



Home Office

# **Powers of Entry**

## **Draft Code of Practice**

January 2013

## 1. Purpose and Scope - Introduction

This Code of Practice is issued by the Secretary of State under Section 48 of the Protection of Freedoms Act 2012. Under Section 51 of the Act a 'relevant person' must have regard to this code when exercising any functions to which the code relates. A failure of the part of any person to act in accordance with any provision of this code does not of itself make that person liable to criminal or civil proceedings. However, the code is admissible as evidence in any such proceedings and any failure to adhere to the code may be taken into account.

The code provides guidance and sets out considerations that apply before, during and after powers of entry and associated powers are exercised. The purpose of the code is to ensure greater consistency in the exercise of powers of entry and greater clarity for those affected by them.

The right to respect for private and family life and the protection of property are enshrined in the European Convention on Human Rights (Article 8 and Article 1 of the First Additional Protocol). Powers of entry and associated powers (such as search and seizure) are intrusive in nature and may engage these rights. Any interference by a public authority with the right to respect for private and family life must be in accordance with the law and necessary for one of the stated purposes in Article 8, eg. for the prevention of disorder and crime. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided by law. Authorised persons or bodies granting the use of, or exercising such powers, should consider whether the necessary objectives can be met by less intrusive means.

This code applies to non devolved powers of entry and associated powers as specified under relevant Acts and statutory instruments. Non devolved powers are powers other than those contained in an Act, or in an instrument made under –

- (i) an Act of the Scottish Parliament,
- (ii) Northern Ireland legislation, or
- (iii) a Measure or Act of the National Assembly for Wales

## 2. Exceptions

**The Code does not override specific statutory powers to conduct routine inspections or to enter premises for enforcement purposes.** The code sets out the considerations that should apply to the exercise of powers of entry (not subject to other codes) before, during and after their use.

**This code does not apply to the entry to premises for purposes and in circumstances which are subject to a separate but similar statutory Code of Practice issued under any enactment which was in force before the commencement of sections 47 to 52 of the Act.**

For example, PACE Code B, issued under section 66 of the Police and Criminal Evidence Act 1984 relates to the search of premises and seizure of property by police officers. Section 67(9) of PACE 1984 requires persons other than police officers (who are charged with the duty of investigating offences or charging offenders) to have regard to that Code. In accordance with paragraph 2.5 of PACE Code B that includes persons exercising a statutory power to enter premises or to inspect goods, equipment or procedures if the exercise of that power is dependent on the existence of grounds for suspecting that an offence may have been committed and the person exercising the power has reasonable grounds for such suspicion.

### 3. Avoiding Discrimination

The Equality Act 2010 makes it unlawful to discriminate against, harass or victimise any person on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage or civil partnership, pregnancy or maternity in the discharge of an authorised persons powers. This applies to the use of powers of entry.

### 4. Definitions used in this code

**'Relevant person'** as defined in the Protection of Freedoms Act for this purpose means any person specified or described by the Secretary of State in an order made by statutory instrument

**'Power of entry'** means a power (however expressed) in any enactment to enter land or other premises; and includes any safeguard which forms part of the power

**'Premises'** is defined under section 46 of the Protection of Freedoms Act and includes any place and, in particular, includes -

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any off-shore installation,
- (c) any renewable energy installation,
- (d) any tent or movable structure.

**The following are definitions for the purpose of this Code:**

**'Authorised persons'** under this code means a person authorised by the Secretary of State (in relation to England) to exercise non-devolved powers of entry (titles other than 'authorised persons' used in legislation where the code applies are to be treated as meaning the same).

**'Dwelling'** includes any building or shelter wholly or mainly used as place of residence or abode;

**'Occupier'** refers to a person who is or appears to be in charge of the premises;

**'Owner/landowner'** – the person owning the premises;

**'Authorised person in charge'** means the authorised person assigned to lead the search, inspection, sampling etc. One authorised person must act as the person in charge whenever powers of entry are exercised.

## 5. Availability / monitoring and changes to the code

Section 49 of the Protection of Freedoms Act requires the Secretary of State to keep this code under review and enables the Secretary of State to alter or replace the code. This code and any subsequent replacement code will be published on the Home Office website and relevant persons must have regard to it.

The remaining sections of this code set out the considerations that should apply to the exercise of powers of entry (not subject to other codes) before, during and after their use. It applies to entry to premises during routine inspections, in addition to powers of entry exercised for enforcement purposes. Authorised persons should continue to adhere to requirements in relevant statute while having regard to the code. This code also applies where legislation is silent on particular matters or where relevant legislation provides fewer safeguards than those provided here.

## 6. Authorisation

If an authorisation process is already set out in legislation or related guidance, then 'authorised persons' should follow the procedures that apply. In the absence of such a process being set out in relation to a specific power, then authority to grant the exercise of a power of entry should be provided by the appropriate person who is authorised to do so within the relevant body. Where routine inspections or visits for large scale operations are involved, processes should be agreed and authorised at a suitably senior level in the organisation exercising the power. It is not necessary for every individual visit to be separately authorised. Inspections and visits should however be properly recorded, including the power of entry being exercised.

Authorisation and authorisation processes should be periodically reviewed to ensure that persons and management processes remain adequate.

## 7. Providing notice of rights / rights of occupiers

Where it is judged necessary to use a power of entry authorised persons should provide a notice of powers and rights to the landowner / occupier in a standard format. This should include:

- whether the search will be conducted with or without a warrant,
- the powers of entry and associated powers used,
- the landowner's or occupier's rights,
- any compensation or complaints procedures that exist,
- stating where a copy of the code of practice may be obtained.

Reasonable effort should also be made to obtain the consent of the landowner or occupier to avoid the need to rely on statutory powers of entry, unless obtaining consent would frustrate the purpose of the exercise, for example by causing undue delay.

There will also be occasions on which notice is clearly not practicable, for example in respect of routine vehicle searches in ports.

In appropriate cases, compensation may be payable for damage caused by entering and searching premises. In such cases authorised persons should explain any compensation procedures and provide the occupier with the address to which a compensation application should be sent.

## **8. Entering premises / Consent**

Where it is appropriate to do so, reasonable notice (usually not less than 48 hours or as specified in relevant legislation) should normally be provided to the occupier or landowner of the intention to visit premises and/or undertake inspection where it is practicable to do so. Where inspections or visits are exercised routinely with the consent of the occupier, a written notice as described at paragraph 7 above may not be necessary, but the visit should be recorded. If pre-notification of a visit would defeat the purposes of any inspection, officers, provided they have the statutory power to do so, can still visit unannounced providing they act within the limitations of their power.

Where permission is sought but not obtained (the occupier refuses or obstructs entry, contact could not be established with the occupier or the premises were unoccupied at the time the power was being exercised) authorised persons should record their attempts to gain permission as a matter of good practice.

It is important that consent is informed and that the occupier is notified about the purpose of the visit and, for exercising the powers of entry and associated powers, what these are and how they will be used. If consent is withdrawn by the occupier at any time, the right to enter the premises should be clearly explained to him or her and also the consequences or penalty for obstructing authorised persons when exercising their legal powers. Where consent is not given it may still be possible to exercise lawful authority to enter, where this is based either on specific statutory powers or judicial authority such as a warrant.

If an authorised person requests that a landowner / occupier does not accompany him/her during the inspection he/she should give that person clear reasons, for example health and safety issues.

The landowner or occupier may accompany the authorised person/s during the course of the inspection if, in the opinion of the authorised person, it neither interferes with the purposes of the investigation, nor are there any other issues which would prevent it.

In the context of powers of entry for the purposes of inspecting an institution / service provider, in some circumstances, it may be necessary to conduct an unannounced inspection in order to gain a genuine picture of ordinary day to day processes relating to that institution / service provider rather than a manufactured or pre-prepared impression. Unannounced visits may also be necessary for the purpose of safeguarding children and vulnerable groups.

Reasonable notice need not be given where the purpose of the entry is the initial safety investigation in the aftermath of an air, rail or marine accident or other emergency where there is an urgent need to investigate the circumstances/causes of the accident or to maintain public safety.

## **9. Number of Persons carrying out search / inspection**

The relevant authority when exercising powers of entry should consider the number of persons needed for the search, inspection etc to be carried out effectively.

The number of persons should reflect what is reasonable and proportionate in the circumstances.

## 10. Entering dwellings: Consent

Unless expressly provided for in powers set out in the relevant statute, authorised persons should not enter premises used as a private dwelling without the occupier's consent, if possible, or before first obtaining a warrant, court order or other judicial authorisation. Where the relevant legislation provides a specific power to enter dwellings, the power should only be used where absolutely necessary and on the approval of the appropriate person in authority who is able to grant such powers, unless entry is required urgently. For instance, where there is an immediate need to protect life or property from harm.

## 11. Entry without consent / exercise of powers without warrant

Where it is proposed to exercise a power of entry without seeking consent, and without a warrant, authorised persons must follow the conditions set out in statute granting them entry and, before deciding to exercise powers, should consider whether the object of entry might be achieved by less intrusive alternative means. Where legislation provides that no notice need be given, authorised persons should nevertheless still consider whether notice could be provided, and where appropriate provide this, where it will not frustrate the purposes of using the power of entry.

Where notice is provided this should be in writing and addressed to the owner or occupier and should set out the purpose of the proposed entry and date and time when it is proposed that the power should be exercised.

On arrival at the premises, the authorised person exercising the power of entry should make reasonable attempts to make contact with the occupier of the premises, or the person appearing to be in charge of them, unless doing so would frustrate the purposes of entry. He or she should show them suitable identification and explain in straightforward language the purpose of the visit and their powers.

If that is not possible, for example because the premises are unoccupied or no person is present, wherever possible, written notice setting out the purpose of entry should be left in a prominent place on the premises.

## 12. Entry under Warrant

Where it is proposed to exercise a power of entry under warrant, the procedures set out in the legislation providing the power must be followed. Authorised persons need to consider all available intelligence before applying for a warrant, such as taking reasonable steps (as is practicable) to verify and corroborate that the information is accurate, recent and not provided maliciously. An application to the court for a warrant should be supported by a signed written authority from a senior official (this should be someone sufficiently senior in the chain of command who is authorised to grant the exercise of powers) within the relevant authority.

## 13. Timing of inspection

Exercising powers of entry by an authorised person should only be undertaken at reasonable hours (reasonable hours may be determined by what is normal working practice for some types of business e.g. entry at night might be considered reasonable for a business that has overnight deliveries). For premises used as a dwelling, wherever possible (and if appropriate) any entry ought to be at a time agreed in advance with the occupier. However, this need not apply where the power of entry is being exercised under a judicial warrant.

## 14. Seizure of property

An authorised person may only seize property where such powers granting the right to seize objects or items are explicitly set out in relevant legislation. The power of seizure will be determined by the relevant legislation and this should be carried out to create the least amount of burden or distress to the occupier of the premises subject to the requirements of enforcing the regulation.

Unless otherwise stated in legislation, an authorised person should provide the occupier of the premises with details of the items seized, the relevant procedures and any appeal rights and disclose how long items may be held before they are returned (although counterfeit or illegal items may be destroyed) and also any compensation terms.

## 15. Retention of property

Unless the process for retention, and, or, destruction of seized property is provided for under a relevant statutory provision:

Anything seized may be retained only for as long as is necessary. Property should not be retained if a copy or image would be sufficient.

Generally, property may be retained, among other purposes:

- For use as evidence at a trial for an offence,
- To facilitate the use in any investigation or proceedings to which it is inextricably linked,
- For forensic examination or other investigation,
- In order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.

If property is seized by an authorised person during inspection, the occupier should, on request be provided with a list or description of the property within a reasonable time.

That person or their representative should be allowed supervised access to the property to examine or photograph it, or should be provided with a photograph or copy, in either case within a reasonable time following any request and at their own expense, unless the authorised person in charge has reasonable grounds for believing this would:

- Prejudice the investigation of any offence or criminal proceedings;
- Lead to the commission of an offence by providing access to unlawful material; or
- Compromise the personal safety of security staff and/or the security of storage facilities.

In exceptional circumstances, and in the interest of personal safety of an individual, access to lawfully held property, for example, medication or personal items left in a seized vehicle should be made available to the individual.

A record should be made of the grounds for denying any such request.

## 16. Other persons

Anyone accompanying an authorised person under their authority onto premises should abide by this code. The authorised person should ensure that he/she has the right to take that person on to the premises before doing so. That right is usually set out in relevant legislation.

## 17. Conduct of inspections

When carrying out a visit or conducting an inspection, an authorised person should identify themselves clearly to the landowner or occupier (where present) by showing his/her authorisation or other means of formal identification (except in situations where the safety of authorised personnel would be compromised by doing so), disclose their authority to undertake the inspection or visit and explain clearly the purpose of the visit. When requested to do so, he/she should:

- Give his/her name and the name of his/her organisation,
- Provide an official contact address and telephone number.

Whilst carrying out his/her investigations an authorised person should:

- Be impartial and fair at all times,
- Comply with any restrictions on seizure eg. legally privileged material; and
- Within a reasonable time after the visit, formally record the site visit in the form of a written report.

In all cases, authorised persons should:

- Exercise their powers reasonably and courteously and with respect for persons and property,
- Only **use reasonable force** where this is expressly permitted under the legislation that provides the power of entry and before doing so consider whether it is both necessary and proportionate in the circumstances,
- Comply with the requirements under relevant legislation including relevant safeguards,
- Be clear about what associated powers may be exercised (such as powers to inspect, search, seize or survey) and exercise those legally and fairly,
- Not exercise any powers other than those granted under legislation.

Premises should be inspected or searched only to the extent necessary to achieve the purpose of the inspection or search.

- The search should no longer continue once the object of that search has been achieved or it is clear that whatever is sought is not on the premises,
- Searches should be conducted with due consideration for the property and privacy of the occupier with no more disturbance than is necessary,
- When **reasonable force** is lawfully permitted it may be used only when necessary and because the co-operation of the occupier cannot be obtained or is insufficient for the purpose. In all cases where a power authorises the use of force, only the **minimum force necessary** to achieve the purposes of the power may be used,
- When only one person is present on the premises at the time when a power is to be exercised, a friend, neighbour or other person should be allowed to witness any search or inspection that is undertaken if the occupier wishes and where it is practicable to do so, unless the authorised person in charge of the entry has reasonable grounds to suspect that this would seriously disrupt the purposes of the entry, or would lead to an unreasonable delay in its exercise,
- A record of the inspection or search should be made including the grounds for refusing the occupier's request, if applicable.

## 18. Assistance from occupiers

In certain circumstances, an occupier should give an authorised person reasonable assistance if required by the authorised person to do so (for instance opening locked doors or containers). If an authorised person requires such assistance from an occupier, the authorised person should give the person clear instruction as to what assistance is required and make that person aware of why, in the authorised person's opinion, the person is required to give that assistance.

## 19. Leaving premises

If premises have been **entered by force**, before leaving the authorised person in charge should make sure the property is left as secure as possible and in as close to the original condition before entry as practicable

## 20. Action after Inspection / search

The authorised person in charge of the use of a power of entry shall make or have made a record of any entry or search that was undertaken to include:

- The statutory provision under which the power was exercised,
- The address of the searched premises,
- The date, time and duration of the search,
- The authority used for the search, and whether it was exercised with or without a warrant,
- The names of those involved in the search, names of any other persons present (if known), unless operational imperatives are sensitive and require that the names of those involved are withheld or not disclosed,
- Any grounds for the refusal of any requests,
- A list of any items seized, and if not covered by a warrant, the grounds for their seizure,
- Whether **reasonable force** was used; and if so, why,
- Details of any damage caused and the reason / circumstances.

When premises are searched under warrant, following its use, the warrant authorising the search shall show as a minimum:

- Whether any articles specified in the warrant were found, and their location,
- Whether any other articles were seized,
- The date and time the warrant was executed, and if present name of occupier or person in charge of the premises,
- Names of authorised persons executing warrant and officials accompanying them,
- If a copy (together with notice of powers and rights) was; handed to the occupier, or, left on the premises and where,
- Name of Justice of the peace or judge / judicial authority issuing the warrant,
- Information about obstruction (for instance offences that may be committed and penalties that may apply).

This is particularly important where powers of entry are used for enforcement purposes. Where routine inspections or visits are undertaken, a briefer record may be appropriate which should nevertheless make clear the statutory power being exercised and details of the purposes and outcomes of the inspection or visit.

## **21. Search registers**

A search register should be maintained by the authorised body containing the search record under paragraph 19 of this Code.

## **22. Conflict of interests**

An authorised person should notify his / her line manager immediately if any situation arises which might reasonably be perceived as a conflict of interests.

## **23. Complaints**

Any complaints procedures should be explained in straightforward language to the occupier of the premises including explaining where they might obtain further information from or a copy of the code.

## **24. Staff Training**

Authorities should ensure that all relevant authorised persons, including those able to exercise powers of entry are familiar with the Code of Practice

## **25. Further information**

Further copies of this Code are available from the Home Office Website:

[www.homeoffice.gov.uk/crime/powers-entry/](http://www.homeoffice.gov.uk/crime/powers-entry/)

