for the purpose of purported compliance, may be an offence and could result in prosecution;
  - a statement that the warning given does not constitute a criminal caution, nor has the consequences of one;
  - a statement to the effect that disclosure of information about the investigation or falsifying, concealing, destroying or otherwise disposing of, or causing or permitting the falsification, concealment, destruction or disposal of documents which are relevant to the investigation may contravene section 342 (offences of prejudicing investigation);
  - a general description of the investigation in connection with which the requirement is made;
  - that the subject of the order, warrant or notice should seek legal advice or ask the appropriate officer about any doubts or concerns they may have, or for guidance on complying with the order, warrant or notice; and
  - the right to apply for a variation or discharge of the order, or notice (not applicable in search and seizure warrants).

The person should also be informed that if anyone contacts them about the investigation they should report this to the appropriate officer or the appropriate person.

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<sup>16</sup> Section 352(5).

36. When serving a notice under a disclosure order or a customer information order, the appropriate officer should inform the person of their right to refuse to comply with any requirement imposed on them unless the appropriate officer has, if required to do so, produced evidence of their authority to issue the notice.<sup>17</sup>
37. Where it appears to the appropriate officer or appropriate person that the recipient of an order, warrant or notice has difficulty in reading or understanding English, they should attempt to serve a copy of the order, warrant or notice on a person known to the recipient who, in the view of the appropriate officer or appropriate person, can explain or translate it. If that is not practicable the appropriate officer or appropriate person should serve the order, warrant or notice and attempt to ensure that the person understands what has occurred (for example by serving a multi-lingual explanation or engaging an interpreter or translator).
38. Sections 359(1) and 366(1) provide that it is an offence if, without reasonable excuse, a person or financial institution fails to comply with a requirement imposed by a disclosure order or customer information order respectively. Sections 359(3) and 366(3) provide that it is an offence to knowingly or recklessly make a false or misleading statement in purported compliance with a disclosure order or customer information order respectively. The other orders are treated as orders of the court against the named person and therefore attract contempt of court proceedings if they are not complied with.
39. Section 449 enables, in certain circumstances, NCA officers to use a pseudonym when doing anything for the purposes of POCA.
40. No document may be removed or accessed and no information sought which is subject to legal professional privilege (with the limited exception in respect of a disclosure order that a lawyer may be required to provide the name and address of a client of his). A person who is subject to the order may withhold material and information sought which is subject to legal professional privilege.<sup>18</sup>
41. None of the powers of investigation permit access to excluded material. Excluded material has the same definition as section 11 of the Police and Criminal Evidence Act 1984 (PACE) and includes journalistic material and medical records.<sup>19</sup>
42. Apart from legal professional privilege and excluded material, requirements for information to be made available under the powers of investigation take precedence over any other claims, and does so in spite of any restriction on the disclosure of information, however imposed.<sup>20</sup>

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

43. The appropriate officer sets the time limit for replies to the notices issued under disclosure orders and customer information orders. The time limits should be reasonable in the circumstances of the case. Where the subject of one of those orders asks for more time to comply, the appropriate officer should carefully consider the request. When the appropriate officer has made a decision, they should set this out and the reasons for the decision in a letter to the subject. The circumstances in which it would be suitable for appropriate officers to consider an extension will vary

<sup>17</sup> Sections 357(6) and 363(7).

<sup>18</sup> See sections 348(2), 354(2) and 361(1).

<sup>19</sup> Section 379.

<sup>20</sup> Sections 348(4), 361(6), 368 and 374.

from case to case but may include the need to obtain legal or other professional advice, difficulty in retrieving the requested information and/or documents and unavailability. The letter conveying the appropriate officer's decision should normally be served in the same manner as the original notice was served.

44. Where a solicitor acts on behalf of the subject of the order and makes the application for an extension of time, the letter must be served on the solicitor.
45. Time limits for compliance with a production order and an account monitoring order are expressly set out in the order – see sections 345(5) and 370(6) and (7). Therefore the subject of the order needs to apply to the court for a variation of the order. If the appropriate officer receives a request for an extension of the time limit to comply with a production order or an account monitoring order, they should direct the subject of the order to the court. An appropriate officer should request a reasonable time limit when making their application for a production order or an account monitoring order in the first place. The appropriate officer should liaise, where possible, with the subject of the order when seeking a time period for compliance in order to minimise applications to the court for extensions of time.

## **Record of Proceedings**

46. The appropriate officer or appropriate person should keep or cause to be kept a written record of the exercise of the powers conferred by the provisions of Chapter 2 of Part 8.
47. The written record should include:
  - a copy of the order or warrant and copies of notices given under an order;
  - a copy of the application for the order or warrant;
  - the date on which the order, warrant or notice was served together with any proof of service;
  - the date of receipt of, and reason for, any request for an extension of the time allowed to comply with the order or notice;
  - the decision in respect of any such request and the date on which it was notified to the subject of the order or notice or their solicitor;
  - the date and place that the information or documents were received in response to the order; and
  - a copy of any receipts provided in accordance with the provisions of this code.

## **Retention of documents and information**

48. If documents, material or information are provided which were not required to be provided under the terms of the order or notice, the document, material or information should not be taken into account for the purposes of the investigation and it should be returned to the person who provided it.
49. Appropriate officers and appropriate persons should follow established local procedures on the retention and return of documents, material and information. Intelligence that arises during the appropriate officer's investigation may be passed to the NCA, police, HMRC and/or other departments and agencies (provided there is a legal basis in place either in statute or common law for the passing of information between those bodies for that purpose).



## Production orders

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

### Definition

51. A production order is a court order which may be made and served on any person or institution, for example a financial institution, requiring the production of, or allowing access to, material within the time period specified in the order; this might include documents such as bank statements (section 345(4)).

### Persons who can apply for a production order

52. An application may be made by an appropriate officer; the definition of appropriate officer depends on the type of investigation (see section 378).

### Statutory requirements

53. An application for a production order must be made to a court and must state that:<sup>21</sup>
- a person specified in the application is subject to a confiscation investigation, a money laundering investigation, a civil recovery investigation or an exploitation proceeds investigation, or that property specified in the application is subject to a civil recovery investigation or a detained cash investigation;
  - the order is sought for the purposes of that investigation, and concerns material (or material of a description) specified in the application and that a person specified in the application appears to be in possession or control of the material.
  - in the case of a confiscation investigation, the reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;
  - in the case of a civil recovery investigation, the reasonable grounds for suspecting that the person specified in the application—
    - holds recoverable property or associated property,
    - has, at any time, held property that was recoverable property or associated property at the time; or
    - the property specified in the application as being subject to the investigation is recoverable property or associated property;
  - in the case of a detained cash investigation into the derivation of cash, the reasonable grounds for suspecting that the property specified in the application as being subject to the investigation, or a part of it, is recoverable property;
  - in the case of a detained cash investigation into the intended use of cash, the reasonable grounds for suspecting that the property specified in the application as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;
  - in the case of an exploitation proceeds investigation, the reasonable grounds for suspecting that for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc), exploitation proceeds have been obtained by the person specified in the application as being subject to the investigation, from a relevant

<sup>21</sup> See sections 345, 346.

offence by reason of any benefit derived by the person;

- in the case of a money laundering investigation, the reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
- the reasonable grounds for believing that the person specified in the application as appearing to be in possession or control of the material so specified is in possession or control of it;
- the reasonable grounds for believing:
  - that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
  - it is in the public interest for the material to be produced, having regard to the benefit likely to accrue to the investigation if the material is obtained, and the circumstances under which the person specified in the application as appearing to be in possession or control of the material holds it.

54. The person named in the order must then either produce the material, or provide access to it, within a period of time, as directed by the order. Section 345(5) provides a time period of seven days, unless in the particular circumstances the judge making the order considers it appropriate to set a different time period.

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

55. The appropriate officer should ascertain, as specifically as is possible in the circumstances, the nature of the material concerned and, where relevant, its location.
56. The appropriate officer should, in certain circumstances, also make enquiries to establish what, if anything, is known about the likely owner, occupier, or person in control of the premises where the material is believed to be located and the nature of the premises themselves; and to obtain any other information relevant to the application. This may not be necessary if the premises are professional bodies or financial institutions.
57. The appropriate officer must consider whether the application should seek production of the material or access to it. In most circumstances the appropriate officer would seek production, so the material can be retained. There are occasions however where the appropriate officer may simply want sight of information contained in larger material, for example an entry in a register.
58. The seven day time limit for the production of material applies unless the court sets a different time period. Reasons which the appropriate officer might advance to the judge for changing the seven day period are that:
- the investigation may be prejudiced unless there is a shorter time period;
  - it would not be reasonably practicable for the subject of the production order to comply with the seven day time period due to the nature or amount of documentation required.

There will be cases where it is appropriate to contact the subject of the production order (for example a financial institution) before the application is made to discuss a reasonable time period.

## Particular action to be taken executing a production order

59. When a production order is served on a person, business or institution seeking the production of material under section 345(4)(a), the covering letter should, in addition to the matters specified in paragraph 35 of the general section, state:
- that the order was made under section 345(4)(a) of POCA;
  - the material or class of material required to satisfy the production order; and
  - the period of time within which the material must be produced.
60. Where an order is made seeking access to material under section 345(4)(b), the covering letter should, in addition to the matters specified in paragraph 35 of the general section, state:
- that the order was made under section 345(4)(b) of POCA;
  - the material or class of material required to satisfy the production order; and
  - the appropriate officer's right of access to the material within the period stated in the order.
61. Section 350 concerns the service of a production order on a government department. Where a production order is served on a government department, it must be served as if the proceedings were other civil proceedings against the department. This means that appropriate officers should look at the list of government departments published by the Cabinet Office under section 17 of the Crown Proceedings Act 1947 in order to find the correct address for service. A list is at annex 2 of Practice Direction 66.<sup>22</sup> A production order served on a government department may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it. If the order does so require, then the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned, and any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned. If the order is not brought to the attention of the officer concerned within the period stated in the order, the person on whom it is served must report the reasons for the failure to a judge of the court which made the order.

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

62. A production order should be served on the person named in the order. If the order is made against a company or institution the appropriate officer should direct the order to a person in authority and with responsibility for the material.
63. An appropriate officer may take away the material covered by the production order, except where the production order is made under section 345(4)(b) of POCA and only allows access to, rather than removal of, the material.
64. An appropriate officer may photograph or copy, or have photographed or copied, the material that has been removed or accessed. If a copy of the material is sufficient, it should be copied on site and the original returned. If this is not practicable and the

<sup>22</sup> See link at [http://www.justice.gov.uk/courts/procedure-rules/civil/contents/form\\_section\\_images/practice\\_directions/pd66\\_pdf\\_eps/pd66-list-of-authorized-government-departments.PDF](http://www.justice.gov.uk/courts/procedure-rules/civil/contents/form_section_images/practice_directions/pd66_pdf_eps/pd66-list-of-authorized-government-departments.PDF)

order was for production rather than providing access, the material may be taken away, be copied and the original returned as soon as possible.

65. Where an appropriate officer requires material to be accessed or produced that is contained in a computer (for example a computer printout), it is to be made available in a visible and legible form in accordance with section 349. The appropriate officer should ensure that care is taken when the person produces the material so that the material on the computer is not, for example, deleted or corrupted.
66. In cases where an appropriate officer serves a production order in person they should complete, unless it is impracticable to do so, a list of the articles or documents removed or accessed and give a copy of it and (if appropriate, usually where an order to grant entry is made) a receipt to the owner or occupier and the subject of the order, if present, before leaving the premises. In any event, the appropriate officer should make, or have made, a record of the articles removed and/or accessed in compliance with a production order. A copy of any such record should be given to the subject of the order and the owner or occupier within seven days of the removal or access of the material.

### **Order to grant entry**

67. An appropriate officer should consider at the application stage whether a right to enter premises under section 347 is necessary in order to satisfy a production order to provide access to material on any premises. It might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order has been made in respect of material in a particular company's office in that building.
68. An order to grant entry differs from a search and seizure warrant in that the order to grant entry is to overcome any physical obstacle in serving the production order and having access to the material. It does not include the power to search the premises. It does not provide a power of entry.

## Search and seizure warrants

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

### Definition

70. A search and seizure warrant is a warrant authorising an appropriate person (and any other persons authorised by the warrant to accompany the appropriate person) to—
- (a) enter and search the premises specified in the application for the warrant, and
  - (b) seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

### Persons who can apply for a search and seizure warrant

71. An application may be made by an appropriate officer; the definition of appropriate officer depends on the type of investigation (see section 378). The person who is carrying out the investigation will normally make the application to the court. The search and seizure warrant must be executed by an appropriate person<sup>23</sup>. It may be the case that the same officer is both an “appropriate officer” and an “appropriate person” and so can undertake both roles.
72. As part of the application, the appropriate officer can request that the warrant authorise other persons to accompany the appropriate person when executing the warrant.<sup>24</sup>

### Statutory requirements

73. An application for a search and seizure warrant must be made to a court, by an appropriate officer (who is an appropriate officer depends on the type of investigation being conducted – see section 378). A search and seizure warrant may be granted under section 352 in the circumstances set out below. The warrant enables an appropriate person (and any other person authorised by the warrant accompanying the appropriate person) to enter and search the premises specified in the warrant, and to seize and retain material found there which is likely to be of substantial value to the investigation. A warrant may be granted if a production order has already been made and has not been complied with and there are reasonable grounds for believing that the required material is on the premises, or that the requirements of section 353 of POCA have been met (section 352(6)).
74. Section 353 refers to two sets of conditions for granting a search a seizure warrant in the absence of a production order.

<sup>23</sup> See section 352(5) and (7) as to who is an appropriate person (but where a production order is not available, see section 353(10) and (11)).

<sup>24</sup> See the order made under section 355 which applies with modifications, in relation to England and Wales, section 16 of the Police and Criminal Evidence Act 1984: the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (England and Wales) Order 2015.

## Code of Practice issued under the Proceeds of Crime Act 2002

- The first set of conditions is that there are reasonable grounds for believing the required material is likely to be of substantial value to the investigation and that it is in the public interest for the material to be obtained having regard to the likely benefit to the investigation, and it would not be appropriate to make a production order because either –
  - it is not practicable to communicate with –
    - the person against whom the production order could be made or
    - the person who could comply with an order to grant entry, or
  - the investigation might be seriously prejudiced unless immediate access to the material is secured.

The first set of conditions might be satisfied, for example, where the person who owns the material, or who controls access to the premises on which the material is held, is abroad and therefore it is not possible to communicate with that person;

- The second set of conditions is that there are reasonable grounds for believing that there is required material on the premises which falls within one of subsections (6), (7), (7A), (7B), (8) or (8A), and that there are reasonable grounds for believing that it is in the public interest for the material to be obtained having regard to the likely benefit to the investigation and either
  - it is not practicable to communicate with the person entitled to grant entry to the premises,
  - entry will not be granted without a warrant, or
  - the investigation might be seriously prejudiced unless immediate entry to the premises is secured.

The second set of conditions might be satisfied, for example, where it is not possible to describe the material (for the purposes of a production order) and access will not be gained without a warrant (e.g. to the residence of the suspect).

75. “Premises” has the same meaning as in section 23 of PACE<sup>25</sup> and includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation, any tent or moveable structure.
76. The search and seizure warrant does not include a power to stop a person, make an arrest or to search a person. This code does not apply to searches conducted under other legislation or any other provision of POCA, and does not apply to searches conducted with consent which are conducted in the absence of a search and seizure warrant.

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

77. The appropriate officer must at all times have in mind that a search and seizure warrant is the most invasive of the powers of investigation.
78. The appropriate officer must consider why a search and seizure warrant is needed rather than a production order with an order to grant entry.
79. The appropriate officer should ascertain as specifically as is possible in the circumstances the nature of the material to be specified in the application and its location.

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<sup>25</sup> See section 379.

80. The appropriate officer should also make reasonable enquiries to establish what, if anything, is known about the likely owner or occupier, or person in control, of the premises and the nature of the premises themselves; whether they have been previously searched and if so how recently; and obtain any other information relevant to the application.
81. The appropriate officer should consider whether any other persons are needed to accompany the appropriate person to execute the warrant (for example, computer experts if material on computers is to be accessed). If they are needed, those persons will need to be named in the application as persons to be authorised by the warrant to accompany the appropriate person at the time of execution of the warrant.

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

82. An application for a search and seizure warrant must state:
  - that a person specified in the application is subject to a confiscation investigation, an exploitation proceeds investigation, or a money laundering investigation; or that the property specified in the application is subject to a civil recovery investigation or a detained cash investigation;
  - the name (if any) and address of the premises to be searched and the object of the search;
  - the material which is sought, or that there are reasonable grounds for believing that there is material falling within section 353(6), (7), (7A), (7B), (8) or (8A) on the premises;
  - which of the requirements under section 352(6) apply to the application, whether a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or that section 353 is satisfied;
  - if relying upon satisfying section 353:
    - how subsection (2) of that section applies; and
    - which of the conditions in either subsection (3) or (5) apply to the application;
  - the name of the appropriate officer or the appropriate person, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director; and
  - the names of any persons which are requested to be able to accompany the appropriate person at the time of execution of the warrant, with the justification for those persons being so authorised by the warrant.

The application should also state that it has been authorised by a senior member of staff, where this is the case, although this is not a pre-requisite.

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

### **Particular action to be taken executing a search and seizure warrant**

84. If the appropriate officer who made the application is not the same person as the appropriate person authorised to execute the warrant, the appropriate officer should explain the background and decision to apply for the warrant to the appropriate

person. The appropriate person will then be in possession of relevant information which would help when executing the warrant.

85. A person who is not an appropriate person, must be authorised by the warrant to attend the execution of the warrant. Authorised persons may only attend execution of the warrant if they are accompanying the appropriate person.

### **Time limit for conducting searches**

86. Search and seizure:

- must be conducted within three calendar months of the warrant being granted for confiscation, money laundering or detained cash investigations;<sup>26</sup> or
- must be conducted within one calendar month of the warrant being granted for civil recovery and exploitation proceeds investigations (see section 356(4));
- the warrant should be returned to the issuing court not more than four months after the date that it was granted.

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

### **Entry other than with consent**

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

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

89. Before a search begins, the appropriate person should identify themselves (subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director) and show an official form of identification, state the purpose of the search and the grounds for undertaking it.

### **Notice of powers and rights**

90. The appropriate person should, unless it is impracticable to do so, provide the owner or occupier and any other person entitled to grant access to the premises with a copy of the warrant and in addition to the matters specified in paragraph 35 of the general section of this code, a notice:

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<sup>26</sup> See the orders made under section 355, listed at footnote 25 above.



- summarising the extent of the powers of search and seizure conferred in POCA; and
  - stating that a copy of this code is available to be consulted and giving a contact point at which it can be obtained.
91. If the owner or occupier, or person entitled to grant access is present, copies of the notice mentioned above, and of the warrant should, if practicable, be given to the owner or occupier or person entitled to grant access before the search begins, unless the appropriate person reasonably believes that to do so would frustrate the object of the search or endanger the officers concerned or other people. If the owner or occupier or person entitled to grant access is not present, copies of the notice and of the warrant should be left in a prominent place on the premises or appropriate part of the premises and endorsed with the name of the appropriate person (or, if authorised, the pseudonym used) and the date and time of the search. The warrant itself should be endorsed to show that this has been done.

### Conduct of searches

92. Searches should be conducted at a reasonable time of day, for example in the case of domestic premises, outside normal sleeping hours and in the case of business premises during normal business hours, unless this might frustrate the purpose of the search. If a search will take place at an unreasonable hour, the appropriate person should record their reasons for doing so in writing.
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 whatever is sought. No search can continue once the appropriate person is satisfied that whatever is being sought is not on the premises. This does not prevent the issue of further search warrants in respect of the same premises if additional grounds come to light. Examples would be when as a result of new information it is believed that articles previously not found or additional articles are now on the premises.
94. Searches must be conducted with due consideration for the property and privacy of the owner or occupier of the premises searched, and with no more disturbance than necessary.
95. The owner or occupier or person entitled to grant access should be asked whether they wish a friend, neighbour or other person to witness the search, however a search need not be unreasonably delayed for this purpose. The person nominated by the owner or occupier or person entitled to grant access should be allowed to witness the search unless the appropriate person has reasonable grounds for believing that the presence of the person asked for would significantly hinder the investigation or endanger the appropriate person concerned or other people. A record of the action taken under this paragraph, including the grounds for refusing a request from the owner or occupier or person entitled to grant access should be made on the premises search record. This requirement also relates to business and commercial properties if practicable, as well as private addresses.
96. A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search. Examples would include questions to discover who is the owner or occupier 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 the search or to determine whether a particular item is liable to be seized.

## Seizure of material

97. An appropriate person may seize:

- material covered by the warrant (being either material specifically mentioned or where there were reasonable grounds for believing that there was material falling within section 353(6), (7), (7A), (7B), (8) or (8A) on the premises);
- material covered by the powers in Part 2 of the Criminal Justice and Police Act 2001 (if appropriate); and
- material not covered by the warrant where the appropriate person has another power of seizure (for example cash under section 294). However, such a situation would arise incidentally to the search and seizure warrant, and regard should be had to the code relevant to the exercise of those powers.

Execution of a search and seizure warrant should no longer continue if it appears to the appropriate person that there is no more material covered by the warrant on the premises.

98. Appropriate persons should be aware of section 59 of the Criminal Justice and Police Act 2001. This applies where something has been seized or purported to have been seized under certain seizure powers (see paragraph 106 below). It provides that anyone with a relevant interest in the seized property has the right to apply to an appropriate judicial authority<sup>27</sup> for its return. Appropriate persons should also be aware of the subsequent duty to secure in section 60 of the Criminal Justice and Police Act 2001.
99. An appropriate person may photograph, image or copy, or have photographed, imaged or copied, any material that has been seized under the warrant. In a confiscation investigation, detained cash investigation or a money laundering investigation, an appropriate person will have regard to their obligation not to retain original material when a photograph or copy would be sufficient. Appropriate officers and appropriate persons must be aware of the safeguards applied by the relevant order made under section 355.<sup>28</sup>
100. In relation to civil recovery investigations or exploitation investigations, appropriate officers and appropriate persons must be aware of the safeguards in section 356. Where an appropriate person considers that information which is held in a computer and is accessible from the premises specified in the warrant is relevant to the investigation, they may require the information to be produced from the computer in a form which can be taken away (for example a computer printout).<sup>29</sup> The appropriate person should ensure that care is taken when the person produces the material so that the material on the computer is not, for example, deleted or corrupted.

## Particular record of proceedings in executing a search and seizure warrant

101. Where premises have been searched under a warrant issued under Chapter 2 of Part 8 of POCA, the appropriate person should make or have made a record of the search, at the time of the search, unless there are exceptional circumstances that

<sup>27</sup> See section 64 Criminal Justice and Police Act 2001 for the meaning of “appropriate judicial authority”: in relation to the exercise of the power of seizure under section 352(4) POCA, whether exercised alone or in conjunction with section 50 of the 2001 Act, it means the High Court.

<sup>28</sup> The current order is the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (England and Wales) Order 2015.

<sup>29</sup> Section 356(5).

would make this wholly impracticable. If a written record is not made at the time then the appropriate person 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 when it is not practicable to obtain all of the information necessary to complete a record, but the appropriate person should make every reasonable effort to do so, and if necessary, complete a partial record. The record should include:

- 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 that vehicle;
- the date, time and duration of the search;
- the warrant under which the search was made (a copy of the warrant should be appended to the record or kept in a place identified in the record);
- the name of the appropriate person, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;
- the names of any persons authorised by the warrant to accompany the appropriate person who attended the execution of the warrant;
- the names and dates of birth of any people on the premises if they are known;
- the names and details of any witnesses;
- any grounds for refusing the owner or occupier's request to have someone present during the search as set out in paragraph 95;
- either a list of any material seized or a note of where such a list is kept and, if not covered by a warrant, the grounds for their seizure;
- details of any damage to property or injury to person caused during the search, and the circumstances in which it was caused;
- confirmation that the premises were left secured and by what means; and
- any other relevant information (if any).

102. The search and seizure warrant should be endorsed by the appropriate person to show:

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

### **Leaving the premises**

103. 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.

## Search register

104. 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 appropriate persons 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.
105. Unless it is impracticable to do so, or it would jeopardise a wider ongoing operation or investigation, a copy of the record should be given immediately to the person in charge of the premises searched. If a record is not made at the time, the person should be informed how they can apply for a copy of the record once it is made.

## Specific procedures for seize and sift powers

106. Part 2 of the Criminal Justice and Police Act 2001 provides persons who are lawfully on any premises and exercising powers of search and seizure with further limited powers. These powers are to seize material from the premises so that they can sift through it or otherwise examine it elsewhere. These powers may be exercised for the reasons stated in section 50 of the Criminal Justice and Police Act 2001. All appropriate persons conducting searches under POCA are permitted to use these powers. Appropriate persons should be careful that they only exercise these powers where it is essential to do so and that they do not remove any more material than is absolutely necessary. The removal of large volumes of material, much of which may not ultimately be retained, may have serious implications for the owners, particularly where they are involved in business. Appropriate persons must always give careful consideration to whether removing copies or images of relevant material or data would be a satisfactory alternative to removing the originals. Where originals are taken, appropriate persons must always be prepared to facilitate the provision of copies or images for the owners where that is reasonably practicable.
107. Property seized under section 50 of the Criminal Justice and Police Act 2001 is to be kept securely and separately from any other material seized under other powers (section 53(2) and (5) of that Act). Section 51 of the Criminal Justice and Police Act 2001 is not relevant as the search and seizure powers under sections 352 and 353 of POCA do not extend to seizing material from the person. An examination under section 53 of the Criminal Justice and Police Act 2001 to determine what material may be retained in accordance with the Act is to be carried out as soon as is reasonably practicable after the seizure, and where appropriate, permitting the person from whom the material was seized, or a person with an interest in the material, an opportunity of being present or represented (section 53(2) and (4)). The appropriate person should ensure that there are appropriate facilities for the sift and that persons from whom the material was seized or who have an interest in the material or their representative may be present.
108. All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to, the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend or their representative, the appropriate person who exercised the search and seizure warrant should give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality, appropriate persons may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it.

109. It is the responsibility of the appropriate person to ensure that, where appropriate, property is returned in accordance with sections 53 to 55 of the Criminal Justice and Police Act 2001. Material which is not retained is to be separated (if possible and having regard to section 53(5)) from the rest of the seized property and returned as soon as reasonably practicable. Material cannot be retained if it is legally privileged material, excluded material or falls outside the terms of the warrant. Delay on return of material is warranted if clear reasons exist; for example, the unavailability of the person to whom the material is to be returned or the need to agree a convenient time to return a very large volume of material. Legally privileged or excluded material which cannot be retained is to be returned as soon as reasonably practicable. As set out in section 58 of the Criminal Justice and Police Act 2001, material is to be returned to the person from whom it was seized, except where the appropriate person is satisfied that some other person has a better right to it.
110. Where an appropriate person involved in the investigation has reasonable grounds to believe that a person with a relevant interest in property seized under section 50 of the Criminal Justice and Police Act 2001 intends to make an application under that Act for the return of any legally privileged or excluded material, the appropriate officer in charge of the investigation should be informed. In any event, the material seized is to be kept in accordance with section 61 of the Criminal Justice and Police Act 2001.
111. The responsibility for ensuring property is properly secured rests ultimately with the appropriate person and the appropriate officer, even if there is a separate person delegated with this specific task. Securing involves making sure that the property is not examined, copied or imaged or put to any other use except with the consent of the applicant or in accordance with the directions of the appropriate judicial authority. Any such consent or directions should be recorded in writing and signed by both the applicant or judicial authority and the appropriate person.
112. Where an appropriate person exercises a power of seizure conferred by section 50 of the Criminal Justice and Police Act 2001, the appropriate person should at the earliest opportunity and unless it is impracticable to do so, provide the owner, occupier, or person entitled to grant access to the premises or the person from whom the property was seized with a written notice:
- specifying what has been seized in reliance on the powers conferred by that section;
  - specifying the grounds on which those powers have been exercised;
  - setting out the effect of sections 59 to 61 of the Criminal Justice and Police Act 2001 which cover the grounds on which a person with a relevant interest in seized property may apply to the appropriate judicial authority for its return and the duty of appropriate persons to secure property in certain circumstances where such an application is made;
  - specifying the name and address of the person to whom notice of any application to the appropriate judicial authority in respect of any of the seized property should be given; and
  - specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination of the property (for example police station, HMRC office or other building).

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

## **Retention**

114. Anything that has been seized under POCA or the Criminal Justice and Police Act 2001 may be retained only for as long as is necessary in connection with the investigation for the purposes of which the warrant was issued.
115. In certain circumstances, property must not be retained if a photograph or copy would be sufficient – appropriate officers and appropriate persons must be aware of the safeguards applied by the relevant order made under section 355 of POCA (in relation to the exercise of powers for the purpose of a confiscation investigation, a money laundering investigation or a detained cash investigation), section 356 (in relation to the exercise of powers for the purpose of a civil recovery investigation or exploitation proceeds investigation) and section 63 of the Criminal Justice and Police Act 2001.

## **Rights of owners**

116. If property is retained under POCA or the Criminal Justice and Police Act 2001, the owner or occupier of the premises from where it was seized, or the person who had custody or control of it immediately prior to its seizure, should on request be provided with a list or description of the property within a reasonable time.
117. That person or their representative should be allowed supervised access to the property to examine it or have it photographed or copied, or should be provided with a photograph or copy, in either case within a reasonable time of any request and at their own expense, unless the appropriate person has reasonable grounds to believe that this would prejudice the investigation or any proceedings. A record of the grounds should be made in any case where access is denied.

## **Access to search warrant application documents**

118. If any person affected by a search and seizure warrant seeks access to the documents supporting the application for the search and seizure warrant, the appropriate officer or the appropriate person is expected to consider the request within 14 days. Objections may be made, for example, on the basis that allowing access to some or all of the documents would:
- prejudice the prevention or detection of crime;
  - prejudice the apprehension or prosecution of offenders; or
  - be contrary to any public interest in maintaining the confidentiality of that information.
119. 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.

## Customer information orders

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

### Definition

121. A customer information order compels a financial institution covered by the application to provide any “customer information” it has relating to the person specified in the application on receipt of a written notice from an appropriate officer asking for that information. “Customer information” is defined in section 364. A “financial institution” means a person carrying on a business in the regulated sector.<sup>30</sup> The “regulated sector” is defined in Schedule 9 to POCA. A customer information order is not available in a detained cash investigation.

### Persons who can apply for a customer information order

122. An appropriate officer (defined according to the type of investigation, see section 378) can apply for a customer information order, but must have the authorisation of a senior appropriate officer before making an application to the court (unless that officer is a senior appropriate officer).<sup>31</sup> A senior appropriate officer, for a confiscation investigation is:

- a senior officer of the NCA;
- a police officer who is not below the rank of superintendent;
- an officer of HM Revenue and Customs who is not below such grade as is designated by the Commissioner of Her Majesty’s Revenue and Customs as equivalent to that rank;
- an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank; or
- an AFI who falls within a description specified in an order made by the Secretary of State under section 453.

For money laundering investigations, a senior appropriate officer is:

- a police officer who is not below the rank of superintendent;
- an officer of HM Revenue and Customs who is not below such grade as is designated by the Commissioner of Her Majesty’s Revenue and Customs as equivalent to that rank;
- an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank; or
- an AFI who falls within a description specified in an order made by the Secretary of State under section 453.

For civil recovery and exploitation proceeds investigations, a senior appropriate officer is a senior officer of the NCA.

<sup>30</sup> Section 416(4).

<sup>31</sup> Section 369(7).

### Statutory requirements

123. The application must state:

- a person specified in the application is subject to a confiscation investigation, a civil recovery investigation; an exploitation proceeds investigation or a money laundering investigation;
- that the order is sought for the purposes of that investigation;
- the financial institutions, or a description of financial institutions, from which the customer information is to be obtained – a description of financial institutions may include all financial institutions but would usually be specifically targeted, such as those financial institutions within a geographical area;
- in the case of a confiscation investigation, the reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;
- in the case of a civil recovery investigation, the reasonable grounds for suspecting that the person specified in the application—
  - holds recoverable property or associated property, or
  - has, at any time, held property that was recoverable property or associated property at the time;
- in the case of a money laundering investigation, the reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
- in the case of any investigation, the reasonable grounds for believing:
  - that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
  - it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

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

124. The appropriate officer should carefully consider the existing evidence and information and source of information so as to limit the number or scope of financial institutions. The appropriate officer should consider what benefit the customer information may have, either in itself or as the lead to other avenues of investigation and whether the information could not be acquired as effectively and efficiently from material which could be obtained by way of a production order. The appropriate officer should consider the cost of a financial institution complying with a customer information order.

125. On receiving a request for authorisation for an application for a customer information order, the senior appropriate officer should consider similar issues. The senior appropriate officer should particularly consider the proportionality of requesting the customer information against the perceived benefit to the investigation. The senior appropriate officer should also consider the broader issues of law enforcement such as the benefit to the wider community.



## Particular action to be taken executing a customer information order

126. Section 363(5) of POCA requires a financial institution (following a notice in writing from an appropriate officer) to provide any customer information which it has relating to the person specified in the application. Section 363(6) gives the appropriate officer the power to identify the manner in which and the time by which the financial institution must provide the information. The appropriate officer should set a reasonable time period depending on the nature of the institution and the information that is requested. There will be cases where the best practice is to contact the financial institution before the notice is served to discuss a reasonable time period.

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

- the name of the financial institution;
- the name of the person(s) (or other identifying factor) about whom customer information is sought;
- the financial institution's right to refuse to comply with any requirement made of it unless the appropriate officer has, if asked to do so, produced evidence of their authority;<sup>32</sup>
- the period of time within which the customer information must be provided;
- the manner in which such information must be provided;
- the place at or to which the information is to be provided;
- where the appropriate officer believes that the customer information includes information held in any other name that the specified person has or had used, that other name;
- where the appropriate officer believes that the customer information includes information held in the name of a company or limited liability partnership that the specified person has or had an interest, the name and all known addresses of that company or limited liability partnership;
- all addresses known by the appropriate officer to have been used by the specified person relating to accounts that may have been or are held by the financial institution;
- the date of birth or approximate age of that person if an individual, or any known identification information in respect of a company or limited liability partnership;
- such other information as the appropriate officer considers would assist the financial institution in complying with the order; and
- notice that a statement made by the financial institution in response to the order may not be used in evidence against it in criminal proceedings other than in the circumstances set out in section 367 of POCA.

## Particular record of proceedings under a customer information order

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

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<sup>32</sup> Section 363(7).

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

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## Account monitoring orders

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

### Definition

131. An application for an account monitoring order must be made to a court by an appropriate officer under section 370, but is not available for a detained cash investigation. An account monitoring order is an order that requires a financial institution to provide information on an account for a specified period, up to 90 days, in the manner and at or by the times specified in the order. "Account information" is information relating to an account held at a financial institution – this would most commonly be transaction details. A "financial institution" means a person carrying on a business in the regulated sector. The "regulated sector" is defined in Schedule 9 to POCA. An appropriate officer may make a further application for an account monitoring order immediately after an account monitoring order has expired.

### Persons who can apply for an account monitoring order

132. An application may be made by an appropriate officer; the definition of appropriate officer depends on the type of investigation (see section 378).

### Statutory requirements

133. The application must state that:

- a person specified in the application is subject to a confiscation investigation, a civil recovery investigation, an exploitation proceeds investigation or a money laundering investigation;
- the order is sought for the purposes of that investigation;
- the order is sought against the financial institution specified in the application in relation to account information that the appropriate officer wishes to obtain. The application must also state that the order is sought in relation to account information<sup>33</sup> about the specified person;
- in the case of a confiscation investigation, the reasonable grounds for suspecting that the person specified in the application has benefited from his criminal conduct;
- in the case of a civil recovery investigation, the reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property;
- in the case of a money laundering investigation, the reasonable grounds for suspecting that the person specified in the application has committed a money laundering offence;
- for any investigation, the reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought, and that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

<sup>33</sup> Account information relates to an account or accounts held at the financial institution by the person (whether solely or jointly with another): section 370(4)

134. The application for an account monitoring order may specify information relating to all accounts held by the person specified in the application for the order at the financial institution so specified, a particular description, or particular descriptions, of accounts so held, or a particular account, or particular accounts, so held. The order will set out the manner and deadline by which the financial institution must produce account information and the period for which the order should last (but this may not exceed a 90 day period).<sup>34</sup>

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

135. The appropriate officer must consider the benefit to the investigation of obtaining information from an account, and whether this information could be obtained by using a production order.
136. The appropriate officer must also consider the account information to be requested. If, for example, the appropriate officer requires information on certain transactions, the appropriate officer is to consider whether this should be limited to transactions over a certain threshold or to the identity of the source of the deposit or transaction destination.
137. The provision of account information will be for so long as the court has set out in the order (although no longer than 90 days, beginning with the day on which the order is made) and be provided at or by the time or times stated in the order. A reasonable time period and times to provide the information should be identified for the court. For example, it may be reasonable that the information should be provided within 24 hours on all transactions unless it appears that it would not be reasonably practicable for the subject of the account monitoring order to comply with this time limit. There will be cases when the best practice is to contact the subject of the account monitoring order (i.e. the relevant financial institution) before the application is made to discuss types of transaction and the reporting process.
138. The appropriate officer should not view the 90 day maximum as the standard time period. The appropriate officer must carefully consider and justify the requirement for the time period requested.

### **Particular action to be taken executing an account monitoring order**

139. When an account monitoring order is served on a financial institution, the covering letter, in addition to the matters specified in paragraph 35 of the general section, must include the following (unless it is already included in the order):
- the name of the financial institution;
  - the identity of the person(s) who holds the account to be monitored, including as much identity information as is known by the appropriate officer;
  - the accounts in relation to which the information is required, whether this is a specific account or a general description of accounts;
  - the account information required (in as specific detail as possible, for example a general description of the nature of the transactions);
  - the period for which the account monitoring order will have effect;
  - the period of time within which such information must be provided to the appropriate officer (for example within 24 hours of a particular transaction taking place);

<sup>34</sup> Section 370(6), (7).

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- the manner in which such information must be provided;
- such other information as the appropriate officer considers would assist the financial institution in complying with the requirements of the account monitoring order;
- notice that a statement made by the financial institution in response to the order may not be used in evidence against it in criminal proceedings other than in the circumstances set out in section 372.

**Particular record of proceedings under an account monitoring order**

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

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## Disclosure orders

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

### Definition

142. A disclosure order is an order authorising an appropriate officer to give to any person the appropriate officer considers has relevant information notice in writing requiring them to answer questions, to provide information or to produce documents with respect to any matter relevant to the investigation in relation to which the order is sought. A disclosure order is not available in detained cash investigations or money laundering investigations. This code does not provide guidance on the use of disclosure notices under other enactments.
143. Once a disclosure order has been made, appropriate officers may use the powers set out in section 357(4) of POCA throughout the investigation. Thus, unlike the other orders which have to be applied for separately on each occasion, a disclosure order granted by a court gives continuing powers for the purposes of the investigation.
144. Under section 357(6) of POCA, where a person is given a notice under a disclosure order, that person is not bound to comply with any requirement imposed by the notice unless evidence of the authority to give the notice is provided. Where this occurs, a copy of the disclosure order should be given to the person.

### Persons who can apply for a disclosure order

145. An application for a disclosure order must be made to a court by a relevant authority (section 357(7)). In relation to a confiscation investigation, only a prosecutor may apply for a disclosure order but this can only be at the request of an appropriate officer (appropriate officers are defined in section 378). The scope of this code does not extend to guidance to prosecutors in making these applications, which is within the scope of the code of practice issued by the Attorney General. Appropriate officers should identify an appropriate prosecutor to make the application on their behalf and explain why, guided by this code, a disclosure order is necessary in the investigation. Once a disclosure order is granted by the judge in a confiscation investigation, the powers provided by the order may be exercised by the appropriate officer.
146. In relation to civil recovery investigations, an officer of the NCA or a member of staff of the relevant Director (section 352(5A)) may apply for disclosure orders. The scope of this code does not extend to guidance to members of staff of the relevant Director, who are within the scope of the code of practice issued by the Attorney General.
147. In relation to exploitation proceeds investigations, an officer of the NCA may apply for a disclosure order.

### Statutory requirements

148. This code only applies to applications by NCA officers in relation to civil recovery and exploitation proceeds investigations. The application needs to state that:
- a person, or property, specified in the application is subject to a civil recovery investigation; or

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- a person specified in the application is subject to an exploitation proceeds investigation;
- the order is sought for the purposes of that investigation;
- the reasonable grounds for suspecting that, in the case of a civil recovery investigation, the person specified in the application holds recoverable property or associated property, or has held property that was recoverable property or associated property at the time, or the property specified in the application for the order is recoverable property or associated property;
- in the case of an exploitation proceeds investigation, the person specified in the application is a person within section 346(2A). A person is within that section if, for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc), exploitation proceeds have been obtained by the person from a relevant offence by reason of any benefit derived by the person;
- the reasonable grounds for believing that:
  - the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it;
  - the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
  - it is in the public interest for the material to be produced or for access to it to be given, having regard to the benefit likely to accrue to the investigation if the material is obtained, and to the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

### **Particular action to be taken in making an application**

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

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

### **Providing of information and production of documents**

150. Production of documents or information in response to a disclosure order should follow, so far as relevant, the processes set out for production orders in paragraphs 50 to 68 above. The appropriate officer should give notice in writing to anyone whom they wish to provide information or documents. In addition to the general requirements at paragraph 35, this notice should include, where applicable:

- whether the appropriate officer requires the respondent to provide information under section 357(4)(b), and a description of that information;
- or whether the appropriate officer requires the respondent to produce documents under section 357(4)(c), and the documents or class of documents required.

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

### Interview

152. The disclosure order also contains a power to ask questions. The preferred method for asking questions is to conduct a formal interview in accordance with the procedure set out below.

### Invitation to interview

153. The appropriate officer should send the person to be interviewed a notice served under the disclosure order which should set out:

- the right of the appropriate officer to carry out the interview under section 357(4)(a) of POCA;
- the purpose of the interview, which may be as detailed as the appropriate officer considers necessary;
- notice that a statement made by a person in response to a requirement imposed on them under a disclosure order may not be used in evidence against them in criminal proceedings other than in the circumstances specified in section 360 of POCA;
- the right to be accompanied at any interview by a solicitor and/or a qualified accountant;
- the right, if they are a juvenile<sup>35</sup>, suffering from a mental impairment, mental disorder or otherwise vulnerable, to be accompanied at any interview by an appropriate adult<sup>36</sup>;

<sup>35</sup> If anyone appears to be under the age of 17 then they must be treated as a juvenile for the purposes of this code unless there is clear evidence that they are older.

<sup>36</sup> The appropriate adult' means, in the case of a:

(a) juvenile:

- (i) the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation;
- (ii) a social worker of a local authority;
- (iii) failing these, some other responsible adult aged 18 or over who is not an appropriate officer or employed by the organisation which the appropriate officer works for;

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

- (i) a relative, guardian or other person responsible for their care or custody;
- (ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not an appropriate officer or employed by the organisation which the appropriate officer works for;
- (iii) failing these, some other responsible adult aged 18 or over who is not an appropriate officer or employed by the organisation which the appropriate officer works for.



- details of the place at which the interview is to take place, and
- where attendance is not required at once, the time and date of the interview.

## Legal and Financial advice

154. In this code, a “solicitor” means a solicitor who holds a current practising certificate, a trainee solicitor, or a duty solicitor representative. Appropriate officers should consult the Law Society in cases where there is a doubt regarding the individual. A “qualified accountant” means a person who is a member or fellow of the Institute of Chartered Accountants in England and Wales, or the Institute of Chartered Accountants of Scotland, or the Institute of Chartered Accountants in Ireland, or the Association of Chartered Certified Accountants, or an overseas equivalent.
155. In urgent cases a person who is not suspected of any unlawful conduct may be prepared to answer questions without the presence of a solicitor and/or qualified accountant. If a person to be interviewed requests access to legal or financial advice before complying with a requirement to be interviewed in a notice served under a disclosure order, the appropriate officer should normally consent and set a reasonable time limit for obtaining such advice. In the exceptional cases set out below the appropriate officer may refuse such a request depending on the circumstances of the case.
156. A person who requests legal and/or financial advice may not be interviewed or continue to be interviewed until they have received such advice unless the appropriate officer conducting the interview has reasonable grounds for believing that:
- i. there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
  - ii. there is an urgent need to prevent the destruction, alteration, interference or harm to evidence connected with the investigation; or
  - iii. the particularly identified solicitor and/or qualified accountant is suspected of being involved in criminality.
157. Such a decision to proceed with the interview should be recorded in writing (together with the reasons) and usually be with the authorisation of a senior appropriate officer.
158. In a case falling within paragraph 156(i) or (ii), once sufficient information has been obtained to avert the risks, questioning should cease until the person has received legal and/or financial advice.
159. In a case falling within paragraph 156(iii), the person should be given an opportunity to make alternative arrangements and identify another suitably qualified solicitor and/or accountant to accompany them during the interview.
160. If a solicitor wishes to send a non-accredited or probationary representative to provide advice on their behalf, then that person is also recognised as a “legal adviser” and should be admitted to the interview unless the appropriate officer considers that this will hinder the investigation.
161. If the appropriate officer refuses access to a non-accredited or probationary representative or a decision is taken that such a person should not be permitted to remain at an interview, this should be recorded in writing (together with the reasons)

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and they should notify forthwith the solicitor on whose behalf the non-accredited or probationary representative was to have acted or was acting, and give them an opportunity to make alternative arrangements. The person being interviewed should also be informed.

162. The main role of any solicitor or qualified accountant is to observe that the interview is conducted in a fair and proper manner. They may not answer questions on behalf of the person being interviewed but they may intervene:
- to seek clarification of questions asked during the interview;
  - to challenge a question asked by the appropriate officer which they consider is improper;
  - to challenge the manner in which a question is asked;
  - if the person may have a reasonable excuse for failure to comply with the disclosure order or notice, to advise them whether or not to reply to a question; or
  - to give the person advice.
163. Any request for legal and/or financial advice and the action taken on it should be recorded on the record and/or taped. If a person has asked for legal and/or financial advice and an interview is begun in the absence of a solicitor or qualified accountant (or the solicitor or qualified accountant has been required to leave an interview), a note must be made in the interview record.
164. The solicitor or qualified accountant may read any documents shown to, or produced by, the person being interviewed at the interview.

### **Vulnerable interviewees**

165. If an appropriate officer believes or is told that a person is under 17 years of age, or if a person of any age suffers from a mental impairment, mental disorder or is otherwise vulnerable, in the absence of clear evidence to dispel that belief, the person should be treated as such for the purposes of this code and an appropriate adult should be called.
166. "Mental impairment" applies to any person who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. "Mental disorder" is defined in the Mental Health Act 1983, section 1(2) as "any disorder or disability of the mind".
167. Appropriate officers must have regard, at all times, and to consider the needs of any person who appears to be blind, visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment and to take action accordingly.
168. A person who is blind or is seriously visually impaired may be accompanied by their guide dog. The appropriate officer must ensure that the person who is blind or seriously visually impaired has their solicitor, relative, appropriate adult, or some other person likely to take an interest in them (and who is not involved in the investigation) available to help in the checking of any documentation. Where the provisions of this code require written consent, then the person who is assisting may be asked to sign instead if the person being interviewed so wishes.

169. A person being interviewed who is seriously physically impaired may be accompanied by an able-bodied adult aged 18 or over to provide such physical assistance as the person being interviewed requires. Such a person may take no part in the interview and has none of the rights of the appropriate adult.
170. 'The appropriate adult' means, in the case of a:
- (a) juvenile:
- the parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person representing that authority or organisation;
  - a social worker of a local authority;
  - some other responsible adult aged 18 or over who is not a member of staff of the interviewing body.
- (b) person who suffers from a mental impairment, is mentally disordered or otherwise vulnerable:
- a relative, guardian or other person responsible for their care or custody;
  - someone experienced in dealing with mental disorder or mental impairment or other vulnerabilities (relevant to the person's condition) but who is not a member of staff of the interviewing body;
  - some other responsible adult aged 18 or over who is not a member of staff of the interviewing body.
171. A person, including a parent or guardian, should not be an appropriate adult if they are:
- suspected of involvement in the case;
  - a victim;
  - a witness;
  - involved in the investigation.
172. If a juvenile's parent is estranged from the juvenile, they should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to their presence.
173. In the case of people who suffer from a mental impairment, are mentally disordered or otherwise vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the person prefers a relative or objects to a particular person their wishes should, if practicable, be respected.
174. A solicitor or qualified accountant present in that capacity may not be the appropriate adult.
175. An appropriate adult present at an interview should be informed that they are not expected to act simply as an observer and that the purpose of their presence is to:
- advise the person being interviewed;
  - observe whether the interview is being conducted properly and fairly;
  - facilitate communication with the person being interviewed.

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

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## Interpreters

### General

178. Appropriate officers or senior appropriate officers are responsible for making sure appropriate arrangements are in place for the provision of suitably qualified interpreters for people who:

- are deaf; or
- do not understand English.

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

### Foreign languages

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

- they have difficulty understanding English; or
- the person wants an interpreter present.

181. The appropriate officer must ascertain, as far as practicable, that the interpreter and the person being interviewed understand each other, and this must be noted on the interview record. An appropriate adult may not act as the interpreter. Action taken to call an interpreter and any agreement to be interviewed in the absence of an interpreter must be recorded in writing and/or taped.

182. The appropriate officer should make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certify its accuracy. The appropriate officer should permit sufficient time for the interpreter to note each question asked and answered. The person should be permitted to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate.

183. In the case of a person making a statement to an appropriate officer other than in English:

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

### Deaf people and people with speech difficulties

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

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

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

## Persons who may be present at interviews

187. Only persons whose presence is provided for by this code should be present. At least two members of staff, one of whom must be an appropriate officer, should be present at all times. There may be more than one person conducting the interview. It is for the person being interviewed to arrange the presence of any solicitor and/or qualified accountant. When doing so they should ensure that the person they select is available to attend. Where the provisions of this code require the presence of an appropriate adult or an interpreter and no such person attends with the person to be interviewed, the appropriate officer should, before commencing or restarting any interview, secure the attendance of such a person.
188. The appropriate officer may be accompanied by a person to assist in handling documents and carrying out such other support tasks as will assist in the conducting of the interview. Such a person has no power to require the person being interviewed to do anything and need not disclose their name provided a record of it is made by the appropriate officer conducting the interview.

## Conduct of the interview

189. Interviews should be conducted in private with at least two members of staff present at all times. As far as practicable interviews should take place in interview rooms which are adequately heated, lit and ventilated. People being questioned or making statements should not be required to stand.
190. The appropriate officer should pursue all reasonable lines of enquiry, whether these assist or undermine the investigation. What is reasonable will depend on the particular circumstances. Appropriate officers must keep this in mind when deciding what questions to ask in an interview.
191. An appropriate officer must not try to obtain answers or elicit a statement by the use of oppression.
192. At the beginning of the interview and immediately following any break, the appropriate officer must caution the person being interviewed as follows:
- 'You are required by law to answer all the questions I put to you unless you have a reasonable excuse for not doing so. If you fail, without reasonable excuse, to answer a question or if you knowingly or recklessly make a statement which is false or misleading you will be committing an offence for which you may be prosecuted. Do you understand?'*
193. The appropriate officer must also inform the person that this is not a criminal caution.
194. The appropriate officer should:
- inform the interviewee of the authority they have to conduct the interview;
  - give their name and that of any other persons present (subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director);

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- inform the interviewee of the purpose for which any person accompanying the appropriate officer is present;
  - ask the interviewee to state their full name and address and date of birth;
  - ask any person present with the interviewee to state their name, business address (or home address as relevant) and capacity in which they are present;
  - state the date, time of commencement and place of the interview;
  - state that the interviewee has the opportunity to request legal and/or financial advice;
  - state and obtain confirmation of the reasons for there being no legal representation if this is the case;
  - inform the interviewee of their right:
    - to consult in private at any time with any solicitor, qualified accountant or appropriate adult present with them;
    - to be questioned fairly;
    - to be given an opportunity at the end of the interview to clarify anything they have said or to say anything further if they wish;
    - to be allowed a break in any interview that lasts for more than two hours.
  - inform the interviewee that the interview is recorded and they will be given a copy of that record;
  - state that the interviewee will be given a notice about what will happen to the record, and
  - attempt to estimate the likely length of the interview and inform the interviewee.
195. The interviewee may ask such further questions as appear to them to be necessary to ascertain the entitlement of any person to be present.
196. The appropriate officer should ask the interviewee whether they suffer from any condition which may impair their ability to understand what is taking place or if they are due to take any medication before the time at which the appropriate officer estimates that the interview will end. The person should be free to take medication during a routine break in the interview.
197. The appropriate officer should offer the interviewee the opportunity to ask any questions to clarify the purpose, structure and conduct of the interview.
198. Breaks from interviewing should be made at recognised meal times or at other times that take account of when the interviewee last had a meal. Short refreshment breaks should be provided at approximately two hour intervals, subject to the appropriate officer's discretion to delay a break if there are reasonable grounds for believing it would prejudice the outcome of the investigation.
199. Any decision to delay a break in an interview should be recorded, with reasons, and duration, in the interview record.
200. Where an interview is adjourned for any reason and is to be resumed at the same place later the same day it should be sufficient for the appropriate officer to inform the interviewee of the time of resumption and no notice in writing requiring attendance at that time should be necessary.

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201. Where an interview is adjourned for any reason and is to be resumed either at a different place or on a different day, the appropriate officer should serve another notice under the disclosure order on the person requiring them to attend at that place and time on that day.
202. The appropriate officer should remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the person's recorded evidence. After a break or at the beginning of a subsequent interview, the appropriate officer should consider summarising the reason for the break and that nothing happened and confirming this with the person.
203. The appropriate officer should inform the interviewee that they have no further questions and offer the person an opportunity to clarify anything they have said and to say anything further that they wish. Any solicitor, qualified accountant or appropriate adult present at the interview along with the interviewee should be given the opportunity to ask the interviewee any question the purpose of which is to clarify any ambiguity in an answer given or to give the interviewee an opportunity to answer any question which they have refused previously to answer.
204. Before concluding the interview, the appropriate officer must ask the interviewee if they have any complaint to make about anything that has taken place at the interview.

### **Interviews with a recording media record**

205. Interviews should be recorded using recording media. "Recording media" means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied.
206. When the interviewee is brought into the interview room the appropriate officer should, without delay but in the person's sight, load the recorder with new recording media and set it to record. The recording media should be unwrapped or opened in the person's presence.
207. The appropriate officer should tell the interviewee about the recording process and state on the record that the interview is being recorded using recording media (identifying what that media is) and that the person will be given a notice about what will happen to the copies of the recording.
208. For the purpose of voice identification the appropriate officer should ask the interviewee, and any other people present, to identify themselves.
209. If the interviewee is deaf or is suspected of having impaired hearing, the appropriate officer or the person assisting should make a written note of the interview, at the same time as the recording.



210. If the interviewee objects to the interview being recorded at the outset, during the interview or during a break, the appropriate officer should explain that the interview is being recorded and that this code requires the person's objections to be recorded on the recording. When any objections have been recorded or the person has refused to have their objections recorded, the appropriate officer should say they are switching off the recorder, give their reasons and switch it off. The appropriate officer or the person assisting should then make a written record of the interview (see provisions below relating to interviews with a written record). If, however, the appropriate officer reasonably considers they should proceed to question the person with the recording media still switched on, the appropriate officer may do so.
211. If the interviewee indicates that they want to tell an appropriate officer about matters not directly connected with the case and that they are unwilling for these matters to be recorded, the person should be given the opportunity to tell the appropriate officer at the end of the interview.
212. When the recorder shows the recording media only has a short time left, the appropriate officer should tell the interviewee the recording media is coming to an end and finish that part of the interview. If the appropriate officer leaves the room for a second set of recording media, the interviewee should not be left unattended. The appropriate officer will remove the recording media from the recorder and insert the new recording media which should be unwrapped or opened in the person's presence. The recorder should be set to record on the new media. To avoid confusion between the recording media, the appropriate officer should mark the media with an identification number immediately after it has been removed from the recorder.
213. When a break is taken, the fact that a break is to be taken, the reason for it and the time should be recorded on the recording.
214. When the break is taken and the interview room vacated by the interviewee, the recording media should be removed from the recorder and the procedures for the conclusion of an interview followed.
215. When a break is a short one and both the interviewee and the appropriate officer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences should be recorded on the recording.
216. Where the interview is being recorded and the media or the recording equipment fails, the appropriate officer should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media should be copied and sealed in the interviewee's presence and the interview recommenced using new equipment/media as required. Where the content of the interview has been lost in its entirety the media should be sealed in the interviewee's presence and the interview begun again.
217. If the equipment failure can be rectified quickly, for example by inserting new recording media, the recording of the interview may continue. When the recording is resumed the appropriate officer should explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue with a written record.

218. When recording media is removed from the recorder during the interview, it should be retained.
219. The appropriate officer should seal the master recording with a master recording label. The appropriate officer should sign the label and ask the interviewee and any third party present during the interview to sign it. If the interviewee or third party refuses to sign the label a senior appropriate officer should be called into the interview room and asked to sign it.
220. The interviewee should be handed a notice which explains:
- how the recording will be used;
  - the arrangements for access to it.
221. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine.
222. The purpose of sealing the master recording in the interviewee's presence is to show the integrity of the recording is preserved. If a single deck/drive machine is used the working copy of the master recording should be made in the interviewee's presence and without the master recording leaving their sight. The working copy should be used for making further copies if needed.
223. A senior appropriate officer should make arrangements for master recordings to be kept securely and their movements accounted for. The interviewee or their legal adviser should be informed and given a reasonable opportunity to be present if the seal on the master recording is to be broken. If the interviewee or their legal representative is present they should be invited to re-seal and sign the master recording.
224. When the master recording seal is broken, a record should be made of the procedure followed, including the date, time, place and persons present. Where the interview is not subsequently used in proceedings the recording media should nevertheless be kept securely. Where no court proceedings result, it is the responsibility of the appropriate officer to establish arrangements for the breaking of the seal on the master recording media, where this becomes necessary.

## **Interviews with a written record**

225. The appropriate officer may authorise that the interview not be recorded by way of recording media where it is not reasonably practicable to do so. This could be due to a failure of equipment or a lack of suitable interview room or recorder if the appropriate officer has reasonable grounds for considering that the interview must not be delayed until the failure has been rectified or a suitable room or recorder becomes available.
226. In such cases, the interview must be recorded in writing. In all cases, the appropriate officer must make a note in specific terms of the reasons for not using recording media.

227. The written record should be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and should constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.
228. If a written record is not made during the interview it should be made as soon as practicable after its completion.
229. Written interview records should be timed and signed by the maker.
230. If a written record is not completed during the interview the reason should be recorded in the interview record.
231. Unless it is impracticable, the interviewee should be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the interviewee cannot read or refuses to read the record or sign it, the appropriate officer should read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The appropriate officer should certify on the interview record itself what has occurred.
232. If the interviewee is unable for any reason to sign the note they may authorise any person present at the interview to sign it on their behalf.
233. If the appropriate adult or the interviewee's solicitor is present during the interview, they should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.
234. A written record should be made of any comments made by the interviewee, including unsolicited comments, which are outside the context of an interview but which might be relevant. Any such record should be timed and signed by the maker. When practicable the interviewee should be given the opportunity to read that record and to sign it as correct or to indicate how they consider it inaccurate.
235. If the interviewee cannot read or refuses to read the written record of comments or sign it, the appropriate officer should read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The appropriate officer should certify on the written record itself what has occurred.
236. When an interviewee agrees to read the record and other comments and sign them as correct, they should be asked to endorse the record and comments with, for example, 'I agree that this is a correct record of what was said' and add their signature or mark. If the person does not agree with the record or comments, the appropriate officer should record the details of any disagreement and ask the interviewee to read these details and sign them to the effect that they accurately reflect their disagreement. Any refusal to sign should be recorded.

## **Record of Interview**

237. In addition to the general provisions on taking records, the appropriate officer should also keep copies of notices in writing issued under a disclosure order (section 357(4)) together with full details of their issue and response.

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

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

239. In respect of interviews conducted under the authority of section 357(4), the record of interview should be held with a transcript of the interview. Documents produced at the interview should also be listed on a note of the action taken under the disclosure order. Receipts should be given to the interviewee, and this should also be recorded.

## Obtaining evidence from abroad

240. Section 375A of POCA makes provision for evidence to be obtained from overseas if a person or property is subject to a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation. This process should be used to obtain relevant evidence.
241. A judge may request overseas assistance as a result of an application by an appropriate officer or a person subject to the investigation if the judge thinks there is relevant evidence in a country or territory outside the United Kingdom. Alternatively, a senior appropriate officer or a relevant Director (section 352(5A)) may request overseas assistance, directly and without making an application to a judge, if they believe that there is relevant evidence in a country or territory outside the United Kingdom. The relevant Directors are outside the scope of this code, but are within the scope of the code of practice issued by the Attorney General.
242. The appropriate officer or senior appropriate officer must ensure that there is material supporting their belief that there is relevant evidence overseas.
243. "Relevant evidence" depends on the type of investigation for which evidence is being requested:
- in relation to a civil recovery investigation, evidence is relevant for the purposes of identifying recoverable property or associated property, and includes whether property is or has been recoverable property or associated property, who holds or has held property, what property a person holds or has held, or the nature, extent or whereabouts of property;
  - in relation to a detained cash investigation, evidence is relevant for the purposes of investigating the derivation of cash or whether cash is intended by any person to be used in unlawful conduct;
  - in relation to an exploitation proceeds investigation, evidence is relevant if it relates to whether a person is a qualifying offender, whether they have obtained exploitation proceeds from a relevant offence, the value of any benefits derived by a person from a relevant offence, or the available amount in respect of a person.
244. Requests for assistance may be sent by a judge, or the senior appropriate officer or a relevant Director to the government of the country or territory concerned, or any authority recognised by the government of the country or territory concerned as being appropriate for receiving requests, or a court or tribunal which is specified within the request and which exercises jurisdiction in the place where the evidence is to be obtained.
245. Alternatively, a request may be sent to the Secretary of State, who must forward the request to the court, tribunal, government or authority in the country or territory concerned.
246. In the case of urgency, a request may be sent via the International Criminal Police Organisation (Interpol or Europol) or any person competent to receive it under any provisions adopted under the EU Treaties, for onward transmission to a court, tribunal, government or authority in the country or territory concerned.

247. Evidence obtained by means of a request for assistance cannot be used for any purpose other than for the purposes of the investigation for which it was obtained or for the purposes of certain proceedings<sup>37</sup> (or any proceedings arising out of such proceedings). However, the court, tribunal, government or authority that received the request and provided the evidence can consent to the use of the evidence for other purposes.

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<sup>37</sup> See section 375B(3).

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