



Attorney  
General's  
Office

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

January 2015

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Proceeds of Crime Act 2002

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

## Abbreviations used in this Code

AFI	accredited financial investigator
CJPA	the Criminal Justice and Police Act 2001
HMRC	Her Majesty's Revenue and Customs
NCA	National Crime Agency
POCA	the Proceeds of Crime Act 2002
The relevant Directors	the Director of Public Prosecutions and the Director of the Serious Fraud Office

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; and
- the Finance Act 2013.

## Introduction

1. This Code is issued by the Attorney General under section 377A of POCA. The Attorney General must make a Code of Practice under that section as to:
  - (a) the exercise by the Director of Public Prosecutions and the Director of the Serious Fraud Office (“the relevant Directors”) of functions they have under Chapter 2 of Part 8 of POCA; and
  - (b) the exercise by any other person, who is the relevant authority by virtue of section 357(9) of POCA in relation to a confiscation investigation, of functions that person has under Chapter 2 of Part 8 of POCA in relation to England and Wales as the relevant authority.
2. What that means is that this Code provides guidance as to how, in England and Wales, the relevant Directors are to use the Part 8 investigatory powers in their role as appropriate officers in civil recovery investigations<sup>1</sup>, how the relevant Directors are to use their powers to obtain a disclosure order in a civil recovery or a confiscation investigation<sup>2</sup>, how a person specified by the Secretary of State as a prosecutor under section 357(9) is to use the power to

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<sup>1</sup> See section 378(3)(a).

<sup>2</sup> See section 357.

obtain a disclosure order in a confiscation investigation<sup>3</sup>, and how the relevant Directors use their powers to request assistance in connection with a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation, in relation to evidence which is overseas<sup>4</sup>. The powers of investigation are not available for a civil recovery investigation, if an interim receiving order or administration order is extant against the relevant property; proceedings for a civil recovery order have been started against the relevant property; or cash is detained under section 295 of POCA<sup>5</sup>, although they do remain available if a property freezing order has been obtained, but proceedings for a civil recovery order have not started.

3. 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 relevant legislation.
4. In this Code, references to statutory provisions are to provisions of POCA, unless otherwise stated.
5. This Code of Practice is a revised version of the Code of Practice entitled “Code of Practice issued under section 377A of the Proceeds of Crime Act 2002” laid before Parliament on 18th June 2008 and issued by the Attorney General and Advocate General for Northern Ireland. This revised Code of Practice replaces the original version of the Code in relation to England and Wales from 1st June 2015. However the original version of the Code continues to apply in relation to investigations carried out in Northern Ireland.
6. This Code includes a section on general provisions relating to all orders and warrants (paragraphs 18 to 52) followed by detailed sections on each of the following topics:
  - Production orders (paragraphs 53 to 71);
  - Search and seizure warrants (paragraphs 72 to 121);
  - Customer information orders (paragraphs 122 to 131);
  - Account monitoring orders (paragraphs 132 to 142);
  - Disclosure orders (paragraphs 143 to 218); and
  - Obtaining evidence from abroad (paragraphs 219 to 226).

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<sup>3</sup> See the Proceeds of Crime (Disclosure Orders: Confiscation Investigations) (Specified Person) Order 2014, SI 2014/3207. The Director of the Serious Fraud Office has been specified as a prosecutor for the purposes of section 357(8)(b) (a confiscation investigation carried out by an AFI).

<sup>4</sup> See section 375A.

<sup>5</sup> See section 341(3).

7. There is a separate code of practice issued by the Secretary of State in respect of the Part 8 investigation powers when they are exercised by law enforcement officers, namely the Director General of the NCA and members of his staff, constables, officers of HMRC, immigration officers and AFIs<sup>6</sup>. This Code mirrors, in all significant respects, that issued by the Secretary of State.

### **Persons to whom this Code applies**

8. This Code provides guidance to:
  - (a) the relevant Directors in their role as appropriate officers in civil recovery investigations in England and Wales;
  - (b) the relevant Directors in their role as relevant authority in relation to an application for a disclosure order in England and Wales;
  - (c) a specified person in their role as relevant authority in relation to an application for a disclosure order in England and Wales; and
  - (d) the relevant Directors when making requests for assistance under section 375A in relation to evidence which the Director thinks overseas in connection with a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation.
9. Anything which a relevant Director is authorised or required to do under, or in relation to, Part 8 of POCA may also be done by a member of the Director in question's staff, if the member of staff is authorised by that Director (whether generally or specifically) for that purpose. Also, anything which one of the Directors or a member of the Director in question's staff is authorised or required to do under, or in relation to, Part 8 of POCA, may be done by a person providing services under arrangements made by that Director, if the person providing services is authorised by the Director (whether generally or specifically) for that purpose<sup>7</sup>. Therefore this Code also applies to the exercise of functions by a member of a relevant Director's staff, or to a person providing services under arrangements made by a relevant Director, if the member of staff or the person providing services is authorised as described to perform those functions.
10. Appropriate officers conduct investigations under Part 8, and there are 5 kinds of investigation permitted – confiscation investigations, civil recovery investigations, detained cash investigations, money laundering investigations and exploitation proceeds investigations. Who may be an appropriate officer in respect of each kind of investigation is set out in section 378. The relevant Directors are included as appropriate officers, but only in respect of a civil recovery investigation (see section 378(3)(a)). A NCA officer is also an

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<sup>6</sup> An AFI is a civilian investigator accredited by the NCA. The AFI will also have to fall within a category given in an order issued by the Secretary of State under section 453 to have access to some or all of the powers of investigation.

<sup>7</sup> See section 2C.

appropriate officer for a civil recovery investigation, but a NCA officer is covered by the Secretary of State's Code of Practice issued under section 377 rather than this Code. Who may be appropriate officers in respect of each of the other kinds of investigation are also set out in section 378, and vary depending on the investigation concerned. An appropriate officer in relation to confiscation, money laundering, exploitation proceeds and detained cash investigations must be a law enforcement officer (as listed in paragraph 7), but reference must be had to section 378 to identify which law enforcement officers may be appropriate officers in relation to the particular kind of investigation in question.

11. The five powers of investigation in England and Wales which may be used for investigations are:
  - (a) production orders,
  - (b) search and seizure warrants,
  - (c) disclosure orders,
  - (d) customer information orders and
  - (e) account monitoring orders.

Production orders, customer information orders and account monitoring orders are applied for and executed by an appropriate officer.

12. Search and seizure warrants are also applied for by an appropriate officer. The warrants are executed however by an appropriate person, as defined in section 352(5). In the case of a warrant sought for the purposes of a civil recovery investigation, this includes a member of the staff of the relevant Director.
13. Applications for disclosure orders are made by the "relevant authority", as defined in section 357(7). In relation to a civil recovery investigation, the relevant authority is a NCA officer or the relevant Director. In relation to a confiscation investigation, the relevant authority is a "prosecutor", as defined in section 357(8). Who qualifies as a prosecutor depends on which kind of appropriate officer is carrying out the investigation. The Secretary of State has the power to specify by Order additional persons as prosecutors, who may therefore apply for disclosure orders in confiscation investigations<sup>8</sup>. Disclosure orders are executed by the appropriate officer however.
14. Where a person fails to comply with any provision of the code, he is not by reason only of that failure 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 its provisions in determining any questions in the proceedings.

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<sup>8</sup> See the Proceeds of Crime (Disclosure Orders: Confiscation Investigations) (Specified Person) Order 2014, SI 2014/3207. The Director of the Serious Fraud Office has been specified as a prosecutor for the purposes of section 357(8)(b) (a confiscation investigation carried out by an AFI).

15. The Code must form part of any published instructions or guidance for the persons to whom the Code applies and affected members of the public. The persons to whom the Code applies must make arrangements for the code (whether in a hard copy form or electronically) to be available to both their staff and members of the public on request.
16. If a person to whom the Code applies is also exercising an additional and separate function or power, for example, making an application under Part 2 of POCA for a restraint order in relation to seized property, the appropriate officer must have regard to any connected code.
17. Those to whom the Code applies 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 the orders and warrants**

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

18. The right to respect for private and family life and the protection of property under the European Convention of Human Rights (ECHR) is safeguarded by the Human Rights Act 1998. The powers of investigation may involve significant interference with 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. The use of the powers which impact upon individuals' rights must be proportionate to the outcome being sought. 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 a 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 their powers them fairly, courteously, responsibly, respectfully and without discrimination.
19. With particular reference to search and seizure warrants, if there is reason to believe an action carried out pursuant to the powers covered by this code might have an adverse effect on relations between law enforcement and the community, the appropriate officer should consult the local police/ community liaison officer and/or any other relevant persons:
  - before any action is taken; or
  - in particularly urgent cases, as soon as practicable after action has been taken.

20. The appropriate officer (in the case of an application for a warrant) or appropriate person (in the case of execution of a warrant) should also consider whether this consultation could jeopardize an ongoing (sensitive) 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.
21. 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>9</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.
22. The appropriate judges to grant these powers are, in relation to confiscation investigations, a judge entitled to exercise the jurisdiction of the Crown Court, and in relation to a civil recovery investigation, a judge of the High Court. Before a judge can grant any of the Part 8 orders or warrants, he will have to be satisfied that the statutory requirements are met. For each order or warrant to be granted, there is a statutory requirement<sup>10</sup> that there must be reasonable grounds for suspecting that:
- in relation to a confiscation investigation, the person who is the subject of the investigation has benefited from his criminal conduct; or
  - in relation to a civil recovery investigation, (a) the person who is the subject of the investigation holds recoverable property or associated property, or (b) has at any time held recoverable property or associated property, or (c) (except in the case of a customer information order) the property which is the subject of the investigation is recoverable property or associated property<sup>11</sup>.
23. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, religion or age cannot be used alone or in combination with another personal factor as the reason for establishing suspicion. Reasonable suspicion cannot 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

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<sup>9</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>10</sup> Except in relation to an application for a search and seizure warrant where a production order has been granted but not complied with, but the statutory requirement will have applied in relation to the granting of the production order (see section 352(6)(a)).

<sup>11</sup> Because of the nature of the order, in the case of a customer information order, point (c) is not applicable, and in the case of an application for an account monitoring order, only point (a) is applicable.

intelligence or information. It can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. However, reasonable suspicion cannot be founded retrospectively.

24. In respect of each order or warrant to be granted, there is a statutory 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. The appropriate officer must be satisfied that the material or information will progress the investigation.
25. There is also a statutory requirement that there must be reasonable grounds for believing that it is in the public interest that the material or information is obtained or accessed by the appropriate officer. The appropriate officer must make sure that the public interest in obtaining the order outweighs the disadvantages to the person against whom the order is being made. For example, an application for an account monitoring order against a bank should not normally be sought unless the appropriate officer considers that this may lead to the identification of monies greater than the anticipated cost to the bank in complying with the order, or that the appropriate officer suspects that the information will be of substantial benefit with regards to the serious nature of the investigation. The appropriate officer must satisfy himself or herself that all of these statutory requirements are satisfied before making the application.

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

26. All the applications for the powers of investigation may be made ex parte to a judge in chambers<sup>13</sup>. In deciding whether the application should be ex parte, the appropriate officer must consider the benefit of not holding the proceedings inter partes<sup>14</sup>. An obvious and probably most common reason would be so as not to alert the persons connected to an investigation that such is ongoing. Inter partes 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 of making an application for an investigation order – the application hearing could then be held inter partes.
27. An application in respect of a civil recovery investigation must be made to a judge of the High Court in accordance with any relevant civil procedure rules and Practice Direction.
28. Appropriate officers must familiarise themselves as to the requirements in POCA, but the following must be included in an application for an order or warrant:

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<sup>12</sup> The appropriate officer is under no obligation to divulge the anticipated cost he or she has decided.

<sup>13</sup> This means that an appropriate officer can apply for an order or warrant without notifying the respondent that the application is being contemplated or made.

<sup>14</sup> Inter partes applications are those notified to the respondent of the contemplated order or warrant. They are therefore aware of the application and can be represented at the hearing.

- the name of the person who is under investigation or (if possible) who holds or owns 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 to the main focus of the investigation, he or she must also be named or specified in the application and there must be an explanation of the person's 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 or consists of items subject to legal privilege or excluded material (with the exception of a lawyer's client's name and address requested under a disclosure order<sup>15</sup>). This does not apply to customer information orders and account monitoring orders as the type of information requested will not be that which could be subject to legal privilege or could be 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 information provided or any other related matters.
31. The person applying must be ready to satisfy the judge that he or she is an appropriate officer (see section 378) who may apply for the order or warrant<sup>16</sup>.
32. Officers should seek reasons (if not given) from the judge for the reasons for the decision on an application whether it is approved or rejected.

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<sup>15</sup> See section 361(1).

<sup>16</sup> This could be by means of a certificate signed by the relevant Director.

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

33. In all cases, the investigatory powers must be exercised fairly, courteously, responsibly and with respect for the persons and property of those concerned and without discrimination.
34. In deciding the method of service of the order or notice, the appropriate officer (in the case of a disclosure order or a customer information order, 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 or notice is served. Search and seizure warrants are executed by an “appropriate person”<sup>17</sup> who should also have regard to these matters when executing the warrant.
35. When serving the order or notice under the order, or executing the warrant, a covering letter must be provided which includes the following information (unless it is already included in the order or the notice):
  - the name of the person who is the subject of the order, warrant or notice or the name by which he or she is 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, or could lead to contempt of court proceedings;
  - 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 general description of the investigation in connection with which the requirement is made (it is not necessary to specify the name of the person or property subject to the investigation on the order, although this information must be given to the judge as part of the application process);
  - 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;

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<sup>17</sup> Section 352(5).

- 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 be an offence under section 342 (offences of prejudicing investigation) punishable by up to five years imprisonment;
- 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.

36. When serving a notice under a disclosure order or a customer information order, the appropriate officer must inform the respondent of his or her right to refuse to comply with any requirement imposed on them unless the appropriate officer has, if required to do so, produced evidence of his authority to issue the notice<sup>18</sup>. The evidence of the authority could include the actual order.
37. Where it appears to the appropriate officer or appropriate person that the recipient of an order, warrant or notice has genuine difficulty in reading or understanding English he or she should attempt to serve a copy on a person known to the recipient who, in the opinion of the appropriate officer or person, is able to explain or translate what is happening. If this is not practicable the appropriate officer or appropriate person should serve the order or warrant and attempt to ensure that the person understands what has occurred (e.g. by serving a multi-lingual explanation or engaging an interpreter or translator).
38. Sections 359(1) and 366(1) provide that an offence is committed if, without reasonable excuse, a person or financial institution fails to comply with a requirement imposed by a disclosure or customer information order. 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. The other orders are treated as orders of the court against the named person and therefore attract contempt proceedings if they are not complied with.
39. What in law amounts to a reasonable excuse will depend on the facts of each particular case and will be a matter for decision by a court. But the fact that a person has already been questioned in connection with the same or a connected investigation, that the question relates to activities outside the jurisdiction or that a truthful answer to a question would tend to incriminate the interviewee or some other person is unlikely, in itself, to amount to a reasonable excuse.

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<sup>18</sup> Sections 357(6) and 363(7).

40. Section 449A enables members of staff of the relevant Director to be identified by means of a pseudonym when authorised to carry out functions under POCA. An application may be made or an order or warrant may be served using a pseudonym. A certificate signed by the relevant Director is sufficient to identify a person as a member of staff of that Director and the member of staff may not be asked any question for the purposes of any proceedings or application under POCA which is likely to reveal his or her true identity. Section 449A does not extend to persons providing services under arrangements made by the relevant Director, or to persons exercising functions as a result of being specified in an order made by the Secretary of State.
41. No document may be removed or accessed and no information sought which is subject to legal professional privilege (with the one limited exception in respect of a disclosure order, see paragraph 28, third bullet). A respondent has the right to withhold material and information sought which is subject to legal professional privilege. The definition of legal privilege evolves by way of case law, and legal advice should be sought where required on the scope of legal privilege. The current case law broadly defines two categories of privilege. The first is legal advice privilege which attaches to communications passing between lawyer and client created for the purpose of giving and receiving legal advice. The second is litigation privilege which attaches to communications and documents which come into existence for the sole or dominant purpose of either giving or obtaining legal advice with regard to contemplated litigation or collecting evidence for use in litigation. However such communications made in the furtherance of a criminal purpose are not privileged.
42. 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>.
43. Aside from the legal privilege and excluded material provision, requirements for information made under the powers of investigation take precedence in spite of any restriction on the disclosure of information, however imposed<sup>20</sup>. They therefore take precedence over any contractual duties of confidentiality and the common law duty of confidence.

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

44. It is for the appropriate officer to set the time limit for replies to requirements made under disclosure orders and customer information orders, and this should be reasonable with regards to the circumstances of the case. Where the subject of one of these orders asks for more time to comply with a requirement made under one of these orders, the appropriate officer

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<sup>19</sup> Section 379.

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

should carefully consider the request. When the officer has made a decision, the appropriate officer should normally set this out and the reasons for it in a letter to the subject of the order. The circumstances in which it would be suitable for appropriate officers to consider an extension will vary from case to case but may include the need to obtain legal or other professional advice, difficulty in obtaining requested information and/or documents and unavailability. The letter conveying the appropriate officer's decision should normally be served in the same way as the original notice under the order was served.

45. Where a solicitor acting on behalf of the subject of the order makes the application for an extension of time, the letter must be served on the solicitor and may also be served on the subject.
46. Time limits for compliance with a production order and an account monitoring order are set out on the face of the order – see sections 345(5) and 370(6) and (7). Therefore they cannot be extended unless the subject of the order applies 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, he or she 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**

47. The appropriate officer or appropriate person must 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 of POCA.
48. The written record must, in relation to each requirement, 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**

49. If documents, material or information are provided which were not required to be provided under the terms of the order or notice, no account must be taken of that document or information in the investigation and it should be returned to the person who provided it.
50. Appropriate officers and appropriate persons must 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).

### **Variation and discharge applications**

51. Where an appropriate officer applies to the court to vary or discharge an order or warrant made under Chapter 2 of Part 8 of POCA, he should, as far as is practicable, follow the same procedure as for the original application.
52. There is no requirement for the same appropriate officer to make the variation or discharge application but if it is a different officer, that officer must be in a position to explain the genuine change of circumstances. These applications are *inter partes*<sup>21</sup>.

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<sup>21</sup> Unlike an application for an investigation order, both the applicant and respondent are notified of an application for a variation or discharge of the order. They therefore both have the opportunity to be represented before the judge.

## Production Orders in Civil Recovery Investigations

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

### Definition

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

### Statutory requirements

55. An application for a production order must be made to a court by an appropriate officer and must state that<sup>22</sup>:
- a person specified in the application is subject to a civil recovery investigation, or that property specified in the application is subject to a civil recovery 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;
  - 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;
  - 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

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<sup>22</sup> See sections 345, 346.

person specified in the application as appearing to be in possession or control of the material holds it.

56. 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 seven days as the normal period, unless in the particular circumstances the judge making the order considers it appropriate to set a different period.

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

57. The appropriate officer should ascertain, as specifically as is possible in the circumstances, the nature of the material concerned and, where relevant, its location.
58. 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 well not be necessary if the premises are professional bodies or financial institutions.
59. The appropriate officer must consider whether he or she requires production of the material or access to it. In most circumstances the appropriate officer should seek production, so material can be retained. There are occasions however where, for example, he or she may simply want sight of information contained in larger material, e.g. an entry in a register.
60. The seven day time limit for the production of material applies unless it appears to the judge that a shorter or longer period would be appropriate. 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 limit, or that it would not be reasonably practicable for the subject of the production order to comply with the seven day time limit due to the nature or amount of documentation required. There will be cases when the best practice is to contact the subject of the production order (e.g. a financial institution) before the application is made to discuss a reasonable time limit.

**Particular action to be taken executing a production order**

61. When a production order is served on a person, business or institution under section 345(4)(a), the order or the covering letter must, in addition to the matters specified in paragraph 35, state:
- that the order was made under section 345(4)(a);
  - the material or class of material required to satisfy the production

order; and

- the period of time within which such documents must be produced.

62. Where an order is made under section 345(4)(b) (for access to material), the order or covering letter must, in addition to the matters specified in paragraph 35, state:

- that the order was made under section 345(4)(b) ;
- the material or class of material required to satisfy the production order; and
- the appropriate officer's right of access to such material within the period stated in the order.

63. Section 350 deals with 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 in relation to 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 set out in annex 2 of Practice Direction 66<sup>23</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**

64. A production order should be served on the person named in the order. If the order is made against a company or other legal persons and there are no directions for service, the appropriate officer should direct the order to a person in authority and with responsibility for the material.

65. When executing a production order, an appropriate officer must ask for the material specified in the production order to be produced.

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<sup>23</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-authorised-government-departments.PDF](http://www.justice.gov.uk/courts/procedure-rules/civil/contents/form_section_images/practice_directions/pd66_pdf_eps/pd66-list-of-authorised-government-departments.PDF)

66. An appropriate officer may remove any material covered by the production order, except where the production order is made under section 345(4)(b) and only allows access to, rather than removal of, the material.
67. An appropriate officer may photograph or copy or have photographed or copied any material that has been removed or accessed. If a copy of the material is sufficient, it must be copied on site and the original returned. If this is not practicable and the order was for production rather than providing access, the material can be taken away, be copied and the original returned as soon as possible.
68. 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.
69. 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 must 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 must 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**

70. An appropriate officer must consider at the application stage if he or she considers the 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 had been made in respect of material in a particular company's office in that building.
71. An order granting entry differs from a search and seizure warrant in that the order to grant entry is to require any person who appears to the appropriate officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material. It does not include the power to search the premises.

## Search and Seizure Warrants in Civil Recovery Investigations

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

### Definition

73. 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

74. An application must be made by an appropriate officer. 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>24</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.
75. 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>25</sup>

### Statutory requirements

76. A search and seizure warrant may be granted under section 352 if either of the requirements for the issuing of the warrant is fulfilled<sup>26</sup>. The requirements are that 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 specified in the application for the warrant, or that section 353 (requirements where production order not available) is satisfied.
77. Section 353 refers to two sets of conditions for granting a search a seizure warrant in the absence of a production order – if either is satisfied section 353 applies.
- 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

<sup>24</sup> See section 352(5)(b) as to who is an appropriate person for a civil recovery investigation (but where a production order is not available, see section 353(10)(b)).

<sup>25</sup> See the order made under section 355 which applies with modifications, in respect of 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.

<sup>26</sup> Section 352(1), (6).

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—

- it is not practicable to communicate with—
  - any person against whom the production order could be made or
  - any person who would be required to 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, if 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 subsection (7)<sup>27</sup>, 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—
  - it is not practicable to communicate with any 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).

78. "Premises" has the same meaning as in section 23 of PACE<sup>28</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.
79. The search and seizure warrant does not include a power to stop a person, make an arrest or to search a person. The legislation and this code only apply to searches of premises. This code does not apply to searches conducted with consent without a search and seizure warrant.

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<sup>27</sup> Material falls within subsection (7) if it cannot be identified at the time of the application but it relates to the person or property specified in the application or to certain related questions, and is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

<sup>28</sup> See section 379.

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

80. The appropriate officer must at all times bear in mind that a search and seizure warrant is the most invasive of the powers of investigation.
81. The appropriate officer must consider why he needs a search and seizure warrant rather than a production order with an order to grant entry.
82. The appropriate officer must ascertain as specifically as is possible in the circumstances the nature of the material to be specified in the application and its location.
83. 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.
84. 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**

85. An application for a search and seizure warrant must state:
  - that a person specified in the application is subject to a civil recovery 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(7) 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 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.
86. 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 investigation unless supported by additional grounds which subsequently come to light.

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

87. If the appropriate officer who made the application is a different person from 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 have the relevant information which will help when executing the warrant.
88. 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**

89. Searches carried out under a warrant in a civil recovery investigation must be conducted within one calendar month of the date of the issue of the warrant<sup>29</sup>. The warrant should be returned to the issuing court not more than four months after the date that it was granted.
90. 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 additional powers of seizure under Part 2 of the Criminal Justice and Police Act 2001 (CJPA) may appropriately be used.

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

91. Before entering the premises, the appropriate person must 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

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<sup>29</sup> Section 356(4).

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, 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 person concerned or other people.

92. Before a search begins, the appropriate person must identify him or herself (subject to the provision in section 449A relating to pseudonyms of members of staff of the relevant Director) and show an official form of identification, state the purpose of the search and the grounds for undertaking it. The appropriate person does not need to comply with this provision if the circumstances detailed in paragraph 91 apply.

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

93. The appropriate person must, unless it is impractical to do so, provide the owner of or occupier of, or 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, a notice<sup>30</sup>:

- 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.

94. If the owner, occupier or person entitled to grant access is present, copies of the notice mentioned above, and of the warrant must, if practicable, be given to the person before the search begins, unless the appropriate person reasonably believes that to do so would frustrate the object of the search or endanger those conducting the search or other people. If the owner, occupier or person entitled to grant access is not present, copies of the notice and of the warrant must 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 the pseudonym authorised under section 449A) and the date and time of the search. The warrant itself must be endorsed to show that this has been done.

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<sup>30</sup> If this information is on the warrant then there is no need for it to be also detailed and served on a separate notice.

## **Conduct of searches**

95. 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.
96. 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 may 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 on the premises.
97. 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. The owner, occupier or person entitled to grant access must be asked whether he or she wishes a friend, neighbour or other person to witness the search. That person must be allowed to do so unless the appropriate person has reasonable grounds for believing that the presence of the person asked for would seriously hinder the investigation, or endanger persons present. A search need not be unreasonably delayed for this purpose. A record of the action taken under this paragraph, including the grounds for refusing a request from the owner, occupier or person entitled to grant access, must be made on the premises search record (see below). This requirement also relates to business and commercial properties if practicable, as well as private addresses.
98. 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 the identity of the owner, 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.

## **Leaving premises**

99. 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.

## Seizure of material

100. 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(7) on the premises);
  - anything covered by the powers in Part 2 of the CIPA which allow an appropriate person to seize property from premises where it is not reasonably practicable to determine on the premises whether he is entitled to seize it and retain it for sifting or examination in secure conditions elsewhere; and
  - anything that the appropriate person has the power to seize not covered by the warrant which is discovered during the course of the search (for example seizure of cash under section 294). However, this is incidental to the search powers and a warrant must not be applied for to search for other material other than that specified in the application. Regard should be had to the code relevant to the exercise of the other powers. A search must not continue after it appears that there is no more material covered by the warrant on the premises, even if the appropriate person suspects that there are other items which he or she may want to seize.
101. Appropriate persons must be aware of section 59 of the CIPA which allows persons with a relevant interest in material which has been seized to make an application to a judicial authority<sup>31</sup> for the return of the material. Appropriate persons must also be aware of the subsequent duty to secure in section 60 of the CIPA.
102. Under section 356, an appropriate person may take copies of any seized material. Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.
103. 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, he or she may require the information to be produced from the computer in a form which can be taken away (for example a computer printout or a removable computer disk)<sup>32</sup>. Care must be taken to ensure that the person producing the material in this form does not delete or corrupt evidence from the computer, either deliberately or accidentally.

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<sup>31</sup> See section 64 of the CIPA 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 CIPA, it means the High Court.

<sup>32</sup> Section 356(5).

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

104. 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 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 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 97;
  - 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).
105. The search and seizure warrant must be endorsed by the appropriate person to show:

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

### **Search register**

106. 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.
107. 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**

108. Part 2 of the CJPA provides persons who are lawfully on any premises and exercising powers of search and seizure with further limited powers to seize material from 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 CJPA; appropriate persons must refer to and have regard to this provision. All appropriate persons conducting searches under POCA are permitted to use these powers. Appropriate persons must 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 retainable, 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.
109. Property seized under section 50 of the CJPA must be kept securely and separately from any other material seized under other powers (section 53(2) and (5) of the CJPA). Section 51 of the CJPA is not relevant as the search and seizure powers under Chapter 2 of Part 8 POCA do not extend to seizing

material from a person. An examination under section 53 of the CIPA to determine what material may be retained in accordance with POCA must be carried out as soon as practicable, allowing the person from whom the material was seized, or a person with an interest in the material, an opportunity of being present or represented. The appropriate person must ensure that he or she has the facilities for the sift to be conducted in suitable surroundings and that persons from whom the material was seized or who have an interest in the material or their representative can be present.

110. 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 must 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.
111. 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 CIPA. Material which is not retainable (i.e. because it is legally privileged material, excluded material or falls outside the terms of the warrant) must be separated from the rest of the seized property and returned as soon as reasonably practicable after the examination of all the seized property has been completed. Delay is only warranted if very clear and compelling 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 must be returned as soon as reasonably practicable and without waiting for the whole examination to be completed. As set out in section 58 of the CIPA, material must be returned to the person from whom it was seized, except where it is clear that some other person has a better right to it.
112. 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 CIPA intends to make an application under section 59 for the return of any legally privileged or excluded material, the appropriate officer must be informed and the material seized must be kept secure in accordance with section 61.
113. 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 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 must be recorded in writing and signed by both the applicant or judicial authority and the appropriate person.

114. Where an appropriate person exercises a power of seizure conferred by section 50 of the CJPA that appropriate person must at the earliest opportunity and unless it is impracticable to do so, provide the occupier of 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 CJPA 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 to secure property in certain circumstances where such an application is made;
  - specifying the name and address of the person to whom notice of an application to the appropriate judicial authority in respect of any of the seized property must 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.
115. If the owner or occupier is not present but there is some other person there who is in charge of the premises, the notice must be given to that person. If there is no one on the premises to whom the notice may appropriately be given, it must 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**

116. Anything which has been seized under either POCA or the CJPA may be retained only for as long as is necessary in connection with the investigation for the purposes of which the warrant was issued.
117. 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 section 356 and section 63 of the CJPA.

### **Rights of owners etc.**

118. If property is retained under POCA or the CJPA, the owner or occupier of the premises on which it was seized or the person who had custody or control of it immediately prior to its seizure must on request be provided with a list or description of the property within a reasonable time.

119. That person or their representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must 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 officer has reasonable grounds for believing that this would prejudice the investigation or any proceedings. A record of the grounds must be made in any case where access is denied.

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

120. 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.
121. 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 in Civil Recovery Investigations**

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

### **Definition**

123. 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 at section 364. A financial institution means a person carrying on a business in the regulated sector<sup>33</sup>. Regulated sector is defined at Schedule 9 to POCA.

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

124. An application may be made by an appropriate officer.

### **Statutory requirements**

125. The application must state:
- a person specified in the application is subject to a civil recovery 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;
  - 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;
  - 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

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<sup>33</sup> Section 416(4).

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**

126. The appropriate officer must carefully consider his existing evidence and information so as to limit the number or scope of financial institutions. This may include researching NCA's intelligence system and the Police National Computer. He or she must consider what benefit the customer information he or she may obtain may have, either in itself or as the lead to other avenues of investigation. He or she must also consider whether the information he or she wishes to gain could not be acquired as effectively and efficiently from material which could be obtained by way of a production order. The appropriate officer must consider the cost both to his or her employer and the financial institutions in complying with the order.
127. He or she must particularly consider the proportionality of requesting the customer information, against the believed benefit to the investigation. He or she must also consider the broader issues of law enforcement such as the benefit to the community of removing the suspected proceeds from circulation.

**Particular action to be taken when executing a customer information order**

128. Section 363(5) requires a financial institution to provide any customer information which it has relating to the person specified in the application if it is given notice in writing by an appropriate officer. Section 363(6) gives the appropriate officer power to require the financial institution to provide the information in a particular manner, and at or by a particular time. The appropriate officer is expected to impose a reasonable time limit depending on the nature of the institution and the information which 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 limit.
129. A notice given under a customer information order must 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;

- 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 in relation to accounts held in any other name which it appears to the appropriate officer that the specified person may have used, that other name;
- where the appropriate officer thinks that the customer information includes information in relation to accounts held in the name of any company or limited liability partnership, which the specified person is or in which it appears to the appropriate officer 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 possibly 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 respondent in complying with the requirement; and
- the financial institution's right not to have information furnished used in evidence against it in criminal proceedings other than in the circumstances specified in section 367(2).

#### **Particular record of proceedings under a customer information order**

130. The appropriate officer must keep a copy of the customer information order and all the notices issued to financial institutions under a customer information order. He or she must also keep a record of all the information supplied in response to the notices.
131. The appropriate officer must consider the customer information he or she has 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.

## **Account Monitoring Orders in Civil Recovery Investigations**

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

### **Definition**

133. An account monitoring order is an order that requires a specified financial institution to provide account information on a specified 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. See paragraph 123 about what is a financial institution. There is no bar to an appropriate officer making a repeat application for an account monitoring order immediately after an account monitoring order has expired.

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

134. Under section 370, an application may be made by an appropriate officer.

### **Statutory requirements**

135. The application must state that :
- a person specified in the application is subject to a civil recovery 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>34</sup> about the specified person;
  - the reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property;
  - 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.

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<sup>34</sup> Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another): section 370(4).

136. 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).

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

137. The appropriate officer has to consider the benefit of obtaining information from an account to his investigation, and whether this information could be as easily obtained by using a production order.
138. The appropriate officer must also consider what account information he or she should request. If, for example, the appropriate officer requires information on certain transactions, he or she must consider whether he or she could meaningfully limit the information he or she requires to amounts over a certain threshold or identity of the source of the deposit or destination of a transaction.
139. 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 limit to suggest to the judge might be 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.
140. Appropriate officers must consider the time period they wish the account monitoring order to cover. The appropriate officer should not treat the 90 day maximum as the standard time limit. They must carefully consider and justify to the judge the requirement for the time period requested.

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

141. When an account monitoring order is served on a financial institution, the covering letter, in addition to the matters specified in paragraph 35, 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 hold 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 (e.g. within 24 hours of a particular transaction taking place);
- the manner in which such information must be provided;
- such other information as the appropriate officer considers would assist the respondent in complying with the requirements of the account monitoring order; and
- the financial institution's right not to have information furnished used in evidence against it in criminal proceedings other than in the circumstances specified in section 372(2).

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

142. The appropriate officer must keep a record of all the account information supplied in response to the order and a copy of the actual order and notices.

## **Disclosure Orders in Civil Recovery and Confiscation Investigations**

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

### **Definition**

144. A disclosure order under section 357 is an order authorising an appropriate officer to give notice in writing to any person requiring him or her 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. This code does not provide guidance on the use of disclosure notices under the Serious Organised Crime and Police Act 2005.
145. Once a disclosure order has been made, the appropriate officer may use the powers set out in section 357(4) throughout his investigation. Thus, unlike the other orders which have to be applied for separately on each occasion, a disclosure order gives continuing powers for the purposes of the investigation. The appropriate officer must serve a notice on any person he wishes to question or to ask to provide information or documents.
146. Under section 357(6), 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 happens, a copy of the disclosure order must be given to the person.

### **Persons who can apply for a disclosure order**

147. An application may be made by the relevant authority, as defined in section 357(7). In relation to a civil recovery investigation to which this Code applies, this is a relevant Director. A member of NCA's staff is also a relevant authority for the purposes of disclosure orders in civil recovery investigations. Members of NCA's staff are bound by the code of practice issued by the Secretary of State under section 377, and not by this code.
148. In relation to a confiscation investigation, the relevant authority is a prosecutor, as defined in section 357(8). Who is a prosecutor in relation to a confiscation investigation depends on who has carried out the investigation, and who qualifies as a prosecutor in that instance, and regard should be had to section 357(8) to determine who that is. The Director of the Serious Fraud Office is a person who has been specified by the Secretary of State under section 357(9) as a prosecutor, in relation to a confiscation investigation carried out by an

AFI<sup>35</sup>. In relation to a confiscation investigation, the relevant authority may only make an application for a disclosure order, if requested to do so by the appropriate officer.

### **Statutory requirements in applications for civil recovery and confiscation investigations**

149. The relevant authority has to satisfy the judge that:

- a person or property specified in the application is subject to a civil recovery investigation, or;
- a person specified in the application is subject to a confiscation investigation which is being carried out by an appropriate officer;
- the order is sought for the purposes of that investigation;
- there are 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;
- there are reasonable grounds for suspecting that, in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
- 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**

150. An application for a disclosure order must state:

- the identity of the person who is subject to a confiscation investigation, or the identity of the person or details of the property

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<sup>35</sup> See the Proceeds of Crime (Disclosure Orders: Confiscation Investigations) (Specified Person) Order 2014, SI 2014/3207.

which is subject to a civil recovery 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**

151. Production of documents or information in response to a disclosure order must follow, so far as relevant, the processes set out for production orders in paragraphs 53 to 71 above. The appropriate officer should give notice in writing to anyone whom he wishes to provide information or documents. In addition to the general requirements at paragraph 35, this notice must include, where applicable;

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

152. 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**

153. The disclosure order also contains a power to ask questions. The preferred course of asking questions is to conduct a formalised interview in accordance with the procedure set out below.

## Invitation to interview

154. The appropriate officer must send the interviewee 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);
  - the purpose of the interview, which may be as detailed as the appropriate officer thinks necessary;
  - the interviewee's right not to have statements made by him used in evidence in criminal proceedings against him or her other than in the circumstances specified in section 360(2);
  - his or her right to be accompanied at any interview by a solicitor and/or a qualified accountant;
  - his or her right, if he or she is a juvenile<sup>36</sup>, is mentally disordered<sup>37</sup> or mentally handicapped, to be accompanied at any interview by an appropriate adult;
  - 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

155. In this Code, a solicitor means a solicitor who holds a current practising certificate, a trainee solicitor, a duty solicitor representative or an accredited representative included on the register of representatives maintained by the Legal Services Commission. 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 who would, for the purposes of the audit of company accounts be regarded by virtue of section 33 of the Companies Act 1989, as holding an approved overseas qualification.
156. 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

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<sup>36</sup> If anyone appears to be under the age of 17 then he or she must be treated as a juvenile for the purposes of this code in the absence of clear evidence to show that he or she is older.

<sup>37</sup> 'Mental disorder' is defined in section 1(2) of the Mental Health Act 1983 as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind'. Where the person conducting the interview has any doubt about the mental state or capacity of an interviewee, that person should be treated as mentally vulnerable and an appropriate adult should be called.

legal or financial advice before complying with a requirement to be interviewed in a notice served under a disclosure order, the appropriate officer must normally consent and set a reasonable time limit for obtaining such advice. In the exceptional cases set out below the appropriate officer can refuse such a request depending on the circumstances of the case and the information or material which is being requested.

157. 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:

(a) the person conducting the interview has reasonable grounds for believing that:

- (i) the consequent delay would be likely to lead to interference with or harm to evidence connected with the investigation; or
- (ii) the delay would alert another person whom the person conducting the interview thinks might have information relevant to the investigation and alerting that person would prejudice the investigation;

(b) a solicitor and/or qualified accountant has been contacted and has agreed to attend but the appropriate officer considers that awaiting their arrival would cause unreasonable delay to the process of investigation;

(c) the solicitor and/or qualified accountant whom the person has nominated:

- (i) cannot be contacted; or
- (ii) has previously indicated that they do not wish to be contacted; or
- (iii) having been contacted, has declined to attend and the person being interviewed declines to consult another solicitor and/or qualified accountant; or,

(d) the person who wanted legal and/or financial advice changes his or her mind.

Such a decision to proceed with the interview should usually be with the authorisation of a senior officer.

158. In a case falling within paragraph 157(a), once sufficient information has been obtained to avert the risk of interference or harm to evidence or of alerting another person so as to prejudice the investigation, questioning must cease until the interviewee has received legal or financial advice.

159. In a case falling within paragraph 157(d), the interview may be started or

continued without further delay provided that the person has given his or her agreement in writing to being interviewed without receiving legal or financial advice and that the person conducting the interview has inquired into the person's reasons for the change of mind and has given authority for the interview to proceed. Confirmation of the person's agreement, his or her change of mind and his or her reasons (where given) must be recorded in the written interview record at the beginning or re-commencement of interview.

160. If a solicitor wishes to send a non-accredited or probationary representative to provide advice on his behalf, then that person is also recognised as a 'legal adviser' and must be admitted to the interview unless the appropriate officer considers that this will hinder the investigation.
161. In exercising his discretion as to whether to admit a legal adviser who is not a solicitor, the person conducting the interview must take into account in particular whether the identity and status of the non-accredited or probationary representative have been satisfactorily established; whether he or she is of suitable character to provide legal advice (a person with a criminal record is unlikely to be suitable unless the conviction was for a minor offence and is not recent); and any other matters in any written letter of authorisation provided by the solicitor on whose behalf the person is attending.
162. If the person conducting the interview 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, he or she must forthwith notify a solicitor on whose behalf the non-accredited or probationary representative was to have acted or was acting, and give him or her an opportunity to make alternative arrangements. The interviewee must also be informed.

### **Persons who may be present at interviews**

163. Interviews must be conducted in private with at least two members of staff present at all times. Only persons whose presence is sanctioned by this code should be present. It is up to the interviewee to arrange the presence of any solicitor and/or qualified accountant. When doing so he or she must ensure that the person he or she selects 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 interviewee the person conducting the interview must, before commencing or restarting any interview, secure the attendance of such a person.
164. The person conducting the interview may be accompanied by a person to assist in handling documents and carrying out such other support tasks as will assist the person conducting the interview to perform his duties. Such a person has no power to require the interviewee to do anything and need not disclose his name or address provided a record of these is made by the person conducting the interview.
165. If the person conducting the interview has any suspicion, or is told in good

faith, that a person is or appears to be (without clear evidence to the contrary):

- under seventeen years of age;
- mentally disordered;
- mentally handicapped; or
- mentally incapable of understanding the significance of questions put to him or her or his or her replies, he or she must not be interviewed unless an appropriate adult is present.

The appropriate adult

166. In this code the appropriate adult means:

- (a) in the case of a juvenile:
  - (i) his or her parent or guardian (or, if the juvenile is in care a member of staff of the care authority/agency or voluntary organisation. The term 'in care' is used in this Code to cover all cases in which a juvenile is 'looked after' by a local authority under the terms of the Children Act 1989);
  - (ii) a social worker;
  - (iii) failing either of the above, another responsible adult aged 18 or over who is not a member of staff of the Agency or any law enforcement or prosecuting body.
- (b) in the case of a person who is mentally disordered or mentally handicapped:
  - (i) a relative, guardian or other person responsible for his or her care and custody;
  - (ii) someone who has experience of working with mentally disordered or mentally handicapped people but who is not a member of staff of the appropriate officer's employer or any law enforcement or prosecuting body (such as an approved social worker as defined by the Mental Health Act 1983, a specialist social worker or a community psychiatric nurse); or
  - (iii) failing either of the above, some other responsible adult aged 18 or over who is not a member of staff of the appropriate officer's employer or any law enforcement or prosecuting body.

167. A person, including a parent or guardian, must not be an appropriate adult if he or she is suspected of involvement in the unlawful conduct to which the investigation relates, is involved in the investigation or has received admissions from the juvenile prior to attending to act as the appropriate adult. If the parent of a juvenile is estranged from the juvenile, he or she must not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to his presence.
168. A person must always be given an opportunity, when an appropriate adult is called to the interview, to consult privately with a solicitor and/or a qualified accountant in the absence of the appropriate adult if they wish to do so.

### **Role of persons who may be present at interviews**

#### *Solicitor and Qualified Accountant*

169. The main role of any solicitor or qualified accountant is to see that the interview is conducted in a fair and proper manner. He or she may not answer questions on behalf of the interviewee but he or she may intervene:
- to seek clarification of questions put during the interview;
  - to challenge a question put by the appropriate officer which he or she considers improper;
  - to challenge the manner in which a question is put;
  - if the client may have a reasonable excuse for failure to comply with the disclosure order, to advise him or her whether or not to reply to a question; or
  - to give the interviewee advice.

170. Any request for legal or financial advice and the action taken on it must be recorded on the record and/or taped. If a person has asked for legal 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.

171. The solicitor or qualified accountant may read any documents shown to, or produced by, the interviewee at the interview.

#### *Appropriate Adult*

172. Where the appropriate adult is present at an interview, he or she must be informed that he or she is not expected to act simply as an observer, and that the purposes of their presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted

properly and fairly, and secondly, to facilitate communication with the person being interviewed.

*Person to assist in case of physical disability*

173. A person who is blind or seriously visually impaired may be accompanied by his guide dog. The person conducting the interview must ensure that the person who is blind or seriously visually impaired has his or her solicitor, relative, the appropriate adult or some other person likely to take an interest in him or her (and not involved in the investigation) available to help in the checking of any documentation. Where this code requires written consent then the person who is assisting may be asked to sign instead if the interviewee so wishes.
174. An interviewee who is seriously physically impaired may be accompanied by an able-bodied adult aged 18 or over to provide such physical assistance, as the interviewee requires. Such a person may take no part in the interview and has none of the rights of an appropriate adult.

*Interpreters*

175. A person must not be interviewed in the absence of a person capable of acting as interpreter if:
- he or she has difficulty in understanding English and the person conducting the interview cannot speak the person's own language; or
  - he or she is deaf or has difficulty with hearing or speaking,
- unless the interviewee agrees in writing that the interview may proceed without an interpreter.
176. An interpreter must also be present if a juvenile is interviewed and the appropriate adult appears to be deaf or there is doubt about his or her hearing or speaking ability, unless he or she agrees in writing that the interview should proceed without one.
177. The interpreter must be provided at the appropriate officers' expense. The person conducting the interview must ascertain, as far as is practicable, that the interpreter and interviewee understand each other and this must be noted on the interview record. An appropriate adult may not act as the interpreter.
178. Action taken to call an interpreter under this section and any agreement to be interviewed in the absence of an interpreter must be recorded in writing and or taped.

## **Excluding Persons from the Interview**

179. The person conducting the interview may exclude from the interview a person whose presence is authorised<sup>38</sup> by the provisions of this code if it appears to the person conducting the interview that the person is mentally disordered (see footnote 37 at paragraph 154).
180. Subject to paragraph 179, the person conducting the interview may exclude from the interview a person whose presence is authorised only if he or she has reason to believe that the person is personally involved in the matter under investigation or that the person has, by improper conduct, hindered the proper conduct of the interview. Before excluding any person the person conducting the interview must state his or her reason and note this on the interview record. What amounts to improper conduct will depend on the circumstances of each case. It would almost always be improper conduct for a person to prompt the interviewee, to provide the interviewee with written answers to the questions, to answer questions on behalf of the interviewee or to interrupt the interview for any reason other than to make a proper representation. Exclusion of any person from an interview is a serious matter which may be subject to comment in court. The person conducting the interview must therefore be prepared to justify his decision.
181. If the person conducting the interview has excluded a person from the interview room under paragraphs 179 or 180, he or she must adjourn the interview. The interviewee must then be informed that he has the right to seek another person to act in the same role as the person who was excluded. If the interviewee wishes the interview to continue, then the interviewer must record this decision and continue with the interview.
182. If the person conducting the interview considers that a solicitor or qualified accountant is acting in such a way as to hinder the proper conduct of the interview, he or she must cease questioning the interviewee, and whilst the tape recorder is still operating, speak to the solicitor or qualified accountant. After speaking to the solicitor or qualified accountant, the person conducting the interview must decide whether or not the interview should continue in the presence of that solicitor or qualified accountant. If he or she decides that it should not, the interviewee must be given the opportunity to consult another solicitor or qualified accountant before the interview continues and that solicitor or qualified accountant must be given an opportunity to be present at the interview.
183. The removal of a solicitor from an interview is a serious step and, if it occurs, the person conducting the interview must consider whether the incident should be reported to the Law Society, Legal Complaints Service, General Council of the Bar or the Institute of Legal Executives (as appropriate). In the case of a qualified accountant the matter should be reported to their professional body, such as the Institute of Chartered Accountants in England and Wales.

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<sup>38</sup> Persons whose presence is authorised are a solicitor, a qualified accountant, an appropriate adult, a person providing assistance and an interpreter.

## **Conduct of interviews**

184. As far as practicable interviews should take place in interview rooms which must be adequately heated, lit and ventilated. People being questioned or making statements must not be required to stand.
185. Breaks from interviewing must be made at recognised meal times. Short breaks for refreshment must also be provided at intervals of approximately two hours, subject to the interviewer's discretion to delay a break if there are reasonable grounds for believing that it would prejudice the outcome of the investigation.
186. Where an interview is adjourned for any reason and is to be resumed at the same place later the same day it shall be sufficient for the person conducting the interview to inform the interviewee of the time or resumption and no notice in writing requiring attendance at that time shall be necessary. The details of the adjournment must be noted in the interview record.
187. Where an interview is adjourned for any reason and is to be resumed either at a different place or on a different day the person conducting the interview must serve another notice under the disclosure order on the interviewee requiring him to attend at that place on that day.

## **The interviewer's obligations at the interview**

188. At the beginning of the interview and immediately following any break, the person conducting the interview must then caution the interviewee 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 you will be committing an offence for which you may be prosecuted. Do you understand?’

The person conducting the interview must also inform the interviewee that this is not a criminal caution and any responses will not be used to incriminate the interviewee.

189. The person conducting the interview must, if asked to do so, produce evidence of his authority to require the interviewee to answer questions under the disclosure order.
190. The person conducting the interview may ask such further questions as appear to him or her to be necessary to ascertain the entitlement of any person to be present.
191. The person conducting the interview must ask the interviewee whether he or

she suffers from any condition which may impair his ability to understand what is taking place or if he or she is due to take any medication before the time at which the appropriate officer estimates that the interview will end. The interviewee must be free to take medication during a routine break in the interview. When a break is to be taken during the interview, the fact that a break is to be taken, the reason for it and the time must be recorded.

192. The person conducting the interview must offer the interviewee the opportunity to ask any questions to clarify the purpose, structure and conduct of the interview.
193. Before concluding the interview the person conducting the interview must ask the interviewee if he or she has any complaint to make about anything which has taken place at the interview.
194. If a question and answer record has been taken of the interview because it was not tape-recorded, the person conducting the interview must afford the interviewee the opportunity to read the record. If the interviewee is for any reason unable to read the note or if the interviewee declines to do so the person conducting the interview must read, or cause it to be read, aloud. The person conducting the interview must invite the interviewee to comment on the note and will add to it any comments made. The interviewee must be invited to sign the note. The person conducting the interview must then record the time in the presence of the interviewee. If the interviewee is unable for any reason to sign the note he or she may authorise any person present at the interview to sign it on his behalf. Where the interviewee refuses to sign the note, or to have it signed on his behalf; the person conducting the interview must record that fact and any reason given for the refusal on the note and have such note countersigned by a senior officer.
195. Whenever this code requires a person to be given certain information, he or she does not have to be given it if he or she is incapable at the time of understanding what is said to him or her, or is violent or likely to become violent or is in urgent need of medical attention, but he or she must be given it as soon as practicable.

## **Recording**

196. Interviews should be recorded by recording media (but see paragraphs 199 and 200). Recording media is any removable, physical audio recording medium (such as magnetic tape, optical disc, or solid state memory) which can be played and copied – it includes audio tapes, recordable discs and video tapes. A record of certain matters arising from the interview must also be made contemporaneously. The matters to be recorded in the note are listed at the end of this section.
197. Recording of interviews must be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

198. One form of record that shall be the master record must be sealed before it leaves the presence of the interviewee. A second form of record will be used as a working copy.

### **Interviews to be recorded in writing**

199. The person conducting the interview may authorise that the interview not be recorded where it is not reasonably practicable to do so. This could be due to failure of the equipment or lack of a suitable interview room or recorder if the person conducting the interview 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.
200. In such cases the interview must be recorded in writing. In all cases the person conducting the interview must make a note in specific terms of the reasons for not recording.

### **Commencement of interviews**

201. When the interviewee is brought into the interview room the person conducting the interview must without delay, but in the sight of the interviewee, load or start the recorder with clean recording media and set it to record. The recording media must, if possible, be unwrapped or otherwise opened in the presence of the interviewee.
202. The person conducting the interview must:
- inform the interviewee that he or she is the appropriate officer or has delegated authority (under section 2C);
  - give his or her name and that of any other persons present (subject to the provision on pseudonyms of members of staff of the relevant Director under section 449A);
  - inform the interviewee of the purpose for which any person accompanying the person conducting the interview is present;
  - ask the interviewee to state his full name and address and date of birth;
  - ask any person present with the interviewee to state their name, business address<sup>39</sup> and capacity in which he or she is 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;

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<sup>39</sup> If persons present do not have a business address (e.g. a parent), they should provide a home address.

- state and obtain the confirmation of the reasons under paragraph 155 et seq for there being no legal representation if this be the case;
- inform the interviewee of his or her right:
  - (a) to consult in private at any time with any solicitor, qualified accountant or appropriate adult present with him or her at any interview;
  - (b) to be questioned fairly;
  - (c) to be given an opportunity at the end of the interview to clarify anything he or she has said or to say anything further if he or she wishes; and
  - (d) to be allowed a break in any interview which last for more than two hours;
- inform the interviewee that the interview is being recorded;
- state that the interviewee will be given a notice about what will happen to the recording media; and
- attempt to estimate the likely length of the interview and inform the interviewee.

### **Objections and complaints by the suspect**

203. If the interviewee raises objections to the interview being recorded either at the outset or during the interview or during a break in the interview, the person conducting the interview must explain the fact that the interview is being recorded and that the provisions of this code require that the interviewee's objections must be recorded. When any objections have been recorded or the interviewee has refused to have their objections recorded, the person conducting the interview may turn off the recorder. In this eventuality the person conducting the interview must say that he or she is turning off the recorder, give his or her reasons for doing so and then turn it off. The person conducting the interview must then make a written record of the interview. If, however, the person conducting the interview reasonably considers that he or she may proceed to put questions to the interviewee with the recorder still on, the person conducting the interview may do so.

### **Changing recording media**

204. When the recorder indicates that the recording media have only a short time left to run, the person conducting the interview must tell the interviewee that the recording media are coming to an end and round off that part of the interview. If the person conducting the interview wishes to continue the

interview but does not already have a second set of recording media, he or she must obtain a set. The interviewee must not be left unattended in the interview room. The person conducting the interview must remove the recording media from the recorder and insert the new recording media, which, if practicable, must be unwrapped or otherwise opened in the interviewee's presence. The recorder must then be set to record on the new recording media. Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This may be done by marking the recording media with an identification number immediately they are removed from the recorder.

### **Taking a break during interview**

205. When a break is to be taken during the course of an interview and the interview room is to be vacated by the interviewee, the fact that a break is to be taken, the reason for it and the time must be recorded on the recording media. The recording media must then be removed from the recorder and the procedures for the conclusion of an interview as set out below followed.
206. When a break is to be a short one and both the interviewee and the person conducting the interview are to remain in the interview room the fact that a break is to be taken, the reasons for it and the time must be recorded on the recording media. The recorder may be turned off. There is, however, no need to remove the recording media and when the interview is recommenced the recording must be continued on the same recording media. The time at which the interview recommences must be recorded on the recording media.

### **Failure of recording equipment**

207. If there is a failure of equipment, which can be rectified quickly, for example by inserting new recording media, the appropriate procedures set out in this code must be followed. When the recording is resumed the person conducting the interview must explain what has happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that particular recorder and no replacement recorder or recorder in another interview room is readily available, the interview may continue without being recorded on recording media.

### **Removing recording media from the recorder**

208. Where recording media are removed from the recorder in the course of an interview, they must be retained and the procedures as set out below followed.

### **Conclusion of interview**

209. The person conducting the interview must inform the interviewee that he or she has no further questions and offer the interviewee an opportunity to clarify anything he or she has said and to say anything further he or she

wishes. Any solicitor, qualified accountant or appropriate adult present at the interview along with the interviewee, must be given the opportunity to ask the interviewee any question the purpose of which is to clarify any ambiguity in an answer given by the interviewee or to give the interviewee an opportunity to answer any question which he or she has refused previously to answer.

210. At the conclusion of the interview, including the taking and reading back of any written statement, the time must be recorded and the recorder switched off. The master recording media must be sealed with a master label. The appropriate officer must sign the label and ask the interviewee and any appropriate adult and other third party present during the interview to sign it also. If the interviewee or the appropriate adult refuses to sign the label, the person conducting the interview must sign it and note the label that the interviewee has refused to do so.
211. The interviewee must be handed a notice, which explains the use which will be made of the recording and the arrangements for access to it. A copy of the recording media must be supplied as soon as practicable to the interviewee, if court proceedings are connected to interview are commenced (i.e. confiscation or civil recovery proceedings).

#### **After the interview**

212. Where the interview is not subsequently used in civil recovery proceedings the recording media must nevertheless be kept securely in accordance with the provisions below.

#### **Recording media security**

213. The person conducting the interview must make arrangements for master recording media to be kept securely and their movements accounted for.
214. The person conducting the interview has no authority to break the seal on a master recording media, which may be required for civil recovery proceedings. If it is necessary to gain access to the master recording media, the person conducting the interview must arrange for its seal to be broken in the presence of another member of the appropriate officer's employer. The interviewee or his legal adviser must be informed of the intention to break the seal on the master recording media and given a reasonable opportunity to be present. If the interviewee or his legal representative is present he or she must be invited to reseal and sign the master recording media. If either refuses or neither is present another member of the appropriate officer's employer must do this.
215. 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.

### **Particular record of action taken under a disclosure order**

216. In addition to the general provisions on taking records, the appropriate officer must also keep copies of notices in writing issued under a disclosure order (see section 357(4)) together with full details of their issue and response.
217. The record of an interview must 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, subject to the provisions relating to pseudonyms of members of staff of the relevant Director, the names of all those present;
  - any request made for financial or legal advice, and action taken on that request;
  - that the person conducting the interview told the interviewee everything he was required to tell him or her 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, and the reason for this.
218. In respect of interviews conducted under the authority of section 357(4)(a), the record of the interview must be held with a transcript of the interview. Documents produced at the interview must also be listed on a note of the action taken under disclosure order. Receipts must be given to the interviewee and this should also be recorded.

## Obtaining evidence from abroad

219. Section 375A 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.
220. 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, the relevant Director 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.
221. The appropriate officer must ensure that there is material supporting his or her belief that there is relevant evidence overseas.
222. “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.
223. Requests for assistance may be sent by a judge, or the 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.
224. 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.
225. 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.

226. Section 375B(3) provides that 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 (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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