



Home Office

**DRAFT CODE OF  
PRACTICE ISSUED UNDER  
SECTION 339ZL OF THE  
PROCEEDS OF CRIME  
ACT 2002 AND SECTION  
22F OF THE TERRORISM  
ACT 2000 ABOUT  
CERTAIN INFORMATION  
ORDERS**

January 2024





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# **DRAFT CODE OF PRACTICE ISSUED UNDER SECTION 339ZL OF THE PROCEEDS OF CRIME ACT 2002 AND SECTION 22F OF THE TERRORISM ACT 2000 ABOUT CERTAIN INFORMATION ORDERS**

Presented to Parliament pursuant to section 339ZL of the Proceeds of Crime Act 2002 and section 22F of the Terrorism Act 2000

January 2024



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# **Code of Practice issued under section 339ZL of the Proceeds of Crime Act 2002 and section 22F of the Terrorism Act 2000 about certain Information Orders**

**The Director General of the National Crime Agency or an authorised National Crime Agency officer must be aware of their mandatory obligations under the legislation and act in accordance with those duties. This is an absolute requirement regardless of any interpretation of this code or any other document or guidance.**

## **Abbreviations used in this code**

<b>CDD</b>	<b>Customer Due Diligence</b>
<b>ECHR</b>	<b>European Convention of Human Rights</b>
<b>ECCT</b>	<b>Economic Crime and Corporate Transparency Act</b>
<b>FATF</b>	<b>Financial Action Task Force</b>
<b>FIU</b>	<b>Financial Intelligence Unit</b>
<b>IO</b>	<b>Information Order</b>
<b>KYC</b>	<b>Know Your Customer</b>
<b>NCA</b>	<b>National Crime Agency</b>

SAR	Suspicious Activity Report
POCA	Proceeds of Crime Act 2002
TACT	Terrorism Act 2000

This is a new code to reflect the amendments to both the Proceeds of Crime Act 2002 (“POCA”) and the Terrorism Act 2000 (“TACT”), subject to the commencement of the Economic Crime and Corporate Transparency Act 2023.

## Introduction

1. The purpose of this code is to meet the Secretary of State’s obligations under section 339ZL of POCA and section 22F of TACT to make a code of practice to guide the Director General of the National Crime Agency (NCA), or an authorised NCA officer, in connection with the exercise of the following functions –
  - a. the making of an application to the magistrates’ court for an information order in reliance on Condition 3 or 4 in section 339ZH of POCA or section 22B of TACT being met; or
  - b. the making of a request to a procurator fiscal for the procurator fiscal to apply for an information order in reliance on Condition 3 or 4 in section



339ZH of POCA or section 22B of TACT being met.<sup>1</sup>

2. It applies to applications for information orders made on or after (26 April 2024
3. The code should not be regarded as a complete or authoritative statement of the law.

## Definitions

4. In this code:
  - references to statutory provisions are to provisions of POCA or TACT, unless otherwise stated;
  - “money laundering” has the meaning given by section 340(11) to POCA and is an act which –
    - a. constitutes an offence under sections 327, 328 or 329 of POCA,
    - b. constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
    - c. constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

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1 Section 339ZH(6A, 6B) POCA 2002; Section 22B(6A, 6B) TACT 2000.

- d. would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom;<sup>2</sup>
- “terrorist financing” means an act which constitutes an offence under any of sections 15 to 18 of TACT, or an act which constitutes a corresponding terrorist financing offence;
  - “corresponding terrorist financing offence” means an offence under the law of the foreign country concerned that would, if done in the United Kingdom, constitute an offence under any of sections 15 to 18 of TACT;<sup>3</sup>
  - “the criminal intelligence function” has the same meaning given by section 1(5) of the Crime and Courts Act 2013;<sup>4</sup>
  - “foreign financial intelligence unit” means a body in a foreign country carrying out the functions of a financial intelligence unit within the meaning of Recommendation 29 of the Financial Action Task Force (FATF) (as that Recommendation has effect from time to time);<sup>5</sup>

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2 Section 340(11) POCA 2002.

3 Sections 15-18 TACT 2000.

4 Section 1(5) Crime and Courts Act 2013.

5 [Recommendation 29: Financial intelligence units \(cfatf-gafic.org\)](http://cfatf-gafic.org).

- “information order” is an order that requires a business in the regulated sector to provide information to assist the criminal intelligence function of the NCA, or a foreign financial intelligence unit (FIU), to conduct its operational or strategic analysis functions relevant to money laundering, or suspected money laundering, and/or terrorist financing, or suspected terrorist financing;
- the “regulated sector” is defined in Schedule 9 of POCA and Schedule 3A of TACT;<sup>6</sup>
- “operational analysis” means analysis which uses available and obtainable information to identify specific targets (e.g. persons, assets, criminal networks and associations), to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime, money laundering or terrorist financing in accordance with the meaning of Recommendation 29 of the Financial Action Task Force (FATF) (as that Recommendation has effect from time to time);<sup>7</sup>

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6 , Schedule 9, sections 1, 2, 3 POCA 2002; Schedule 3A sections 1, 2, 3 TACT 2000.

7 [Recommendation 29: Financial intelligence units \(cfatf-gafic.org\)](http://cfatf-gafic.org).

- “strategic analysis” means analysis which uses available and obtainable information, including data that may be provided by other competent authorities, to identify money laundering and terrorist financing related trends and patterns. This information is then also used by the FIU or other state entities in order to determine money laundering and terrorist financing related threats and vulnerabilities. Strategic analysis may also help establish policies and goals for the FIU, or more broadly for other entities within the AML/ CFT regime in accordance with the meaning of Recommendation 29 of the Financial Action Task Force (FATF) (as that Recommendation has effect from time to time).<sup>8</sup>
- “authorised NCA officer” means –
  - the Director of the National Crime Agency or;
  - an NCA officer authorised by the Director General to the NCA (whether generally or specifically) for the purposes of section 339ZH of POCA or section 22B of TACT.

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8 [Recommendation 29: Financial intelligence units \(cfatf-gafic.org\)](https://cfatf-gafic.org).

# Legislative context

5. The code applies to an authorised NCA officer exercising functions in relation to information orders.
6. The code requires that an authorised NCA officer applying for an information order makes the application to the appropriate court. In England, Wales, and Northern Ireland the order is made to a magistrates' court subject to the conditions in section 339ZH of POCA or section 22B of TACT being met. In Scotland, the order is made to a Sheriff's court by a procurator fiscal at the request of an authorised NCA officer, subject to the conditions in section 339ZH of POCA or section 22B of TACT being met.
7. The code should be available for reference by an authorised NCA officer, and members of the public.
8. A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings.
9. The code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.<sup>9</sup>

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9 Section 339ZL(8) POCA 2002.

10. The expectation is that the provisions of the code will apply to the exercise of all functions under this code. However, any decision not to follow the code should be carefully considered and noted.
11. The authorised NCA officer should be aware of the legislation and the detail of the particular provisions under which they operate. They should seek legal advice and/or guidance where necessary in advance of using the powers. This includes the relevant provisions in the Criminal Procedure Rules and Civil Procedure Rules as appropriate, and in Northern Ireland the relevant rules of court.

## **General provisions**

12. The right for respect for private and family life and the peaceful enjoyment of property under the European Convention of Human Rights (ECHR) is safeguarded by the Human Rights Act 1998. Powers of investigation following an information order may involve significant interference with the privacy and property of those whose personal information is obtained or seen.
13. The use of the powers which impact upon individuals' rights should be proportionate to the outcome being sought. In particular, those exercising the powers should consider at every stage whether the necessary objectives can be achieved by less intrusive means – this may

be by 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 becomes ready to comply and allows them the opportunity to make representations about the detail of the proposed order or notice.

14. In all cases, those exercising the powers should exercise them fairly, courteously, responsibly, respectfully, without unlawful discrimination and in accordance with any statutory duties on them. Under section 149 of the Equality Act 2010, a public authority, or a person who is not a public authority but who exercises public functions, has a duty to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a relevant “protected characteristic” and those who do not share it, and to take steps to foster good relations between those persons.
15. Section 11 of the Children Act 2004, also requires the NCA to ensure that in the discharge of its functions it has regard to the need to safeguard and

promote the welfare of all persons under the age of 18.<sup>10</sup>

## Reasonable grounds to believe

16. Reasonable grounds to believe should not be founded retrospectively. Therefore, those exercising the powers in this Code should be able to explain to the court or the respondent, the basis for their belief by reference to intelligence or information about, or specific behaviour by, the person concerned.
17. Reasonable grounds to believe should not be supported based on personal factors alone without reliable supporting intelligence or information or some specific behaviour. Reasonable grounds to believe should not be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity.

## Statutory requirements

18. An information order may be granted by a magistrates' or sheriff court on an application by

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- 10 Those exercising the powers in Northern Ireland should ensure that in the exercise of their functions, they have regard to the need to safeguard and promote the welfare of all persons under the age of 18 years in compliance with obligations under Article 3 of the UN Convention on the Rights of the Child.



an authorised NCA officer, if satisfied that any of Conditions 1, 2, 3, or 4 of section 339ZH of POCA or Conditions 1, 2, 3, or 4 of section 22B of TACT are met.<sup>11</sup> Conditions 3 and 4 for the making of an information order are relevant to this Code and the application to the court must demonstrate how the statutory requirements in these Conditions are met.<sup>12</sup>

19. Condition 3 is met if the information would assist an authorised NCA officer to conduct:

- operational analysis of information that is relevant to money laundering or suspected money laundering and/or terrorist financing or suspected terrorist financing, or;
- strategic analysis identifying trends or patterns in the conduct of money laundering or terrorist financing, or systemic deficiencies or vulnerabilities which have been, are being or are likely to be, exploited for the purposes of money laundering or terrorist financing, for the purposes of the criminal intelligence function of the NCA so far as it relates to money laundering or terrorist financing;

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11 See section 339ZH(1) POCA 2002; section 22B(1) TACT 2000.

12 See section 339ZH (6A, 6B) POCA 2002; section 22B (6A, 6B) TACT 2000.

- the respondent is a person carrying on a business in the regulated sector;
- where the application for the order is made to a magistrates' court, the person making the application has had regard to this Code of Practice;
- where the application for the order is made to the sheriff –
  - the application is made by a procurator fiscal at the request of an authorised NCA officer, and;
  - the person making that request has had regard to this Code of Practice, and;
- it is reasonable in all the circumstances for the information to be provided.

20. The following examples are non-exhaustive and cover some hypothetical scenarios to demonstrate how information orders may be used to support NCA operational and strategic analysis:

**Example 1: Information orders being used to support NCA operational analysis relevant to money laundering**

The NCA's UK Financial Intelligence Unit is undertaking operational analysis regarding an individual suspected of being engaged in Modern Slavery and it is believed that the individual holds accounts with a UK financial Institution which are being used to launder the proceeds of crime. A request has been made to the financial institution to provide relevant financial intelligence, such as transactional data for the identified account, and has been refused. An information order is requested to obtain the required information for use for intelligence purposes only to increase understanding of the individual's money laundering activity and support identification of further lines of enquiry.

**Example 2: Information orders being used to support NCA operational analysis relevant to terrorist financing**

The NCA's UK Financial Intelligence Unit is undertaking operational analysis regarding an individual suspected of being engaged in terrorist financing activity and it is believed that a UK Accountancy firm are providing services to this individual in relation to businesses held in the UK. A request has been made to the Accountancy firm to provide relevant financial intelligence regarding the business's account history but no response has been received. An information order is requested to obtain the required information for use for intelligence purposes to support identification of further lines of enquiry and potential wider suspects engaged in the activity.

**Example 3: Information orders being used to support NCA strategic analysis relevant to money laundering**

The NCA's UK Financial Intelligence Unit is undertaking a strategic assessment of the scale of the money laundering threat within the Cryptocurrency Sector. Requests have been made to relevant institutions to provide information regarding the number of potential clients refused access to their services who failed KYC/CDD processes due to concerns around money laundering. However, these requests have been rejected. Information orders are requested to obtain this information to be used for intelligence purposes to support increased understanding of the potential volume of suspect individuals who are attempting to utilise these services for money laundering.

**Example 4: Information orders being used to support NCA strategic analysis relevant to terrorist financing**

The NCA's UK Financial Intelligence Unit is undertaking a strategic assessment of the scale and trend of SAR reporting on crowdfunding for terrorist finance. Information is requested from relevant institutions regarding the number and value of transactions they have visibility of referencing crowdfunding platforms and methodologies. The aim is to use this information to provide a baseline to be compared against what can be seen within SARs; however, a number of institutions are not responding. Information orders are requested to obtain the information for intelligence purposes and to support analysis of whether crowdfunding is disproportionately present within SARs and explore the risks posed by the sector. This will in turn be used to form an assessment of potential risks for money laundering and terrorist finance and how well these risks are understood by reporters.

21. Condition 4 for the making of an information order in section 339ZH of POCA and section 22B of TACT is met if:
- a request has been made by a foreign FIU to the NCA for the provision of the information required to be given under the order,

- an authorised NCA Officer has reasonable grounds to believe that the request was made only for the purpose of the foreign FIU to conduct one or both of the following—
  - operational analysis of information that is relevant to money laundering or suspected money laundering and/or terrorist financing or suspected terrorist financing or potential terrorism funds, or;
  - strategic analysis identifying trends or patterns in the conduct of money laundering or terrorist financing, or systemic deficiencies or vulnerabilities which have been, are being or are likely to be, exploited for the purposes of money laundering or terrorist financing,

and that the information is likely to be of substantial value to the foreign FIU in carrying out such analysis;

- the provision of the information by the NCA to the foreign FIU would be for the purposes of the criminal intelligence function of the NCA, so far as it relates to money laundering or terrorist financing;
- the respondent is a person carrying on a business in the regulated sector;

- where the application for the order is made to a magistrates' court, the person making the application has regard to this code of practice;
- where the application for the order is made to the sheriff –
  - the application is made by a procurator fiscal at the request of an authorised NCA officer, and;
  - the person making that request has had regard to this Code of Practice, and;
- it is reasonable in all the circumstances for the information to be provided.

22. The following examples are non-exhaustive and cover some hypothetical scenarios to demonstrate how information orders may be used to support foreign FIU activity:

### **Example 1: Information orders being used to support foreign FIU activity relevant to money laundering**

The NCA's UK Financial Intelligence Unit receive a request from a foreign FIU for intelligence relating to an individual based in the foreign jurisdiction who is suspected of being engaged in High End Money Laundering activity and utilising UK structures to launder the proceeds of crime. Operational analysis by the foreign FIU has identified accounts believed to be held by the individual in a UK financial institution. A request has been made to the financial institution for account and transaction details but has been refused. An information order is requested to obtain the relevant financial intelligence for dissemination to the requesting foreign FIU. The foreign FIU will use this information for intelligence purposes to support the identification of UK accounts utilised by the suspect to conduct their money laundering activity.

### **Example 2: Information orders being used to support foreign FIU activity relevant to terrorist financing**

The NCA's UK Financial Intelligence Unit receive a request from a foreign FIU for intelligence relating to an individual based in the foreign jurisdiction who is suspected to be a member of a Proscribed Terrorist Organisation and has been arrested for terrorist financing offences. Operational analysis by the foreign FIU has identified accounts believed to be linked to the funding of terrorist activity which are held by the individual in a UK financial institution. A request has been made to the financial institution for account and transaction details but has received no response. An information order is requested to obtain the relevant financial intelligence for dissemination to the requesting foreign FIU. The foreign FIU will use this for intelligence purposes in support of the ongoing overseas investigation and support disruption of illicit finance flows through UK structures.

23. The application to the magistrates' or sheriff court for an information order must:
- specify the person or entity who is the subject of the information order;

- specify or describe the information sought under the order;
- specify the person or entity carrying on a business in the regulated sector from whom the information is sought “the respondent”.

24. The application should also set out:

- why the information order is required and how it will be used to support NCA operational and strategic analysis;
- that consideration has been given to minimising the amount of data obtained or the number of individuals affected.

## **Particular action to be taken when executing an information order**

25. When an information order is served on a business in the regulated sector, the covering letter should include the following:

- the name of the business in the regulated sector;
- the name(s) of the person(s) or organisation(s) and/or other identifying factors about whom the information is sought;
- how the information required under the order is to be provided;



- the date by which it is to be provided;
- where the authorised NCA officer believes that the information order includes information held in any other names that the specified person has, or had used previously, that other name;
- all relevant addresses known by the authorised NCA officer to have been used by the specified person relating to accounts that may have been, or are held by, the business in the regulated sector;
- such other information as the authorised NCA officer considers would assist the business in the regulated sector in complying with the order;
- notice that if a person fails to comply with an information order made by a magistrates' court, the magistrates' court may order the person to pay an amount not exceeding £5,000;
  - the £5,000 mentioned above is to be treated as adjudged to be paid by a conviction of the court for the purposes of the Magistrates' Courts Act 1980 or (as the case may be) the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
  - in order to take account of changes in the value of money, the Secretary of State may by regulations substitute one sum for

another sum, for the time being specified above.

## Statements

26. A statement made by a business in the regulated sector in response to the information order may not be used in evidence against it in criminal proceedings, other than in the circumstances set out in section 339ZI of POCA or section 22C of TACT.

## Particular record of proceedings under an information order

27. The authorised NCA officer should keep a record of all the information supplied in response to the information order and a copy of the order and any notices.

## Appeals

28. An appeal from a decision on an application for an information order lies with the relevant appeal court.
29. An appeal lies at the instance of any person who was a party to proceedings on the application.
30. The relevant appeal court is:
  - the Crown Court, in the case of a decision made by a magistrates' court in England and Wales;

- a county court, in the case of a decision made by a magistrates' court in Northern Ireland;
  - the Sheriff Appeal Court, in the case of a decision made by the sheriff;
31. On an appeal the relevant appeal court may:
- make or (as the case may be) discharge an information order, or;
  - vary the order.

## Supplementary

32. An information order does not confer the right to require a person to provide privileged information under section 339ZK of POCA and section 22E of TACT.<sup>13</sup>
33. Information provided in pursuance of an information order is not to be taken to breach any restriction on the disclosure of information (however imposed as per section 339ZK of POCA and section 22E of TACT).
34. An application for an information order may be heard and determined in private.

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13 'Privileged information' is information which a person would be entitled to refuse to provide on the grounds of legal professional privilege in proceedings in the High Court or, in Scotland, legal privilege as defined by section 412 of POCA 2002.

35. Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to information orders.







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