|  |
| --- |
| APPLICATION FOR SEARCH WARRANT: POCA 2002*(Criminal Procedure Rules, rr.47.26 & 47.32; ss.352, 353, 354 & 355, Proceeds of Crime Act 2002; articles 13, 14 & 15, Proceeds of Crime Act 2002 (External Investigations) Order 2014)* |
| See the notes for guidance (‘GN’) at the end of this form. Use this form **ONLY** for a search warrant application under **section 352, Proceeds of Crime Act 2002** (POCA), or under **article 13 of the POCA (External Investigations) Order 2014** (EIO).GN1 There are different forms for applications under other Acts.Application to a judge at …………………………………………….…………...…….…… Crown CourtThis is an application by ……………………………………………...…….……… (name of applicant)of …………………………………….…..…...…….……… (name of police force or investigating agency)Applicant’s address:GN2 …………………………………………...…….…………………………..… Email address: …………………………………………...…….…………………………………….… Contact telephone number(s): ……………………………………………………………………………..… I am entitled under POCA s.378 / EIO art.2 to apply for a search and seizure warrant (an ‘appropriate officer’). GN3The person or property specified in box 2 is subject to the investigation described in that box.For the purposes of the investigation, I apply for a warrant authorising an appropriate person to search for and seize any material identified or described in box 3 as is found on the premises specified in box 4. The ground for my application is:[[1]](#footnote-1)(i) a production order made on …………..…… (date) in relation to the material specified in box 3(a) has not been complied with and there are reasonable grounds for believing that that material is on the premises specified in box 4(a) [ ]  **or**(ii) the requirements listed in boxes 3 and 4 are satisfied [ ]  |
| **Arrangements for hearing the application**I estimate that the court should allow …………….… (time) to read this application and …………….… (time) for the hearing. GN4I expect any warrant issued to be executed on …….… (planned date) at ……….(planned time). GN4My application [does] [does not][[2]](#footnote-2) include confidential information in a separate document. GN5 |
| **1. Complete the boxes above and boxes 1 to 6 below.** If you use an electronic version of this form, the boxes will expand. GN1 If you use a paper version and need more space, you may attach extra sheets.2. Complete the declaration in box 7 and the authorisation in box 8.3. Attach the draft warrant(s) you are asking the court to issue.4. Send or deliver a copy of the completed form and all supporting documents to the court. GN4 You may send them by secure email. Make sure the court knows if the application is urgent. Your time estimates will help the court to allow enough time to prepare for the hearing. |
| **1) The offence(s) under investigation.**GN1(a) What offence(s) are you investigating? Specify the legislation or other law which creates the offence.(b) Which provision of POCA s.378 / EIO art.2 allows you to make this application? |
| **2) The investigation.**GN5(a) The investigation is:*Either:*[(i) [a confiscation investigation] [a money laundering investigation] [a detained cash investigation] [a detained property investigation] [a frozen funds investigation] in the United Kingdom.]*or:*[(ii) an investigation outside the United Kingdom.](b) Who or what is under investigation? In the case of a confiscation investigation or money laundering investigation, give the subject’s name and any other identifying details, e.g. date of birth, address, etc. In the case of a detained cash investigation, a detained property investigation or a frozen funds investigation, specify the cash, property or funds.(c) Explain as appropriate:[(i) If this is a UK confiscation investigation, why do you suspect that the person under investigation has benefited from his or her criminal conduct? The court must be satisfied that your grounds for suspicion are reasonable.][(ii) If this is a UK money laundering investigation, why do you suspect that the person under investigation has committed a money laundering offence? Identify the alleged money laundering offence. The court must be satisfied that your grounds for suspicion are reasonable.][(iii) If this is a UK detained cash or property investigation, why do you suspect that the cash or property involved was obtained through unlawful conduct or is intended to be used in unlawful conduct? The court must be satisfied that your grounds for suspicion are reasonable.][(iv) If this is a UK frozen funds investigation, why do you suspect that the money held in the frozen account was obtained through unlawful conduct or is intended to be used in unlawful conduct? The court must be satisfied that your grounds for suspicion are reasonable.][(v) If this is a non-UK investigation, why do you believe that there is an investigation by an overseas authority which relates to a criminal investigation or to criminal proceedings (including proceedings to remove the benefit of a person’s criminal conduct following that person’s conviction), and the investigation is into whether property has been obtained as a result of or in connection with criminal conduct, or into the extent or whereabouts of such property? The court must be satisfied that the criteria prescribed by EIO art.13 are met.] |
| **3) Material sought.**GN6*Either:*(a) Identify the material sought. Identify the material in as much detail as practicable.If what you are looking for includes information that may be stored on an electronic device:(i) what device(s) or description(s) of device (e.g. server; desktop; laptop; tablet; smartphone; removable storage; etc.) are you looking for? Give as much detail as practicable.(ii) why do you believe that the information for which you want to search is likely to be stored there?*Or:*(b) If you cannot identify the material sought, give a general description and explain why you believe that that material: (i) in the case of a confiscation investigation, relates to the question whether the person specified in box 2 has benefited from criminal conduct, or to any question about the extent or whereabouts of that benefit or of realisable property available for satisfying a confiscation order made in respect of that person, (ii) in the case of a money laundering investigation, relates to the question whether the person specified in box 2 has committed a money laundering offence, (iii) in the case of a detained cash investigation, detained property investigation or frozen funds investigation into the derivation of cash, property or money held in a frozen account relates to the question whether that property is recoverable property or to any other question as to its derivation, (iv) in the case of a detained cash investigation, detained property investigation or frozen funds investigation into the intended use of cash, property or money held in a frozen account relates to the question whether that property is intended by any person to be used in unlawful conduct, (v) in the case of a non-UK investigation, relates to that investigation. The court must be satisfied that your grounds for belief are reasonable.(c) In a case in which no production order already has been made: (i) why do you believe that the material is likely to be of substantial value to the investigation? Material may be of substantial value by itself or together with other material. The court must be satisfied that your grounds for belief are reasonable. (ii) why do you believe that it is in the public interest for the material to be obtained, having regard to:* other potential sources of information,
* the benefit likely to accrue to the investigation if the material is obtained?

The court must be satisfied that your grounds for belief are reasonable.(d) If the material for which you want to search, including any information stored electronically, may consist of or include~~s~~ items subject to legal privilege, what arrangements will you make to sift it? GN7 & 8 |
| 4) Premises to be searched.GN9 Use this box if you are applying for a search warrant in respect of one set of premises. If you are applying for warrants in respect of more than one set of premises, use this box for the first set of premises then tick here [ ]  and complete the table at the end of this form for the others. You must attach a draft warrant for each set of premises that you list.(a) Address or other description of the premises:(b) Why do you believe that the material identified or described in box 3 is on those premises? The court must be satisfied that your grounds for belief are reasonable.*In a case in which no production order already has been made, complete either (c) or (d) as appropriate:*(c) If the material is identified in box 3(a), why do you believe that it would not be appropriate to make a production order for any one or more of the following reasons? Tick to indicate which.[ ]  (i) it is not practicable to communicate with any person against whom the production order could be made.[ ]  (ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises.[ ]  (iii) the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material. Explain why you believe that each reason you have ticked applies. The court must be satisfied that your grounds for belief are reasonable.*or:*(d) If the material is described in box 3(b), which one or more of the following requirements is met? Tick to indicate which.[ ]  (i) it is not practicable to communicate with any person entitled to grant entry to the premises.[ ]  (ii) entry to the premises will not be granted unless a warrant is produced.[ ]  (iii) the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them. Explain why each requirement that you have ticked is met. |
| 5) Search with additional persons. Use this box only if you are applying for the court’s authority to conduct the search with people who are not ‘appropriate persons’ under POCA s.352 or ‘appropriate officers’ under EIO art. 13 and who are not otherwise authorised by law to conduct or take part in the search.(a) Which other persons do you want to take part in the search? Identify those people by function or description (e.g. scientists, IT experts, accountants). You do not need to identify anyone who will be present only as an observer.(b) Why do you want those people to take part in the search? |
| 6) Duty of disclosure.GN10 See also the declaration in box 7.Is there anything of which you are aware that might reasonably be considered capable of undermining any of the grounds of this application, or which for some other reason might affect the court’s decision? Include anything that reasonably might call into question the credibility of information you have received, and explain why you have decided that that information still can be relied upon. |
| 7) DeclarationTo the best of my knowledge and belief:(a) this application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and(b) the content of this application is true.I undertake to inform the court if information that might reasonably be considered capable of undermining any of the grounds of this application comes to my knowledge after a search warrant is issued but before the search takes place.Signed:GN1 ……………………...……………………………………….………………………… [applicant]Date: …………………………. Time: …………………………. |
| 8) AuthorisationI have reviewed this application.To the best of my knowledge and belief this application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of its grounds,I am satisfied that making this application is a necessary and proportionate step to take in this investigation,I am satisfied that the applicant will be able to answer the court’s questions.I authorise the applicant to present this application to the court.Authorising officer’s name: ……..…………………………..…………..…………………………………..…Rank or grade: ………………………………………..…………..…………………………………………..…Signed:GN1 ………………….………………………….…………………………….… [authorising officer]Date: …………………………. Time: …………………………. |
| Judge’s decision – this record must be kept by the courtI heard this application today.The applicant satisfied me about his or her entitlement to make the application.The applicant confirmed on oath or affirmation the declaration in box 7.The applicant gave me additional information, the essence of which was:[[3]](#footnote-3)I [was] [was not] satisfied that the requirements of [POCA section 352] [EIO article 13] were met and I [issued] [refused to issue] [a warrant] [warrants] accordingly.[[4]](#footnote-4)Signed: ………………………………………..…………………………………………………………...…Name: ………………………………………………………………………………….…..…………..…..…A Judge entitled to exercise the jurisdiction of the Crown CourtDate: …………………………. Time: …………………………. |

**List of premises to be searched.** See box 4. Use this table if you are applying for the issue of warrants in respect of more than one set of premises.

**In column (a)**, give the address or other description of the premises. **In column (b)**, explain why you believe the material you are looking for is on those premises. **In column (c)**, list, as applicable, each box 4(c) reason that you believe applies, or each box 4(d) requirement that you say is met, giving your reasons.

|  |  |  |
| --- | --- | --- |
| **(a) Address or description of premises** | **(b) Reasons for believing material is on those premises** | **(c) Box 4(c) reason that applies, or box 4(d) requirement that is met, with reasons** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**Notes for guidance**

**Before you fill in this form**, read PACE Code B[[5]](#footnote-5) and the College of Policing guidance[[6]](#footnote-6).

**1. Use of this form**

Use this form ONLY for an application for a search and seizure warrant under CrimPR 47.32 and section 352 of the Proceeds of Crime Act 2002 (POCA)[[7]](#footnote-7) or article 13 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014 (the EIO).[[8]](#footnote-8) This form collects the information required by that legislation. If the details in each case are substantially the same (e.g. the same investigation and the same suspect), one form can be used to make applications for more than one warrant.

If an electronic version of this form is used, instead of a signature it may be authenticated electronically (e.g. by sending it from an email address recognisable to the recipient): see Criminal Procedure Rules, rule 5.3. Forms for use with the Rules are at: <https://www.gov.uk/guidance/criminal-procedure-rules-forms#other-proceedings>.

There are different forms for applications for search warrants under other Acts and for applications for production and other orders.

POCA s.352 / EIO art.13 allows the court to issue a warrant if either (i) a production order already made under POCA s.345 / EIO art.6 has not been complied with and there are reasonable grounds for believing that the material ordered to be produced is on the premises specified in the application for the warrant, or (ii) the requirements in POCA s.353 / EIO art.14 are satisfied. The applicant can either specify the material sought or, if the material cannot be identified at the time of the application for a warrant, describe it in less detail and explain to what question in the investigation it relates.

POCA s.353 / EIO art.14 each contain two main sets of conditions. The first set applies where the material sought is identified (s.353(3) / art.14(2) – a box 3(a) case). The second set applies where the material cannot be identified, only described in less detail (s.353(5) / art.14(4) – a box 3(b) case).

One of the first main set of conditions (identified material – box 3(a)) is that there are reasonable grounds for believing that it would not be appropriate to make a production order for any one or more of the reasons listed in box 4(c): see POCA s.353(4) / EIO art.14(2)(c).

One of the second main set of conditions (unidentified material – box 3(b)) is that one of the further requirements listed in box 4(d) is met: see POCA s.353(9) / EIO art.14(6). If you rely on the second main set of conditions the court must be satisfied that at least one of those further requirements is met, not just that there are reasonable grounds for believing it to be met.

Under POCA s.354 / EIO art.15 a warrant does not authorise the seizure of material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court, or material which is ‘excluded material’.

For the definition of excluded material, see guidance note 7 beneath. Health, social services and education records held in confidence are likely to be excluded material. Documents or other records held for the purposes of journalism will be excluded material if they have been held in confidence ever since they were created or acquired for journalistic purposes, e.g. notes of a confidential interview. Other business and banking records and other journalistic material held in confidence are likely to be materials that can be seized if the warrant so permits.

You will need to decide whether it is more appropriate to apply for a warrant under POCA or under section 9 and Schedule 1, paragraph 12, Police and Criminal Evidence Act 1984 (PACE), bearing in mind that POCA can only be used for certain types of investigation.

**2. Applicant’s contact details**

The court may need to contact the applicant urgently. In choosing the address and telephone number(s) to give, applicants should be aware that details entered in this application form may be disclosed in subsequent legal proceedings, unless the court orders them to be withheld.

**3. Status of the applicant**

You must satisfy the court about your entitlement to make the application. Under POCA s.378, a constable, a National Crime Agency officer, an officer of Revenue and Customs, an immigration officer and an accredited financial investigator each may be an ‘appropriate officer’. Under EIO art.2, an ‘appropriate officer’ is a constable, an NCA officer or a Revenue and Customs officer.

The ‘appropriate persons’ authorised by a warrant to conduct a search are listed in POCA s.352(10) and are a constable, an officer of Revenue and Customs, an immigration officer and an accredited financial investigator.

**4. Making an application: time estimates and live links**

An application must be made to the court address for the applicant’s area given by HM Courts and Tribunals Service, unless it is one that must be heard by the Chief Magistrate.

Electronic service of the application, by email to a secure inbox, is more secure than paper and is strongly preferred. Use a format (for example Word, rather than pdf) that allows you to complete or amend the application and which allows the court to amend the draft warrant if required.

If the application includes details that you think should be withheld in any subsequent legal proceedings, set out those details in a separate document marked as confidential to the court and in that document explain why you think that those details ought not be seen by anyone other than the court: see rules 5.10(9) and 47.26(4) of the Criminal Procedure Rules.

If an application is very sensitive, special arrangements can be made. Consult the court.

The court needs a realistic estimate of how long to allow for reading and hearing the application. If in doubt, consult the court. To help assess the urgency of the application compared with others, the court also needs to know when it is expected that the warrant will be executed.

Where a live link is available, it can be used for the applicant to attend before the court, if the court so allows. The application must have been delivered to the court (delivery may be by email). Applicants should be aware that the court may not consider live link a satisfactory method by which to receive explanations of material of great factual complexity, or by which to hear an application in which the court has to be referred to a substantial number of documents.

At the hearing the applicant will be required to take an oath or affirm: see Criminal Procedure Rules, rule 47.25(4).

**5. The investigation**

You must explain whether the investigation is a UK confiscation investigation, money laundering investigation, detained cash investigation, detained property investigation or frozen funds investigation, or an ‘external’ (i.e. non-UK) investigation. Give sufficient details for the judge to be able to make an informed decision about the application.

**6. The material sought (see also guidance notes 7 & 8)**

If the reason for this application is that a production order already has been made, but has not been complied with, then the application must specify the material specified in that order.

If no production order has been made, then you can choose either to specify the material sought, or instead to give a less detailed description and meet the other POCA s.353 / EIO art.14 requirements.

If you are able to specify the material sought, because a production order already has been made (but not complied with), or because you can be specific anyway, complete box 3(a).

If you are not able to specify the material, complete box 3(b).

In a case in which no production order already has been made, you must also complete box 3(c) and (d).

In every case you must describe the material sought in as much detail as practicable, and the description in the draft warrant(s) that you supply for the court must correspond with this.

The question at box 3(c)(ii) is about the balance the judge must strike, before issuing a warrant and even if all the other conditions for issuing a warrant are satisfied, between (i) the importance of the public interest in protecting privacy and confidentiality against intrusion, and (ii) the importance of the public interest in effective investigation of suspected criminal conduct. You must satisfy the judge that the public interest requirement in POCA s.353(3)(b) / EIO art.14(2)(b) is met (see ‘Use of this form’, above). A useful approach is to ask yourself the question why your need for the information you hope to get justifies a search for it, despite the impact that search will have on those who will be affected, and then explain that in your answer to the question.

Powers to seize additional material beyond the scope of the warrant are given by section 19 of PACE and section 50 of the Criminal Justice and Police Act 2001.

**7. Excluded material**

Under POCA s.379 and section 11 of the Police and Criminal Evidence Act 1984 (PACE), ‘excluded material’ means—

 (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which that person holds in confidence;

 (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

 (c) journalistic material which a person holds in confidence and which consists—

 (i) of documents; or

 (ii) of records other than documents.

A person holds material other than journalistic material in confidence if that person holds it subject to an express or implied undertaking to hold it in confidence, or subject to a restriction on disclosure or an obligation of secrecy contained in an Act.

A person holds journalistic material in confidence if that person holds it subject to any such undertaking, restriction or obligation, and it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

Under PACE s.12, ‘personal records’ means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

 (a) to that person’s physical or mental health;

 (b) to spiritual counselling or assistance given or to be given to that person; or

 (c) to counselling or assistance given or to be given to that person, for the purposes of his or her personal welfare, by any voluntary organisation or by any individual who—

 (i) by reason of office or occupation has responsibilities for that welfare; or

 (ii) by reason of an order of a court has responsibilities for that person’s supervision.

Under PACE s.13, ‘journalistic material’ means material acquired or created for the purposes of journalism, but only if it is in the possession of a person who acquired or created it for those purposes (including a person who receives it from someone who intends that the recipient shall use it for those purposes).

**8. Other powers to seize and sift**

Under section 19 of PACE:[[9]](#footnote-9)

1. a constable who is lawfully on any premises may seize anything which the constable has reasonable grounds for believing has been obtained in consequence of the commission of an offence, or which is evidence in relation to an offence which the constable is investigating or any other offence, and in either case it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed.
2. a constable may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.
3. no power of seizure conferred on a constable under any enactment authorises the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.

Under section 50 of the Criminal Justice and Police Act 2001,[[10]](#footnote-10) if a person executing a search warrant (a) finds something which he or she has reasonable grounds to believe may be, or may contain, something for which that person has authority to search under the warrant, and (b) it is not reasonably practicable there and then to determine whether that is so; then that person can seize so much of what he or she has found as it is necessary to remove to enable that to be determined.

Under that same section, if such a person (a) finds something which he or she would be entitled to seize under the warrant but for its being comprised in something which he or she is not entitled to seize, and (b) it is not reasonably practicable there and then to separate the seizable property from the other property, then that person can seize both the seizable and the other property.

**9. Premises to be searched**

In every case the premises to be searched must be specified and you must explain why you believe that the material sought is on those premises. If no production order already has been made, the requirements in POCA s.353 / EIO art.14 must be satisfied.

The applicant must describe the premises in as much detail as needed to define the geographical extent of the search authorised by the court. A corresponding description must be entered in the draft warrant for the court. If only part of a building is to be searched, a plan may be helpful. If you are applying for warrants in respect of more than one set of premises you must attach a draft warrant for each.

A vehicle on premises that you are authorised to search (on a driveway or in a garage, for example) can be searched in the same way as anything else on those premises. If you want to search a vehicle parked nearby (in the street, for example) you can apply for a warrant to search it as separate premises. Use box 4 or the table at the end of the form if you can specify the vehicle(s) you want to search (for example, by registration number or other description).

**10. Duty of disclosure**

Information that might undermine any of the grounds of the application must be included in the application, or the court’s authority for the search may be ineffective. The court will not necessarily refuse to issue a warrant in every case in which there is information that undermines the grounds of the application.

The applicant must identify for the court information that comes from a source that cannot be tested (for example, a report from an anonymous informant), and must explain why that information is thought to be credible. Sensitive information may be set out in a separate document: Criminal Procedure Rules, rule 47.26(4) (and see guidance note 4 above).

The applicant must inform the court if there is anything else that might influence the court’s decision to issue a warrant and which is not the subject of any other question in this application form. This may include whether there is any unusual feature of the investigation or of any potential prosecution – for example, might the investigation result in a private prosecution?

November 2021

1. Tick as applicable. [↑](#footnote-ref-1)
2. Delete as applicable. [↑](#footnote-ref-2)
3. Delete if not applicable. [↑](#footnote-ref-3)
4. Delete as applicable and give brief reasons for the decision. [↑](#footnote-ref-4)
5. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903811/pace-code-b-2013.pdf> [↑](#footnote-ref-5)
6. <https://www.app.college.police.uk/app-content/investigations/investigative-strategies/search-powers-and-obtaining-and-executing-search-warrants/> [↑](#footnote-ref-6)
7. <https://www.legislation.gov.uk/ukpga/2002/29/section/352> [↑](#footnote-ref-7)
8. <https://www.legislation.gov.uk/uksi/2014/1893/article/13/made> [↑](#footnote-ref-8)
9. <https://www.legislation.gov.uk/ukpga/1984/60/section/19>. [↑](#footnote-ref-9)
10. <https://www.legislation.gov.uk/ukpga/2001/16/section/50>. [↑](#footnote-ref-10)