



Home Office

# **Code of practice issued under section 377 of the proceeds of crime act 2002**

Investigations

2017

# Contents

Abbreviations used in this code	1
Introduction	1
Appropriate officers and appropriate persons	4
<b>General provisions relating to all orders and warrants</b>	<b>6</b>
Action to be taken before an application is made	6
Reasonable grounds for suspicion	8
Action to be taken in making an application	10
Action to be taken in serving an order or warrant	11
Action to be taken in receiving an application for an extension of a time limit	14
Record of Proceedings	15
Retention of documents and information	15
Variation and discharge application	16
<b>Production orders</b>	<b>16</b>
Definition	16
Persons who can apply for a production order	16
Statutory requirements	16
Particular action to be taken before an application for a production order	18
Particular action to be taken executing a production order	18
Particular provisions relating to the handling and retention of documents produced or accessed in response to a production order	19
Order to grant entry	20
<b>Search and seizure warrants</b>	<b>21</b>
Definition	21
Persons who can apply for a search and seizure warrant	21
Statutory requirements	21
Particular action to be taken before an application for a search and seizure warrant	24
Particular action in making an application for a search and seizure warrant	24
Particular action to be taken executing a search and seizure warrant	25
Time limit for conducting searches	25
Entry other than with consent	25
Notice of powers and rights	26
Conduct of searches	26
Leaving the premises	27
Seizure of material	27
Particular record of proceedings in executing a search and seizure warrant	29
Search register	30
Specific procedures for seize and sift powers	31
Retention	33

Rights of owners	33
Access to search warrant application documents	33
<b>Customer information orders</b>	32
Definition	32
Persons who can apply for a customer information order	33
Statutory requirements	33
Particular action to be taken before an application for a customer information order is made	33
Particular action to be taken executing a customer information order	34
Particular record of proceedings under a customer information order	35
<b>Account monitoring orders</b>	39
Definition	39
Persons who can apply for an account monitoring order	39
Statutory requirements	39
Particular action to be taken before an application for an account monitoring order	40
Particular action to be taken before executing an account monitoring order	40
Particular record of proceedings under an account monitoring order	41
<b>Unexplained wealth orders</b>	42
Definition	42
Persons who can apply for a UWO	42
Statutory requirements	43
Particular action to be taken before making an application	43
Service of documents	44
Requirements for making an application	45
Points to note	45
Providing of information and production of documents	45
Interim freezing orders	48
Definition	48
Persons who can apply for an interim freezing order	48
Particular action to be taken in making an application	48
<b>Disclosure orders</b>	49
Definition	49
Persons who can apply for a disclosure order	50
Statutory requirements	51
Particular action to be taken in making an application	51
<b>Interview</b>	53
Invitation to interview	53
Legal and Financial advice	54
Persons who may be present at interviews	56

Vulnerable interviewees	56
The Appropriate Adult	56
Role of the persons who may be present at Interviews –	
Solicitor & qualified accountant	57
Appropriate Adult	58
Person to assist in care of physical disability	58
<b>Interpreters</b>	59
General	59
Foreign languages	59
Excluding persons from the interview	60
Conduct of the interview	61
The appropriate officer obligations at interview	61
<b>Recording interviews</b>	63
Interviews with a written record	63
Commencement of interview	64
Objections & complaints by interviewee	66
Changing recording media	66
Taking a break during interview	66
Failure of recording equipment	67
Removing recording media from the recorder	67
Conclusion of interview	67
After the interview	68
Recording media security	68
Particular record of actions taken under a disclosure order	68
<b>Obtaining evidence from abroad</b>	71

# **Code of Practice issued under section 377 of the Proceeds of Crime Act 2002**

**Officers must be aware of their mandatory obligations under the legislation and act in accordance with these duties. This is an absolute requirement regardless of any interpretation of this code or any other document or guidance.**

## **Abbreviations used in this code**

AFI	Accredited Financial Investigator
CFA	Criminal Finances Act 2017
CJPA	Criminal Justice and Police Act 2001
DoJNI	Department of Justice Northern Ireland
HMRC	Her Majesty's Revenue and Customs
NCA	National Crime Agency
PACE	Police and Criminal Evidence Act 1984
POCA	Proceeds of Crime Act 2002
SFO	Serious Fraud Office

POCA has been amended since it was enacted. This code is necessary due to the commencement of provisions under the Criminal Finances Act 2017 which amend POCA.

## **Introduction**

1. The purpose of this code is to guide law enforcement officers in the exercise of their functions when conducting investigations under Part 8 of POCA. The code should not be regarded as a complete or authoritative statement of the law. Only the courts can give an authoritative interpretation of the legislation, and the contents of this code may be affected by subsequent judicial decisions and changes to the legislative provisions referred to.
2. The provisions in the CFA which have led to amendments of this code will initially be commenced in respect of England and Wales only. This means that the following aspects of the code only apply to officers when exercising Part 8 functions in England and Wales:
  - The exercise of powers in detained property investigations
  - The exercise of powers in frozen funds investigations
  - The exercise of powers by Financial Conduct Authority officers in civil recovery investigations
  - Applications by enforcement authorities for unexplained wealth orders and interim freezing orders (whether in connection with a particular investigation or not)
  - Change to the definition of a confiscation investigation so that it includes an investigation into the available amount in respect of the person (see s341(1)(c) of POCA)
  - Changes to Part 8 of POCA to replace references to HMRC officers with references to "officers of Revenue and Customs"

- Change to appropriate officers and senior appropriate officers for civil recovery investigations to include Revenue and Customs officers
  - The amendment removing the restriction on the exercise of certain powers by officers of Revenue and Customs, where it relates to an excluded matter.
  - Changes to definitions of NCA officers
  - The amendment to allow disclosure orders to be used in money laundering investigations (see section 357(2))
  - The amendment to section 357(1) to allow “appropriate officers” to apply for a disclosure order instead of “a prosecutor”
3. Officers operating in Northern Ireland should not attempt to use these powers or otherwise rely on these provisions.
4. In this code, references to statutory provisions are to provisions of POCA, unless otherwise stated.
5. This code of practice is made by the Secretary of State under section 377, and applies to all actions undertaken in England and Wales and Northern Ireland (subject to the restrictions in paragraph 2 above) by the persons listed in paragraph 5 as part of an investigation under Part 8 on or after xxxx 2017, notwithstanding that the investigation may have begun before that time. This code replaces previous codes made under section 377. It supersedes separate codes relating to England and Wales and Northern Ireland. DoJNI issue their own version of the code in relation to AFIs and constables.
6. The code applies to the following investigations conducted under Part 8:
- Confiscation investigations;<sup>1</sup>
  - civil recovery investigations;<sup>2</sup>
  - detained cash investigations;<sup>3</sup>
  - money laundering investigations;<sup>4</sup>
  - exploitation proceeds investigations;<sup>5</sup>
  - detained property investigations (in England and Wales);<sup>6</sup> and
  - frozen funds investigations (in England and Wales).<sup>7</sup>
7. Subject to paragraph 2 above, the code applies to the following persons<sup>8</sup> exercising functions in relation to the investigations listed in the previous paragraph:
- the Director General of the NCA;
  - NCA officers;
  - AFIs (although they are covered by the separate DoJNI code in relation to investigations in Northern Ireland)

<sup>1</sup> Section 341(1) (see paragraph 2 in respect of the definition for Northern Ireland)

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

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

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

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

<sup>6</sup> Section 341 (3b)

<sup>7</sup> Section 341 (3c)

<sup>8</sup> Section 341(2) and (3) and 341A and 377(1)

- constables (although they are covered by the separate DoJNI code in relation to investigations in Northern Ireland);
  - officers of Revenue and Customs;
  - immigration officers; and
  - Financial Conduct Authority Officers (in respect of civil recovery investigations in England and Wales).
8. However, in relation to the powers conferred on an officer of Revenue and Customs in Northern Ireland which are exercisable in connection with:
- a production order made or to be made in relation to a confiscation investigation or a money laundering investigation;
  - a search and seizure warrant issued or to be issued in relation to a confiscation investigation or a money laundering investigation;
  - a customer information order, and
  - an account monitoring order.
- The powers are exercisable by the officer only so far as the officer is exercising a function relating to a matter other than an excluded matter<sup>9</sup>.
9. The powers of investigation dealt with by this code are the powers relating to:
- production orders;
  - search and seizure warrants;
  - disclosure orders;
  - customer information orders;
  - account monitoring orders;
  - unexplained wealth orders (in England and Wales); and
  - interim freezing orders (in England and Wales).
10. There is a separate code of practice in respect of the exercise in England and Wales and Northern Ireland of investigation powers conferred on relevant Directors<sup>10</sup> under Part 8 issued by the Attorney General. SFO officers are subject to the code issued by the Attorney General and not this code. There is also a code of practice in Northern Ireland made by DoJNI in relation to the investigation powers conferred on constables and AFIs. There is also a separate code in relation to investigations in Scotland under Chapter 3 of Part 8 made by Scottish Ministers (see section 410 POCA).
11. There are special powers for the NCA in Part 6 of POCA relating to investigations where tax is suspected of arising or accruing as a result of a person's or a company's criminal conduct, and this code does not apply to the exercise of these powers.
12. Section 449 enables, in certain circumstances, NCA officers to use a pseudonym when carrying out any function for the purposes of POCA.

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<sup>9</sup> An excluded matter is a matter specified in section 54(4)(b) of, or in any of paragraphs 3, 5, 7, 10, 12 and 14 to 30 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005: section 375C(3).

<sup>10</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales, it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

## **Appropriate officers and appropriate persons**

13. The “appropriate officer” in each case depends on the type of investigation and are set out in section 378 (SFO officers should refer to the code issued by the Attorney General). A reference to an AFI is to one who falls within the description specified in an order made by the Secretary of State under section 453.
14. The following are appropriate officers:
  - a. in relation to a confiscation investigation:
    - a NCA officer;
    - an AFI;
    - a constable;
    - an officer of Revenue and Customs;
    - an immigration officer; or
  - b. in relation to a civil recovery investigation:
    - a NCA officer;
    - an officer of Revenue and Customs (in England and Wales only);
    - an officer of the Financial Conduct Authority (in England and Wales only).
    - (or the relevant Director, but they are not covered by this code, rather they are covered by the code made under section 377A);
  - c. in relation to a detained cash investigation:
    - a constable;
    - an AFI;
    - an officer of Revenue and Customs;
    - an immigration officer; or
  - d. in relation to a money laundering investigation:
    - an AFI;
    - a constable;
    - an officer of Revenue and Customs;
    - an immigration officer; or
  - e. in relation to an exploitation proceeds investigation:
    - a NCA officer.
  - f. in relation to a detained property investigation in England and Wales:
    - a constable
    - an AFI
    - an officer of Revenue and Customs

- g. in relation to a frozen funds investigation in England and Wales:
- a constable
  - an AFI
  - an officer of Revenue and Customs
15. The powers of investigation may be applied for or executed by the persons specified in the legislation in relation to each power. Often this is the appropriate officer, but search and seizure warrants may be executed only by an “appropriate person”. An appropriate person<sup>11</sup> is:
- a. for a warrant sought for the purposes of a civil recovery investigation:
    - a NCA officer;
    - an officer of Revenue and Customs (for Northern Ireland, an HMRC officer);
    - an officer of the Financial Conduct Authority (in England and Wales); or
    - a member of the staff of the Director of Public Prosecutions or the Director of the Serious Fraud Office.
  - b. for a warrant sought for the purposes of a detained cash investigation, or a detained property investigation or frozen funds investigation in England and Wales, a confiscation investigation or a money laundering investigation:
    - a constable;
    - an AFI;
    - an officer of Revenue and Customs (for Northern Ireland, an HMRC officer)
    - an immigration officer; or
  - c. for a warrant sought for the purposes of an exploitation proceeds investigation;
    - a NCA officer.
16. Where an appropriate officer or appropriate person fails to comply with any provision of this code, they should not by reason only of that failure be liable to any criminal or civil proceedings, but the code is admissible as evidence in such proceedings. A court may take account of any failure to comply with the code in determining any question(s) in the proceedings.
17. The code should be available for reference by appropriate officers, appropriate persons and members of the public. It should be available in particular at police premises. Government departments and other bodies who have AFIs conducting investigations should also make arrangements for the code to be available, if practicable, at their public offices.

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

18. If an appropriate officer is also exercising an additional and separate function or power, for example, a search for cash under section 289, the appropriate officer should have regard to any relevant code in relation to the exercise of those functions or powers.
19. Appropriate officers should be aware of the legislation and the detail of the particular provisions under which they operate. They should seek legal advice and/or guidance where necessary in advance of using the powers. This includes the relevant provisions in the Criminal Procedure Rules and Civil Procedure Rules as appropriate.

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

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

20. 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 the privacy and property of those whose premises are searched, on whom personal information is obtained, or whose personal information, material or documents are seen and/or seized. The powers therefore need to be fully and clearly justified before they are used. The use of the powers which impact upon individuals' rights should be proportionate to the outcome being sought. In particular, those exercising the powers should consider at every stage whether the necessary objectives can be achieved by less intrusive means – this may be by approaching the potential respondent to ascertain whether they will provide the required information without the need for a court order or to give them prior notice that an application is to be made. The giving of prior notice of an application may mean that the respondent 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 should exercise them fairly, courteously, responsibly, respectfully, without unlawful discrimination and in accordance with any statutory duties on them. Under the Equality Act 2010, section 149, police officers are carrying out their functions also have a duty to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a relevant "protected characteristic" and those who do not share it, and to take steps to foster good relations between those persons. The Children Act 2004, section 11, also requires chief police officers, local authorities, health authorities, prisons, probation officers and other specified persons and bodies to ensure that in the discharge of their functions they have regard to the need to safeguard and promote the welfare of all persons under the age of 18.
21. With particular reference to search and seizure warrants, if there is reason to believe that the use of the powers covered by this code might have an adverse effect on relations between law enforcement and the community, the local police/community liaison officer should be consulted:
  - before the action is taken, or
  - in particularly urgent cases, as soon as practical thereafter.

22. The appropriate officer (in the case of an application for a warrant) or appropriate person (in the case of execution of a warrant) would need to consider whether any consultation could jeopardise an ongoing wider operation or investigation. In such circumstances consultation may not be necessary, but generally it is best practice to consult.
23. The expectation is that the provisions of the code will apply to all searches carried out under this code. However any decision not to follow the code should be carefully considered and noted.
24. The appropriate officer or person should take special care and have particular regards to an individual's vulnerabilities in responding to an order made in connection with the investigation or a search and seizure warrant.
25. A refusal to allow a search of premises or a vehicle may in some instances constitute an offence, including (but not limited to) willful obstruction of an appropriate officer in the exercise of a power or execution of a duty.<sup>12</sup>
26. Applications for the purposes of confiscation investigations, detained cash investigations, money laundering investigations, detained property investigations and frozen funds investigations are made to a judge entitled to exercise the jurisdiction of the Crown Court, and in Northern Ireland a Crown Court judge (detained property investigations and frozen funds investigations are not currently available in Northern Ireland). Applications for the purpose of civil recovery investigations or exploitation proceeds investigations are made to a judge of the High Court. Before a judge may grant any of the Part 8 orders or warrants sought, the statutory requirements particular to that order or warrant need to be met. Therefore before applying for an order or warrant, the appropriate officer or relevant authority needs to be satisfied that those requirements are fully met.
27. Appropriate officers should be aware of the definition and scope of the different types of investigations under Part 8, and in this regard should have particular reference to sections 341 and 341A. They must be satisfied that the statutory requirements are fulfilled in relation to the type of investigation. They should also be aware of the limits to some of the individual powers in relation to the different investigations. It is of particular note that disclosure orders are not available in detained cash investigations, or (in England and Wales) in detained property and frozen funds investigations. Disclosure orders are available in money laundering investigations in England and Wales, but not in Northern Ireland (see paragraph 2 above).<sup>13</sup> Only production orders and search and seizure warrants are available in detained cash investigations.

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<sup>12</sup> See section 89 of the Police Act 1996 (in relation to constables), section 453A of POCA (in relation to AFIs), section 31 of the Commissioners for Revenue and Customs Act 2002 (in relation to officers of Revenue and Customs), section 453B of POCA (in relation to SFO officers), section 453C (in relation to immigration officers)

<sup>13</sup> See section 357(2).

## **Reasonable grounds for suspicion**

28. Whether there are reasonable grounds for suspicion will depend on the circumstances in each case. There should be some objective basis for that suspicion based on facts, information and/or intelligence. The appropriate officer should take into account such factors as how the individual, premises or vehicle were identified, previous intelligence regarding the person(s), vehicle(s) or premises, previous law enforcement involvement with the person(s), vehicle(s) or premises, and suspected links with criminal activities, whether in the UK or overseas.
29. All appropriate officers and appropriate persons should recognise that investigations are more likely to be effective and legitimate and more likely to secure public confidence when their reasonable grounds for suspicion are based on a range of objective factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to officers and they are well informed about local crime patterns. Local senior officers have a duty to ensure that those under their command who exercise search powers have access to such information, and the officers exercising the powers have a duty to acquaint themselves with that information. Appropriate officers should therefore be able to explain the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned.
30. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour that provides an objective basis for that suspicion. For example, a person's race religion or age could not be based on generalisations or stereotypical images or categories of people being more likely to be involved in criminal activity.
31. Reasonable suspicion should normally be linked to accurate and current 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 could not be founded retrospectively.
32. 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.

33. 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,<sup>14</sup> or that the appropriate officer, having regard to the benefit likely to accrue to the investigation, believes that it is the public interest for account information to be provided. The appropriate officer must satisfy themselves that all of these statutory requirements are satisfied before making the application.
34. POCA requires appropriate officers to obtain authorisation from a senior appropriate officer (see section 378) when making an application for (or the variation of) a customer information order (see section 369(7))<sup>15</sup> or an application for (or discharge or variation of) a disclosure order in confiscation or money laundering investigations (a disclosure order is not available in a money laundering investigation in Northern Ireland; see paragraph 2 above).<sup>16</sup> However, appropriate officers should also, where practicable, obtain internal authorisation in respect of applications for the other orders and warrants. The appropriate officer should therefore obtain the authorisation of a senior officer (at least the rank of inspector in the police or police staff equivalent, or the equivalent rank of seniority within the department or agency for which the appropriate officer works).
35. A disclosure order in relation to a civil recovery or exploitation proceeds investigation can only be obtained in the High Court by an NCA officer in either case, or by the relevant Director<sup>17</sup> in the case of a civil recovery investigation. An NCA officer who seeks such an order should obtain authorisation from a senior appropriate officer that an application may be made.
36. A disclosure order for the purposes of a confiscation investigation in England and Wales can be obtained by an appropriate officer. In Northern Ireland, a disclosure order for the purposes of a confiscation investigation can only be obtained by a prosecutor in the Crown Court, but the prosecutor should be in receipt of a request to do so from an appropriate officer. An appropriate officer who seeks such an order should obtain authorisation from a senior appropriate officer that an application may be made.<sup>18</sup>

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<sup>14</sup> The appropriate officer is under no obligation to divulge the anticipated costs.

<sup>15</sup> Unless they are themselves a senior appropriate officer.

<sup>16</sup> See section 362(6)

<sup>17</sup> Relevant Director has the meaning given by section 352(5A): in relation to England and Wales, it means the Director of Public Prosecutions or the Director of the Serious Fraud Office. In relation to Northern Ireland, it means the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office.

<sup>18</sup> See section 357.

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

37. Applications for unexplained wealth orders must be made by an enforcement authority rather than an appropriate officer. It is not necessary for an investigation to be underway in order to apply for a UWO and some of the general provisions listed in these sections do not apply. Officers applying for UWOs should refer to the UWO section in this code. Currently, the provisions relating to unexplained wealth orders have not been commenced in Northern Ireland, so are not available to enforcement authorities operating in that jurisdiction.
38. All of the applications for the powers of investigation may be made to a judge in chambers without notice to the other parties. In deciding whether an application should be made without notice, the appropriate officer should consider the benefit of not holding the proceedings after giving notice to all parties. An obvious and common reason would be so as not to alert the individual(s) connected to an investigation that it is ongoing. On notice proceedings might enable the person to move material or information and thereby frustrate the investigation. However, where an order is directed at a financial institution (who would be the respondent), the institution should normally be notified of the intention to make an application for an investigation order – the application hearing could then be held in the presence of, or by giving notice to, the institution. Further guidance on contacting the respondent to an order is given at paragraph 76 for production orders and paragraph 158 for account monitoring orders.
39. Appropriate officers should familiarise themselves with any mandatory requirements or alternative methods (e.g. applications electronically) under applicable rules of court. An application in respect of a civil recovery investigation or an exploitation proceeds investigation, or an application for an unexplained wealth order, must be made to a judge of the High Court in accordance with the relevant civil procedure rules and Practice Direction(s).
40. Appropriate officers should familiarise themselves with the requirements in POCA, but the following should be included in an application for an order or warrant:
  - a. the name of the person who is under investigation or (if possible) who holds or owns the property which is under investigation, and confirmation that any information sought is for the purposes of the investigation. If the application is for an order against a different person or property to the main focus of the investigation, they should also be named or specified in the application and there should be an explanation of the connection to the investigation. In respect of applications for a disclosure order it may not be possible to name each potential recipient of a notice and so they should be named as far as practicable in the evidence in support of the application;
  - b. the grounds on which the application is made; and

- c. confirmation that none of the material or information sought is subject to legal professional privilege or excluded material (with the exception that a lawyer may be required to provide the name and address of their client under a disclosure order). This does not apply to customer information orders and account monitoring orders as the type of information requested should not be that which would come within legal professional privilege or excluded material.
- 41. The information and evidence produced in support of an application should show that there are reasonable grounds for suspicion directly relating to the relevant matter under investigation. Appropriate officers should seek to limit the scope of what they request in an application to matters directly relevant to their investigation. Appropriate officers should be aware that their application and any information and evidence produced in its support will be subject to scrutiny by the judge.
- 42. Where information appears to justify an application, the appropriate officer should take reasonable steps to check the information is accurate, recent, and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought.
- 43. Where there is any sensitive information and there are concerns that disclosure would create a real risk of serious prejudice to an important public interest, legal advice should be sought about the need for disclosure of that information. There may be the possibility of a public interest immunity application to the court so that the sensitive information need not be disclosed. The appropriate officer should be in a position to deal with any questions the judge may have about the accuracy of the information provided or any other related matters.
- 44. The person applying should be in a position to satisfy the judge that they are an appropriate officer (see section 378) who may apply for the order or warrant.<sup>19</sup> The person applying for an unexplained wealth order should be in a position to satisfy the judge that they have the legal basis to act on behalf (and in place) of an enforcement authority (see section 362A (7)).
- 45. Appropriate officers should seek reasons (if not already given) from the judge for the grounds on which a decision is made, and whether or not an application for an order or a warrant is approved or rejected.

#### **Action to be taken in serving an order or executing a warrant**

- 46. In all cases, the investigatory powers should be exercised fairly, courteously, responsibly, with respect for the persons and property of those concerned and without discrimination.

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<sup>19</sup> For example, this could be a warrant card or documentation confirming the status of an AFI.

47. In deciding the method of service of the order or (in the case of a disclosure order or a customer information order) notice, the appropriate officer should take into account all the circumstances of the investigation, including the possible need to ensure and prove service. Search and seizure warrants are executed by an “appropriate person”<sup>20</sup> who should also have regard to these matters when executing the warrant.
48. When serving the order or notice under the order or executing a warrant, a covering letter should be provided which includes the following information (unless it is already included in the order, warrant or the notice):
- the name of the person who is the subject of the order, notice or warrant or the name by which they are known;
  - a warning in plain language that failure without reasonable excuse to comply with the requirement may be an offence and could result in prosecution or lead to contempt of court proceedings or, in the case of an unexplained wealth order, civil recovery and/or contempt of court proceedings;
  - a statement that, where there has been a failure to comply with an unexplained wealth order, a presumption that the property to which the order relates is recoverable will arise and can be used in future civil recovery 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 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 maybe an offence under section 342 (offences of prejudicing investigation) punishable by up to five years’ imprisonment;
  - 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 should 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; and
  - the right to apply for a variation or discharge of the order, or notice (not applicable in search and seizure warrants).

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<sup>20</sup> Section 352(5) POCA.

49. 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.
50. When serving a notice under a disclosure order or a customer information order, the appropriate officer should inform the person of their right to refuse to comply with any requirement imposed on them unless the appropriate officer has, if required to do so, produced evidence of their authority to issue the notice.<sup>21</sup> The evidence of the authority could include the order itself.
51. Where it appears to the appropriate officer or appropriate person that the recipient of an order, warrant or notice has difficulty in reading or understanding English, they should attempt to serve a copy of the order, warrant or notice on a person known to the recipient who, in the view of the appropriate officer or appropriate person, can explain or translate it. If that is not practical, the appropriate officer or appropriate person should serve the order, warrant or notice and attempt to ensure that the person understands what has occurred (for example by serving a multi-lingual explanation or engaging an interpreter or translator).
52. Sections 359(1) and 366(1) provide that it is an offence if, without reasonable excuse, a person or financial institution fails to comply with a requirement imposed by a disclosure order or customer information order respectively. Sections 359(3), 362E(1) 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, unexplained wealth order or customer information order respectively (unexplained wealth orders are not available in Northern Ireland). The other orders are treated as orders of the court against the named person and therefore attract contempt of court proceedings if they are not complied with.<sup>22</sup>
53. 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.
54. 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). A respondent has the right to withhold material and information sought which is subject to legal professional privilege. The definition of legal privilege evolves through 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 legal privilege.

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<sup>21</sup> Sections 357(6) and 363(7).

<sup>22</sup> Enforcement agencies might also consider bringing contempt of court proceedings where there is a failure to comply with a disclosure order or a customer information order.

- 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.

Where legal professional privilege is asserted in respect of material or items the appropriate officer or appropriate person may consider whether it is appropriate to use the ‘seize and sift’ powers under Part 2 of the Criminal Justice and Police Act 2001, or refer the matter to independent counsel. Independent counsel may be present either by virtue of the warrant (in relation to a confiscation, money laundering, or detained cash investigation only) or with the agreement of the occupier.

55. None of the powers of investigation permit access to excluded material. Excluded material has the same definition as section 11 of PACE or in relation to Northern Ireland article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE NI”) and includes journalistic material and medical records.<sup>23</sup>
56. 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>24</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**

57. The appropriate officer sets the time limit for replies to the notices issued under disclosure orders and customer information orders. The time limits should be reasonable in the circumstances of the case. Where the subject of one of those orders asks for more time to comply, the appropriate officer should carefully consider the request. When a decision has been made, they should set this out and the reasons for the decision in a letter to the subject. The circumstances in which it would be suitable for appropriate officers to consider an extension will vary from case to case but may include the need to obtain legal or other professional advice, difficulty in retrieving the requested information and/or documents and unavailability. The letter conveying the appropriate officer’s decision should normally be served in the same manner as the original notice.
58. Where a solicitor acts on behalf of the subject of the order and makes the application for an extension of time, the letter should be served on the solicitor and may also be served on the subject.

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<sup>23</sup> Section 379 POCA

<sup>24</sup> Sections 348(4), 361(6), 368 and 374 POCA.

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

### **Record of Proceedings**

60. The appropriate officer or appropriate person should keep or cause to be kept a written record of the exercise of the powers conferred by the provisions of Chapter 2 of Part 8.

61. The written record should include:

- a copy of the order or warrant and copies of notices given under an order;
- a copy of the application for the order or warrant;
- the date on which the order or notice was served together with any proof of service or the date on which the warrant was executed;
- 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**

62. If documents, material or information are provided which were not required to be provided under the terms of the order or notice, the document, material or information should not be taken into account for the purposes of the investigation and it should be returned to the person who provided it. Similarly any copies made of such information or material which were not required to be provided, should be returned or destroyed, and a record made of any return or destruction.

63. Appropriate officers and appropriate persons should follow established local procedures on the retention and return of documents, material and information. Intelligence that arises during the appropriate officer's investigation may be passed to the NCA, police, Revenue and Customs and/or other departments and agencies (provided the appropriate officer is satisfied that 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**

64. Where an appropriate officer applies to the court to vary or discharge an order under Chapter 2 of Part 8, they should, as far as practicable, follow the same procedure as for the original application.
65. 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 should be in a position to explain the genuine change of circumstances. The respondent should be notified of an application to vary or discharge an order and be given the opportunity to be represented at the hearing.<sup>25</sup>

## **Production orders**

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

### **Definition**

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

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

68. An application must be made by an appropriate officer. The definition of appropriate officer depends on the type of investigation (see section 378, and paragraph 2 above).

### **Statutory requirements**

69. An application for a production order must be made to a court and must state that:<sup>26</sup>

- a person specified in the application is subject to a confiscation investigation, a money laundering investigation, a detained property investigation, a frozen funds investigation, a civil recovery investigation or an exploitation proceeds investigation, or that property specified in the application is subject to a civil recovery investigation or a detained cash investigation;
- Currently, detained property investigations and frozen funds investigations do not apply in Northern Ireland
- the order is sought for the purposes of that investigation, and concerns material (or material of a description) specified in the application and that a person specified in the application appears to be in possession or control of the material;
- in the case of a confiscation investigation,

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<sup>25</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.

<sup>26</sup> See sections 345 and 346 POCA.

- there are reasonable grounds for suspecting that the person specified in the application has benefited from his criminal conduct; or,
  - the purpose of the investigation is to identify the extent or whereabouts of property available for satisfying a confiscation order made in respect of him;
- in the case of a civil recovery investigation, there are reasonable grounds for suspecting
  - that the person specified in the application holds recoverable property or associated property,
  - that the person specified in the application has, at any time, held property that was recoverable property or associated property at the time; or
  - the property specified in the application as being subject to the investigation is recoverable property or associated property;
- in the case of a detained cash investigation or frozen funds investigation into the derivation of cash or money held in a bank or building society account, there are reasonable grounds for suspecting that the property specified in the application as being subject to the investigation, or a part of it, is recoverable property (frozen funds investigations are not available in Northern Ireland);
- in the case of a detained cash investigation or frozen funds investigation into the intended use of cash or money held in a bank or building society account, there are reasonable grounds for suspecting that the property specified in the application as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;
- in the case of a detained property investigation into the derivation of the property, there are reasonable grounds for suspecting that the property specified in the application as being subject to the investigation, or a part of it, is recoverable property (detained property investigations are not available in Northern Ireland);
- in the case of a detained property investigation into the intended use of the property, there are reasonable grounds for suspecting that the property specified in the application, or a part of it, is intended by any person to be used in unlawful conduct (detained property investigations are not available in Northern Ireland);
- in the case of an exploitation proceeds investigation, there are reasonable grounds for suspecting that for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc.), exploitation proceeds have been obtained by the person specified in the application as being subject to the investigation, from a relevant offence by reason of any benefit derived by the person;
- in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
- there are reasonable grounds for believing that the person specified in the application as appearing to be in possession or control of the relevant material is in possession or control of it;
- there are reasonable grounds for believing:
  - that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
  - it is in the public interest for the material to be produced, having regard to the benefit likely to accrue to the investigation if the material is obtained, and the circumstances under which the person specified in

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

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

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

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

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

76. When a production order is served on a person, business or institution seeking the production of material under section 345(4)(a), the covering letter should, in addition to the matters specified in paragraph 40 of the general section, state:
  - that the order was made under section 345(4)(a) of POCA;
  - the material or class of material required to satisfy the production order; and
  - the period of time within which the material must be produced.

77. Where an order is made seeking access to material under section 345(4)(b), the covering letter should, in addition to the matters specified in paragraph 40 of the general section, state:
- that the order was made under section 345(4)(b) of POCA;
  - the material or class of material required to satisfy the production order; and
  - the appropriate officer's right of access to the material within the period stated in the order.
78. Section 350 concerns the service of a production order on a government department. Where a production order is served on a government department, it must be served as if the proceedings were other civil proceedings in relation to the department. This means that appropriate officers should look at the list of government departments published by the Cabinet Office and the Office of the First Minister and Deputy First Minister in Northern Ireland<sup>27</sup> under section 17 of the Crown Proceedings Act 1947 in order to find the correct address for service. A list relating to England and Wales is at annex 2 of Practice Direction 66. For Northern Ireland, a Judicial Review Practice Note 1/2008 as revised on 10 October 2013.<sup>28</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**

79. A production order should be served on the person named in the order. If the order is made against a company or institution the appropriate officer should direct the order to a person in authority and with responsibility for the material.
80. When executing a production order, an appropriate officer should ask for the material specified in the production order to be produced.
81. An appropriate officer may take away the material covered by the production order, except where the production order is made under section 345(4) (b) and only allows access to, rather than removal of, the material.
82. An appropriate officer may photograph or copy, or have photographed or copied, the material that has been removed or accessed. If a copy of the material is sufficient, it should be copied on site and the original returned. If this is not practicable and the order was for production rather than providing access, the material may be taken away, be copied and the original returned as soon as possible.

<sup>27</sup> See further the Crown Proceedings (Northern Ireland) Order 1981.

<sup>28</sup> See link at <http://www.thegazette.co.uk/notice/B-7510-48>

83. Where an appropriate officer requires material that is contained in a computer (for example a computer printout) to be accessed or produced, 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 (whether deliberately or accidentally).
84. In cases where an appropriate officer serves a production order in person they should complete, unless it is impracticable to do so, a list of the articles or documents removed or accessed and give a copy of it and (if appropriate, usually where an order to grant entry is made) a receipt to the owner or occupier and the subject of the order, if present, before leaving the premises. In any event, the appropriate officer should make, or have made, a record of the articles removed and/or accessed in compliance with a production order. A copy of any such record should be given to the subject of the order and the owner or occupier within seven days of the removal of or access of the material.

#### **Order to grant entry**

85. An appropriate officer should consider at the application stage whether a right to enter premises under section 347 is necessary in order to satisfy a production order to provide access to material on any premises. It might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order has been made in respect of material in a particular company's office in that building.
86. 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**

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

### **Definition**

88. 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 in relation to confiscation, money laundering, detained cash, and, in England and Wales, detained property and frozen funds investigations to:

- enter and search the premises specified in the application for the warrant, and
- 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**

89. An application must be made by an appropriate officer; the definition of appropriate officer depends on the type of investigation (see section 378). The person who is carrying out the investigation will normally make the application to the court. The search and seizure warrant must be executed by an appropriate person.<sup>29</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.

90. 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 (in relation to confiscation, money laundering, detained cash, detained property and frozen funds investigations only).<sup>30</sup>

### **Statutory requirements**

91. 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>31</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.

92. Section 353 refers to two sets of conditions for granting a search and 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 investigation and that

<sup>29</sup> See section 352(5) and (7) as to who is an appropriate person (but where a production order is not available, see section 353(10) and (11) POCA).

<sup>30</sup> See the order made under section 355 which applies with modifications, in relation to England and Wales, section 16 of PACE: the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (England and Wales) Order 2015. Investigators need to be aware of equivalent Northern Ireland legislation.

<sup>31</sup> Section 352(1), (6) POCA.

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, where the person who owns the material, or who controls access to the premises on which the material is held, is abroad and therefore it is not possible to communicate with that person;

- The second set of conditions is that there are reasonable grounds for believing that there is required material on the premises which falls within one of subsections (7),<sup>32</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 the person entitled to grant entry to the premises,
  - entry will not be granted without a warrant, or
  - the investigation might be seriously prejudiced unless immediate entry to the premises is secured.

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

93. “Premises” has the same meaning as in section 23 of PACE<sup>33</sup> and article 25 of the PACE (Northern Ireland) Order 1989<sup>34</sup> and includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation (not in Northern Ireland), any tent or moveable structure.
94. The search and seizure warrant does not include a power to stop a person, make an arrest or to search a person. This code does not apply to searches conducted under other legislation or any other provision of POCA, and does not apply to searches conducted with consent which are conducted in the absence of a search and seizure warrant.

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<sup>32</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 listed in section 353(7) (ZA), 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>33</sup> See section 379.

<sup>34</sup> A renewable energy installation is not explicitly included in the PACE (Northern Ireland) Order 1989 definition of “premises.”

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

95. The appropriate officer should at all times have in mind that a search and seizure warrant is the most invasive of the powers of investigation.
96. The appropriate officer should consider why a search and seizure warrant is needed rather than a production order with an order to grant entry.
97. The appropriate officer should ascertain as specifically as is possible in the circumstances the nature of the material to be specified in the application and its location.
98. 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.
99. 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**

100. An application for a search and seizure warrant must state:

- that a person specified in the application is subject to a confiscation investigation, an exploitation proceeds investigation, or a money laundering investigation; or that the property specified in the application is subject to a civil recovery investigation or a detained cash investigation, a detained property investigation or a frozen funds investigation (detained property investigations and frozen funds investigations are not available in Northern Ireland);
- the name (if any) and address of the premises to be searched and the object of the search;
- the material which is sought, or that there are reasonable grounds for believing that there is material falling within section 353(6), (7), (7A), (7B), (8) or (8A) on the premises;
- which of the requirements under section 352(6) apply to the application, whether a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or that section 353 is satisfied;
- if relying upon satisfying section 353:
  - how subsection (2) of that section applies; and
  - which of the conditions in either subsection (3) or (5) apply to the application;

- the name of the appropriate officer or the appropriate person, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;<sup>35</sup> and
- the names of any persons which are requested to be able to accompany the appropriate person at the time of execution of the warrant, with the justification for those persons being so authorised by the warrant.

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

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

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

102. If the appropriate officer who made the application is not the same person as the appropriate person authorised to execute the warrant, the appropriate officer should explain the background and decision to apply for the warrant to the appropriate person. The appropriate person will then be in possession of relevant information which would help when executing the warrant.
103. A person who is not an appropriate person should 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**

104. A search and seizure warrant:
  - must be executed within three calendar months of the warrant being granted for confiscation, money laundering or detained cash investigations; or
  - must be executed within one calendar month of the warrant being granted for civil recovery and exploitation proceeds investigations (see section 356(4));
  - the warrant should be returned to the issuing court not more than four months after the date that it was granted.
105. Where the extent or complexity of a search means that it is likely to take a long time to complete, the appropriate person may wish to consider whether the powers under Part 2 of the CJPA (additional powers of seizure) may appropriately be used.

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

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

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<sup>35</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

- the owner or occupier and any other person entitled to grant access are known to be absent; or
  - there are reasonable grounds for believing that to alert the owner or occupier or any other person entitled to grant access by attempting to communicate with them would frustrate the object of the search or endanger the appropriate person concerned or other people.
107. Before a search begins the appropriate person should identify themselves (subject to the provisions in POCA relating to pseudonyms of officers of the NCA)<sup>36</sup> 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 101 apply.
- Notice of powers and rights**
108. The appropriate person should, unless it is impracticable to do so, provide the owner or occupier and any other person entitled to grant access to the premises with a copy of the warrant and in addition to the matters specified in paragraph 46 of the general section of this code, a notice:
- 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.
109. If the owner or occupier, or person entitled to grant access is present, copies of the notice mentioned above, and of the warrant should, if practicable, be given to the owner or occupier or person entitled to grant access before the search begins, unless the appropriate person reasonably believes that to do so would frustrate the object of the search or endanger those who are to conduct the search or other people. If the owner or occupier or person entitled to grant access is not present, copies of the notice and of the warrant should be left in a prominent place on the premises or appropriate part of the premises and endorsed with the name of the appropriate person (or, if authorised, the pseudonym used)<sup>37</sup> and the date and time of the search. The warrant itself should be endorsed to show that this has been done.
110. If the person does not appear to understand what is being said, or the officer has doubts as to the person's ability to speak and/or understand English, or to hear and/or speak, then the officer should take reasonable steps to ensure that the person understands. If these reasonable steps cannot be fulfilled, for example a suitable interpreter cannot be found, then the search may not proceed. In all cases, the officer should record any difficulties encountered and the reasons for, or for not, proceeding.

**Conduct of searches**

111. 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

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<sup>36</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

<sup>37</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

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.

112. Premises should 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. A search may not continue once the object of the search has been found and 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 application for further search and seizure warrants in respect of the same premises if additional grounds come to light. Examples would be when as a result of new information it is believed that articles previously not found or additional articles are now on the premises.
113. Searches should be conducted with due consideration for the premises and privacy of the owner or occupier of the premises searched, and with no more disturbance than necessary.
114. The person should be asked whether they wish a friend, neighbour or other person to witness the search. However a search need not be unreasonably delayed for this purpose. The person nominated should be allowed to witness the search unless the appropriate person has reasonable grounds for believing that the presence of the person asked for would significantly hinder the investigation or endanger the appropriate person concerned or other people. A record of the action taken under this paragraph, including the grounds for refusing a request from the person entitled to grant access, should be made on the premises search record (for the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched. The person is under no obligation to provide this information and they should not be asked to provide it for the purpose of completing this record). This requirement also relates to business and commercial properties if practicable, as well as private addresses.
115. A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search. Examples would include questions to discover who is the owner or occupier or person entitled to grant access of specified premises, to find a key to open a locked drawer or cupboard or to otherwise seek co-operation during the search or to determine whether a particular item is liable to be seized.

### **Leaving the premises**

116. 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**

117. An appropriate person may seize:
  - material covered by the warrant (being either material specifically mentioned or where there were reasonable grounds for believing that there was material falling within section 353(6), (7), (7A), (7B), (8) or (8A) on the premises);

- anything covered by the powers in Part 2 of the CJPA which allow an appropriate person to seize property from premises where it is not reasonably practicable to determine on the premises whether they are 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 should 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.
118. Execution of a search and seizure warrant should no longer continue if it appears to the appropriate person that there is no more material covered by the warrant on the premises, even if the appropriate person suspects that there are other items which they may want to seize.
119. Appropriate persons should be aware of section 59 of the CJPA. This applies where something has been seized or purported to have been seized under certain seizure powers. It provides that anyone with a relevant interest in the seized property has the right to apply to an appropriate judicial authority<sup>38</sup> for its return. Appropriate persons should also be aware of the subsequent duty to secure seized property, see sections 60 and 61 of the CJPA.
120. An appropriate person may photograph, image or copy, or have photographed, imaged or copied, any material that has been seized under the warrant. In a confiscation investigation, detained cash investigation or a money laundering investigation, an appropriate person will have regard to their obligation not to retain original material when a photograph or copy would be sufficient. Appropriate officers and appropriate persons should be aware of the safeguards applied by the relevant order made under section 355 in confiscation investigation, detained cash investigation, a detained property investigation, a frozen funds investigation or a money laundering investigation. Detained property investigations and frozen funds investigations are not available in Northern Ireland (see paragraph 2).<sup>39</sup>
121. In relation to civil recovery investigations or exploitation proceeds investigations, appropriate officers and appropriate persons should be aware of the safeguards in section 356. An appropriate person may take copies of any seized material. Material seized under a warrant may be retained for as 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. But if an appropriate officer has reasonable grounds for believing that:
- a. The material may need to be produced for the purposes of any legal proceedings, and
  - b. It might otherwise be unavailable for those purposes,

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<sup>38</sup> See section 64 of the CJPA for the meaning of “appropriate judicial authority”: in relation to the exercise of the power of seizure under section 352(4) of POCA, whether exercised alone or in conjunction with section 50 of the 2011 Act, it means the High Court.

<sup>39</sup> In relation to England and Wales, the current order is the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (England and Wales) Order 2015.

It may be retained until the proceedings are concluded.<sup>40</sup>

122. Where an appropriate person considers that information which is held in a computer and is accessible from the premises specified in the warrant is relevant to the investigation, they may require the information to be produced from the computer in a form which can be taken away (for example a computer printout or removable computer disc).<sup>41</sup> Care should 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.

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

123. Where premises have been searched under a warrant issued under Chapter 2 of Part 8, the appropriate person should make or have made a written record of the search at the time of the search, unless there are exceptional circumstances that would make this impractical. If a written record is not made at the time then the appropriate person should do so as soon as is reasonably practical thereafter and also set out the reasons for the delay in making the record. There may be situations when it is not practical 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;
- outcome of the search;
- the warrant under which the search was made (a copy of the warrant should be appended to the record or kept in a place identified in the record);
- the name of the appropriate person, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;<sup>42</sup>
- 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;<sup>43</sup>
- the names and details of any witnesses;
- any grounds for refusing the request of the owner, occupier, or the person who is entitled to grant access to have someone present during the search as set out in paragraph 113;
- any explanation given by the person as to the ownership, origins, purpose and destination of any material seized;
- 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;

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<sup>40</sup> Section 356(10) POCA.

<sup>41</sup> Section 356(5) POCA.

<sup>42</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

<sup>43</sup> When considering whether to request and make a record of someone's personal details, the appropriate person should be aware of the need for proportionality to avoid any unjustifiable interference with a person's right to private and family life under article 8 of the ECHR.

- the circumstances in which it was caused;
  - confirmation that the premises were left secured and by what means; and
  - any other relevant information.
124. 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.
125. When an officer makes a record of the search electronically and is unable to produce a copy of the form at the time of the search, the officer should explain how the person can obtain a full copy of the record of the search and give the person a receipt which contains:
- a unique reference number and guidance on how to obtain a full copy of the report;
  - the name of the officer who carried out the search (subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director);<sup>44</sup> and
  - the power used to search.
126. The search and seizure warrant should be endorsed by the appropriate person to show:
- whether any material was seized;
  - the date and time at which it was executed;
  - the name of the appropriate person who executed it, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director);<sup>45</sup> and
  - whether a copy of the warrant, together with a copy of the Notice of Powers and Rights, was handed to the owner or occupier or person entitled to grant entry, or whether it was endorsed and left on the premises together with the copy notice and, if so, where.

### **Search register**

127. In the case of searches undertaken by constables, the record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other appropriate persons the record of the search should be maintained in a suitable form, i.e. the record should be easily accessible, retrievable and subject to reasonable rules for storage, in particular in relation to the length of time before the record is destroyed.
128. In order to promote public confidence in the use of the powers, bodies using these powers should make the records available (anonymised as required) to be scrutinised by representatives of the community, and to explain the use of the powers at a local level in response to a reasonable request.

<sup>44</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

<sup>45</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

## **Specific procedures for seize and sift powers**

129. 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 the premises so that they can sift through it or otherwise examine it elsewhere. These powers may be exercised for the reasons stated in section 50 of the CJPA: appropriate persons should refer to and have regard to this provision. All appropriate persons conducting searches under POCA are permitted to use these powers. Appropriate persons should be careful that they only exercise these powers where it is essential to do so and that they do not remove any more material than is absolutely necessary. The removal of large volumes of material, much of which may not ultimately be retained, may have serious implications for the owners, particularly where they are involved in business, or activities such as journalism or provision of medical services. Appropriate persons should 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 should always be prepared to facilitate the provision of copies or images for the owners where that is reasonably practicable.
130. 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 initial examination under section 53 of the CJPA to determine what material may be retained in accordance with POCA must be carried out as soon as reasonably 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 should 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.
131. 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. What constitutes a relevant interest in specific material may depend on the nature of that material and the circumstances in which it is seized. Anyone with a reasonable claim to ownership of the material and anyone entrusted with its safe keeping by the owner should be considered. If an examination proceeds in the absence of an interested person who asked to attend or their representative, the appropriate person who exercised the search and seizure warrant should give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality, appropriate persons may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it.
132. 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 CJPA. Material which is not retained is to be separated (if possible and having regard to section 53(5)) from the rest of the seized property and returned as soon

as reasonably practicable, after examination of all the seized property. Material cannot be retained if it is legally privileged material, excluded material or falls outside the terms of the warrant. Delay on return of material is warranted if clear reasons exist; for example, the unavailability of the person to whom the material is to be returned or the need to agree a convenient time to return a very large volume of material. Legally privileged or excluded material which cannot be retained is to be returned as soon as reasonably practicable, and without waiting for the whole examination. As set out in section 58 of the CJPA, material is to be returned to the person from whom it was seized, except where the appropriate person is satisfied that some other person has a better right to it. Requirements to secure and return property apply equally to all copies, images or other material created because of the seizure of the original property.

133. 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 CJPA intends to make an application under section 59 of that Act for the return of any legally privileged or excluded material, the appropriate officer in charge of the investigation should be informed as soon as practicable and the material seized should be kept secure in accordance with section 61. Appropriate persons should consider reaching agreement with owners and/or other interested parties on the procedures for examining a specific set of property, rather than awaiting the judicial authority's determination. Agreement can sometimes give a quicker and more satisfactory route for all concerned and minimise costs and legal complexities.
134. The responsibility for ensuring property is properly secured rests ultimately with the appropriate person and the appropriate officer, even if there is a separate person delegated with this specific task. Securing involves making sure that the property is not examined, copied or imaged or put to any other use except with the consent of the applicant or in accordance with the directions of the appropriate judicial authority. Any such consent or directions should be recorded in writing and signed by both the applicant or judicial authority and the appropriate person. The mechanics of securing property vary according to the circumstances; "bagging up" (placing material in sealed bags or containers and strict subsequent control of access) is the appropriate procedure in many cases.
135. Where an appropriate person exercises a power of seizure conferred by section 50 of the CJPA, the appropriate person should, at the earliest opportunity and unless it is impracticable to do so, provide the owner, occupier, or person entitled to grant access to the premises or the person from whom the property was seized with a written notice:
  - specifying what has been seized in reliance on the powers conferred by that section;
  - specifying the grounds on which those powers have been exercised;
  - setting out the effect of sections 59 to 61 of the CPJA which cover the grounds on which a person with a relevant interest in seized property may apply to the appropriate judicial authority for its return and the duty of appropriate persons to secure property in certain circumstances where such an application is made;
  - specifying the name and address of the person to whom notice of any application to the appropriate judicial authority in respect of any of the seized property should be given; and

- specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination of the property (for example police station, Revenue and Customs office or other building).
136. If the owner or occupier is not present but there is some other person there who is in charge of the premises, the notice should be given to that person. If there is no one on the premises to whom the notice may appropriately be given, it should either be left in a prominent place on the premises or attached to the exterior of the premises so that it will easily be found.

### **Retention**

137. Anything that has been seized under POCA or 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.
138. Property should not be retained if a photograph or copy would be sufficient – appropriate officers and appropriate persons should be aware of the safeguards applied by the relevant order made under section 355 of POCA (in relation to the exercise of powers for the purpose of a confiscation investigation, a money laundering investigation or a detained cash investigation), section 356 (in relation to the exercise of powers for the purpose of a civil recovery investigation or exploitation proceeds investigation) and section 63 of the CJPA.

### **Rights of owners**

139. If property is retained under POCA or the CJPA, the owner or occupier of the premises from where it was seized, or the person who had custody or control of it immediately prior to its seizure, should on request be provided with a list or description of the property within a reasonable time.
140. That person or their representative should be allowed supervised access to the property to examine it or have it photographed or copied, or should be provided with a photograph or copy, in either case within a reasonable time of any request and at their own expense, unless the appropriate person has reasonable grounds to believe that this would prejudice the investigation or any proceedings, or would lead to the commission of an offence by providing access to unlawful material such as pornography. A record of the grounds should be made in any case where access is denied.

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

141. 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. Access may be refused, 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.
142. 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 unless to do so would prejudice the investigation.

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## **Customer information orders**

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

### **Definition**

144. A customer information order compels a financial institution covered by the application to provide any “customer information” it has relating to the person specified in the application on receipt of a written notice from an appropriate officer asking for that information. “Customer information” is defined in section 364. A “financial institution” means a person carrying on a business in the regulated sector.<sup>46</sup> The “regulated sector” is defined in Schedule 9 to POCA. A customer information order is not available in a detained cash investigation, a detained property investigation or a frozen funds investigation.

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

145. An appropriate officer (defined according to the type of investigation, see section 378) can apply for a customer information order, but must have the authorisation of a senior appropriate officer before making an application to court (unless that officer is a senior appropriate officer).<sup>47</sup>

A senior appropriate officer for a confiscation investigation is:

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

For money laundering investigations, a senior appropriate officer is:

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

For civil recovery investigations in England and Wales, a senior appropriate officer is:

- a senior officer of the NCA;

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<sup>46</sup> Section 416(4).

<sup>47</sup> Section 369(7).

- the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs authorised by the Commissioners (whether generally or specifically) for this purpose; or
- a senior Financial Conduct Authority officer.

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

## **Statutory requirements**

146. The application must state:

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

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

147. The appropriate officer should carefully consider the existing evidence and information and source of information so as to limit the number or scope of financial institutions. This may include researching NCA's intelligence system and the Police National Computer. The appropriate officer should consider what

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

148. The appropriate officer should particularly consider the proportionality of requesting the customer information against the believed benefit to the investigation. They should 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 serving notices under a customer information order**

149. Section 363(5) requires a financial institution (following a notice in writing from an appropriate officer) to provide any customer information which it has relating to the person specified in the application. Section 363(6) gives the appropriate officer the power to require the financial institution to provide the information in a particular manner, and at, or by, a particular time. The appropriate officer should set a reasonable time period depending on the nature of the institution and the information that is requested. There will be cases where the best practice is to contact the financial institution before the notice is served to discuss a reasonable time period.
150. A notice given under a customer information order should include the following:
  - the name of the financial institution;
  - the name of the person(s) (or other identifying factor) about whom customer information is sought;
  - the financial institution's right to refuse to comply with any requirement made of it unless the appropriate officer has, if asked to do so, produced evidence of their authority;<sup>48</sup>
  - the period of time within which the customer information must be provided;
  - the manner in which such information must be provided;
  - the place at or to which the information is to be provided;
  - where the appropriate officer believes that the customer information includes information held in any other name that the specified person has or had used, that other name;
  - where the appropriate officer believes that the customer information includes information held in the name of a company or limited liability partnership that the specified person has or had an interest, the name and all known addresses of that company or limited liability partnership;
  - all addresses known by the appropriate officer to have been used by the specified person relating to accounts that may have been or are held by the financial institution;
  - the date of birth or approximate age of that person if an individual, or any known identification information in respect of a company or limited liability partnership;
  - such other information as the appropriate officer considers would assist the financial institution in complying with the order; and

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<sup>48</sup> Section 363 (7).

- notice that a statement made by the financial institution in response to the order may not be used in evidence against it in criminal proceedings other than in the circumstances set out in section 367.

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

151. The appropriate officer should keep a copy of the customer information order and all the notices issued to financial institutions under a customer information order. The appropriate officer should also keep a record of all the information supplied in response to the notices.
152. The appropriate officer should consider the customer information that has been obtained and consider whether a production order or account monitoring order would be the next step to obtain further information and material to support the investigation.

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## **Account monitoring orders**

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

### **Definition**

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

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

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

### **Statutory requirements**

156. The application must state that:

- a person specified in the application is subject to a confiscation investigation, a civil recovery investigation, an exploitation proceeds investigation or a money laundering investigation;
- the order is sought for the purposes of that investigation;
- the order is sought against the financial institution specified in the application in relation to account information that the appropriate officer wishes to obtain.
- The application should also state that the order is sought in relation to account information<sup>49</sup> about the specified person;
- in the case of a confiscation investigation,
  - there reasonable grounds for suspecting that the person specified in the application has benefited from their criminal conduct; or,
  - the purpose of the investigation is to identify the extent or whereabouts of property available for satisfying a confiscation order made in respect of them;
- in the case of a civil recovery investigation, the reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property;
- in the case of a money laundering investigation, the reasonable grounds for suspecting that the person specified in the application has committed a money laundering offence;
- for any investigation, the reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought, and that it is in the public interest for the account

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<sup>49</sup> Account information relates to an account or accounts held at the financial institution by the person.

information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

157. The application for an account monitoring order may specify information relating to all accounts held by the person specified in the application for the order at the financial institution so specified, a particular description, or particular descriptions, of accounts so held, or a particular account, or particular accounts, so held. The order will set out the manner and deadline by which the financial institution must produce account information and the period for which the order should last (but this may not exceed a 90 day period).<sup>50</sup>

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

158. The appropriate officer should consider the benefit to the investigation of obtaining information from an account, and whether this information could be obtained by using a production order.
159. The appropriate officer should also consider the account information to be requested. If, for example, the appropriate officer requires information on certain transactions, the appropriate officer should consider whether this should be limited to transactions over a certain threshold or to the identity of the source of the deposit or transaction destination.
160. The provision of account information will be for so long as the court has set out in the order (although no longer than 90 days, beginning with the day on which the order is made) and be provided at or by the time or times stated in the order. A reasonable time period and times to provide the information should be identified for the court. For example, it may be reasonable that the information should be provided within 24 hours on all transactions unless it appears that it would not be reasonably practicable for the subject of the account monitoring order to comply with this time limit. It is best practice 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.
161. Appropriate officers should consider the time period they wish the account monitoring order to cover. The appropriate officer should not view the 90 day maximum as the standard time period. The appropriate officer should carefully consider and justify the requirement for the time period requested.

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

162. When an account monitoring order is served on a financial institution, the covering letter, in addition to the matters specified in paragraph 40 of the general section, should include the following (unless it is already included in the order):
  - the name of the financial institution;
  - the identity of the person(s) who holds the account to be monitored, including as much identity information as is known by the appropriate officer;
  - the accounts in relation to which the information is required, whether this is a specific account or a general description of accounts;

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<sup>50</sup> Section 370(6), (7) POCA.

- the account information required (in as specific detail as possible, for example a general description of the nature of the transactions);
- the period for which the account monitoring order will have effect;
- the period of time within which such information must be provided to the appropriate officer (for example within 24 hours of a particular transaction taking place);
- the manner in which such information must be provided;
- such other information as the appropriate officer considers would assist the financial institution in complying with the requirements of the account monitoring order;
- notice that a statement made by the financial institution in response to the order may not be used in evidence against it in criminal proceedings other than in the circumstances set out in section 372.

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

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

## **Unexplained wealth orders**

164. This section of the code provides for the use of unexplained wealth orders in England and Wales (UWOs) and contains guidance on specific provisions relating to the use of those orders. This section of the code applies to the following enforcement authorities:
- The National Crime Agency
  - The Financial Conduct Authority
  - HM Revenue and Customs
165. The functions of the Serious Fraud Office and the Director of Prosecutions (in relation to England and Wales) in respect of UWOs are covered by a code issued by the Attorney General.

### **Definition**

166. A UWO is an investigation tool under Part 8 of POCA intended to assist in building evidence. It is specifically designed to support the building of a case for civil recovery under Part 5 of POCA, but can also be used for other reasons both criminal and civil (provided there is a legal basis for using such information). UWOs are not available in Northern Ireland (see paragraph 2).
167. A UWO provides an enforcement authority with the ability to require an individual or company to provide specific documents or information in order to establish whether the asset(s) in question have been legitimately obtained. As such, it provides an alternative means of obtaining information and allowing for the consideration of action against persons and their property about whom little information is available.

### **Persons who can apply for a UWO**

168. An application for a UWO may be made to the High Court by an enforcement authority. The application may be made without notice. An enforcement authority<sup>51</sup> is:
- The National Crime Agency
  - Her Majesty's Revenue and Customs
  - The Financial Conduct Authority
  - The Director of the Serious Fraud Office, or
  - The Director of Public Prosecutions (in relation to England and Wales)

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<sup>51</sup> As defined in section 362(A) (7) POCA.

169. An application for a UWO is made by the enforcement authority, as set out above, rather than an appropriate officer of that authority. The authority concerned should give consideration to implementing a suitable assurance and authorisation process that ensures appropriate applications will be made. The authority (or Director, as appropriate) should also ensure that properly trained and qualified members of their staff are making applications in their name.
170. Enforcement agencies considering the use of a UWO should have regard to the cost-capping provisions contained within the practice direction of the Criminal Procedure Rules. The rules allow for cost-capping in appropriate cases; costs should not be the sole factor in deciding whether or not to apply for a UWO.

### **Statutory requirements**

171. An application for a UWO must be made to the High Court. The application must specify or describe the property in respect of which the order is sought, and specify the person whom the enforcement agency thinks holds the property ("the respondent").<sup>52</sup>
172. The application should state that:

- There is reasonable cause to believe that the respondent holds the specified property and that the aggregate value of that property is greater than £50,000;
- there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property;
- the respondent is a:
  - non-EEA politically exposed person (as specifically defined in POCA),<sup>53</sup> or
  - there are reasonable grounds to suspect that the respondent (or a person connected with them) is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), and details as to the basis of that suspicion.

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

173. The enforcement authority should carefully consider the value of evidence that may be obtained through a UWO. A UWO provides law enforcement with a tool to obtain information and documentation in relation to property that appears to be disproportionate to the known income of an individual or company. A fundamental aim of the power, therefore, is to access evidence that would otherwise not be available. Although not an absolute requirement, the applicant should consider whether alternative tools of investigation could be used in obtaining any relevant documents and information.

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<sup>52</sup> See section 362(A) (2). Section 362(A) specifies what an order must contain as well as the requirement to comply with an order within a certain timeframe.

<sup>53</sup> Defined in section 362B (7) & (8). A politically exposed person is an individual who has been entrusted with prominent public functions by an international organization or a state outside the UK or EEA. It also includes family members and close associates and those who are otherwise connected to the individual.

174. Whether there are reasonable grounds for suspecting that there is insufficient lawfully obtained income to explain the wealth (i.e. holding of the property) will depend on the circumstances in each case, and should be carefully considered. Applicants should be able to explain the basis for their suspicion by reference to disclosable intelligence or information about, or some specific behaviour by, the individual or company concerned (including open source material from overseas where there may be public registers relating to property and public servants income).
175. Applicants should take reasonable steps to liaise with other agencies in order to:
- establish whether they already own material that explains a person's wealth, and
  - ensure appropriate action, thereby avoiding duplicating enquiries that may already be underway.
176. In considering whether to apply for a UWO, the enforcement agency should have made reasonable attempts to:
- establish the identity of the beneficial owner, for example in cases where a property is held in trust;<sup>54</sup>
  - identify either –
    - the politically exposed person or associate of such;
    - the type of serious crime in which the respondent, or person associated with the respondent, is suspected of being involved.
177. In drafting the proposed terms of the UWO in the application, care should be taken to list strict requests for information. The applicant should consider what precise information they require and categorise this in a structured fashion. This will assist in avoiding receiving responses that comply with the UWO but are vague or minimal.

### **Service of documents**

178. Service of documents overseas should be dealt with according to the usual civil procedure rules for service outside the jurisdiction.

### **Requirements for making an application**

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<sup>54</sup> For property held in trust, see also the provisions at section 362H.

179. In addition to fulfilling the statutory requirements, the applicant must specify the property in respect of which the order is sought. It is immaterial whether or not other persons - in addition to the respondent - also hold the property, or whether the property was obtained by the respondent before or after the UWO provisions came into force. The information provided to the court should be sufficient to frame the requirements of the order, as the order places an obligation on the respondent to explain the source of the specified asset(s) within a time period set by the court.

#### **Points to note**

180. In coming to a decision as to whether there are reasonable grounds to suspect that the respondent's lawfully obtained income would have been insufficient to obtain the property, the court will:
- have regard to any mortgage, charge, or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
  - assume that the respondent obtained the property for a price equivalent to its market value;
  - consider income to be "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;
  - interpret "known" sources of the respondent's income to mean the sources of income that are reasonably ascertainable from available information at the time of making an application. This will include open source material, including from other jurisdictions;
  - consider the other lawful financial benefits available to the respondent aside from income, such as capital gains. Although not an express requirement, it is reasonable to expect the court to assess the full financial circumstances when considering an application.

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

##### Where a respondent fails to comply with an order

181. A respondent must respond to an order within a certain time specified by the court. This period is known as the 'response period', but different time periods may be specified in respect of different requirements made by the order.
182. If the respondent fails to comply with the requirements imposed by the UWO within the relevant response period for that requirement, the property concerned

is presumed to be “recoverable property”.<sup>55</sup> In this case, the enforcement authority can consider whether to take further action against the property. This may include recovering the property using the civil recovery powers provided by Part 5 of POCA. If civil recovery proceedings are commenced, the respondent can provide evidence to rebut the presumption that their property is recoverable in those proceedings.

183. A respondent will be treated as having failed to comply with a UWO if, without reasonable excuse, he fails to comply with all of the requirements imposed by the order. It is important to note that where a response is provided to a particular requirement in the UWO, but that response is considered to be unsatisfactory, this does not mean that he has failed to comply with the order (see section 362D).<sup>56</sup>

#### Where a respondent complies, or purports to comply, with an order

184. If, within the response period, the respondent complies or purports to comply with the requirements imposed by an order, and there is no interim freezing order the appropriate enforcement authority may (at any time) determine what enforcement or investigatory proceedings, if any, ought to be taken in respect of the property. This will include considering whether to refer any evidence to the agency that has discretion over commencing criminal proceedings. If it is determined that no further proceedings are necessary, this does not prevent such proceedings being taken subsequently.
185. Knowingly or recklessly making a statement that is false or misleading is a criminal offence under section 362E of POCA.
186. The term ‘purported compliance’ applies in cases where a person has provided a response to each of the requirements of an order but the recipient is not wholly satisfied with the response. The term is required to ensure clarity in the circumstances in which the presumption that the property is recoverable will arise; in cases of non-compliance, this presumption will arise automatically.
187. The provision is also intended to protect the individual in instances where there has been a genuine attempt to comply with the requirements of the order. It is not, however, intended to excuse a poor or limited response and the respondent is

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<sup>55</sup> Recoverable property is property obtained through unlawful conduct (section 304 POCA).

<sup>56</sup> An example of this might be where an individual provides nothing more than the bare minimum of information necessary to address each requirement of the order, and as a result the agency is not satisfied by his explanation as to the derivation of the property. In those circumstances, the rebuttable presumption that the property is recoverable does not arise, but the enforcement agency may elect to take further civil recovery action against the property in light of the evidence (or lack of evidence) provided by the individual.

expected to provide full and genuine information; failure to do so could still amount to non-compliance with the order. It should also be noted that an agency would be entitled to rely on any information provided in any further action against the respondent or his property. It is therefore incumbent on the applicant to ensure that the terms of the order are specific and clear in order to minimise the likelihood of an unsatisfactory response being provided.

188. However, if an interim freezing order (see paragraphs 193-200 below) is in effect, the enforcement authority must make this determination within 60 days starting with the day of compliance<sup>57</sup> or purported compliance.
189. Subject to certain exceptions, a statement made by a person in response to a requirement imposed by a UWO may not be used in evidence against that person in criminal proceedings. Exceptions are –
  - In case of proceedings under Part 2 or 4;
  - On a prosecution for an offence under section 362E;
  - On a prosecution for an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements); or
  - On a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement made in response to a requirement imposed by a UWO.
190. If the enforcement authority considers that investigatory or enforcement proceedings could be appropriately taken by another agency, they need to be satisfied that there is a legal basis for sharing the information/evidence. It is also important to note that they are only passing the information/evidence to the other agency for them to take their own independent operational decision to pursue appropriate investigations or proceedings. The enforcement agency is not tasking the other agency.
191. The enforcement authority may take copies of any documents produced by the respondent in response to the requirements of an order. Such documents (which may be originals) may be retained for as long as it is necessary to retain them in connection with an investigation of the type specified in section 341.<sup>58</sup> Documents may also be retained if the enforcement authority has reasonable grounds to believe that they may need to be produced for the purposes of any legal proceedings (and would otherwise be unavailable). In such circumstances, they may be retained until the proceedings are concluded.
192. The UWO provisions do not provide an express exclusion in respect of legally privileged material. This should rarely arise as it is unlikely that material and information sought by way of a UWO will include information which is privileged.

<sup>57</sup> Section 362D (3). Where the requirements are complied with at different times, this means the last date upon which action to comply with the order is taken.

<sup>58</sup> Section 341 makes provision for civil recovery investigations, money laundering investigations, confiscation investigations and detained cash investigations.

The High Court will consider this issue, when relevant, both in considering the application and in proceedings that use information gathered in response to a UWO.

## **Interim freezing orders**

### **Definition**

193. An interim freezing order is an order that allows for the freezing of property identified as a result of a UWO. It is intended to prevent property being dissipated while it is subject to the order. As with the UWO itself, interim freezing orders are not currently available in Northern Ireland.

### **Persons who can apply for an interim freezing order**

194. An application for an interim freezing order can only be made by the enforcement authority that applied for the UWO to which the interim freezing order relates.

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

195. An application for an interim freezing order may be made to the High Court as part of a UWO hearing, and it should be made at the same time as a UWO. The UWO and interim freezing order may be combined in one document.

196. An interim freezing order cannot be made in advance of a UWO, nor can it be applied for as an alternative to freezing orders under other provisions.

197. The enforcement authority should consider whether to apply for an interim freezing order. This should be considered on the individual facts of the case, but could include the following factors –

- The likelihood, based on available evidence or the nature of the case, that the property may be dissipated;
- The value of the property;
- Other interests in the property. This may include the complexity of the ownership arrangements of the property;
- The location of the respondent, in particular if he/she is, or is normally, overseas;
- The ability to monitor the property by other means; for example by way of the Land Registry;
- In relation to residential property, that there is no likelihood of the property being disposed of in the time period of the UWO.
- A realisation that a case will be expected to progress more quickly if relevant property is frozen.

198. It is important to note that the only test for the court when considering an application for an interim freezing order is whether making the order would avoid the risk of frustrating any civil recovery order that might be subsequently made.
199. In applying for an interim freezing order, the enforcement authority should also consider the possible need for a receiver. A receiver may not be necessary if the property does not require active management or if this can be achieved in another manner.
200. The enforcement authority or any person affected by an interim freezing order can apply for the order to be varied or discharged at any time.

### **Disclosure orders**

201. Persons to whom this part of the codes apply should familiarise themselves with the introduction section which sets out general matters relating to all the orders and warrants.
- Definition**
202. A disclosure order under section 357 is an order authorising an appropriate officer to give to any person the appropriate officer considers has relevant information notice in writing requiring them to answer questions, to provide information or to produce documents with respect to any matter relevant to the investigation in relation to which the order is sought. A disclosure order is not available in detained cash investigations, detained property investigations or frozen funds investigations. In Northern Ireland, a disclosure order is also not available in a money laundering investigation. This code does not provide guidance on the use of disclosure notices under other legislation.
203. Once a disclosure order has been made, appropriate officers may use the powers set out in section 357(4) throughout the investigation. Thus, unlike the other orders which have to be applied for separately on each occasion, a disclosure order granted by a court gives continuing powers for the purposes of the investigation. The appropriate officer should serve a notice on any person he wishes to question or to ask to provide information or documents.
204. 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. A copy of the disclosure order should therefore be given to the person on each occasion a notice is served upon them.

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

205. In England and Wales, in relation to a confiscation or money laundering investigation, and appropriate officer (defined according to the type of investigation, see section 378) can apply for a disclosure order, but must have the authorisation of a senior appropriate officer (unless that officer is a senior appropriate officer).
206. A senior appropriate officer for a confiscation investigation is:
  - a senior officer of the NCA
  - a senior police officer who is not below the rank of superintendent;
  - an officer of HMRC who is not below such grade as is designated by the Secretary of State as equivalent to that rank;
  - an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank; or
  - an Accredited Financial Investigator (AFI) who falls within a description specified in an order made by the Secretary of State under section 453.
207. A senior appropriate officer for a money laundering investigation is:
  - a senior police officer who is not below the rank of superintendent;
  - an officer of Revenue and Customs who is not below such grade as is designated by the Secretary of State as equivalent to that rank;
  - an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank; or
  - an Accredited Financial Investigator (AFI) who falls within a description specified in an order made by the Secretary of State under section 453.
208. In relation to a confiscation investigation in Northern Ireland, a prosecutor (as defined in section 357(8) and (9) of POCA) can apply for a disclosure order at the request of an appropriate officer. Disclosure orders are not available in money laundering investigations in Northern Ireland.
209. In relation to civil recovery investigations in England and Wales, an officer of the NCA, an officer of Revenue and Customs, an officer of the Financial Conduct Authority or a relevant Director<sup>59</sup> may apply for disclosure orders. The scope of this code does not extend to guidance to members of staff of the relevant Director, who are within the scope of the code of practice issued by the Attorney General. For civil recovery investigations in Northern Ireland, and NCA Officer or a relevant Director may apply for a disclosure order.
210. In relation to exploitation proceeds investigations, an officer of the NCA may apply for a disclosure order.

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<sup>59</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(5A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

## **Statutory requirements**

211. The application must state that:

- a person specified in the application is the subject of a civil recovery, exploitation proceeds, confiscation or money laundering investigation; and
- the order is sought for the purposes of that investigation.

212. The application should also state that:

- It is considered that 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;
  - in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
  - in the case of a money laundering investigation in England and Wales only (see paragraph 2 above), the person specified in the application for the order has committed a money laundering offence;
  - in the case of an exploitation proceeds investigation, the person specified in the application is a person within section 346(2A). A person is within that section if, for the purposes of Part 7 of the Coroners and Justice Act 2009 (“criminal memoirs etc.”), exploitation proceeds have been obtained by the person from a relevant offence by reason of any benefit derived by the person.
- there are reasonable grounds for believing that:
  - the person the application specifies as appearing to be in possession or control of the information so specified is in possession or control of it;
  - the information 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 information to be produced or for access to it to be given, having regard to the benefit likely to accrue to the investigation if the information is obtained, and to the circumstances under which the person the application specifies as appearing to be in possession or control of the information holds it.

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

213. An application should state:

- in the case of a civil recovery investigation, details of the property or the name of the person under investigation;
- in the case of confiscation, money laundering or exploitation proceeds investigations, the name of the person under investigation (disclosure orders are not available in money laundering investigations in Northern Ireland; see paragraph 2 above);
- 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.
214. The appropriate officer should carefully consider what benefit the disclosure order may bring to the investigation, either in itself or as the lead to other avenues of investigation and whether the information could not be acquired as effectively and efficiently from material which could be obtained by other orders.
215. In view of the continuing powers conferred by a disclosure order, the Secretary of State expects that officers authorising applications should have completed and maintained formal accreditation relevant to the functions of a senior appropriate officer (as provided by the NCA under section 3 of POCA).
216. Where a respondent is required to provide information, the notice should be accompanied by a letter explaining that the information should be produced in the form of a witness statement together with a standard statement of truth. The letter should also explain that the respondent will be committing a criminal offence if they fail, without reasonable excuse, to answer questions.

## **Interview**

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

### **Invitation to interview**

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

- the right of the appropriate officer to carry out the interview under section 357(4)(a);
- the purpose of the interview, which may be as detailed as the appropriate officer considers necessary;
- the right not to have statements made by them used in evidence in criminal proceedings other than in the circumstances specified in section 360(2);
- the right to be accompanied at any interview by a solicitor and/or a qualified accountant;
- the right, if they are a juvenile<sup>60</sup> or have a mental disorder,<sup>61</sup> to be accompanied at any interview by an appropriate adult.<sup>62</sup> Where the person conducting the interview has any doubt about the mental state or capacity of a person to be interviewed, that person should be treated as mentally vulnerable and an appropriate adult should be called.
- 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;
- that failure to comply with a disclosure order without reasonable excuse is an offence under section 359;
- that false or misleading statements in response to an order, whether deliberate or reckless, also amount to an offence.

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<sup>60</sup> If anyone appears to be under the age of 18, they must be treated as a juvenile for the purposes of this code unless there is clear evidence that they are older.

<sup>61</sup> Mental disorder is defined in section 1(2) of the Mental Health Act 1983 as “mental illness, arrested or incomplete disorder of the mind, psychopathic disorder, and any other disorder or disability of the mind.” For Northern Ireland. See article 3(1) of the Mental Health (Northern Ireland) Order 1986.

<sup>62</sup> ‘Appropriate Adult’ means, in the case of a:

- juvenile:
  - the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation;
  - a social worker of a local authority;
  - failing these, some other responsible adult aged 18 or over who is not an appropriate officer or employed by the organisation which the appropriate officer works for;
- person who is mentally disordered or mentally vulnerable:
  - a relative, guardian or other person responsible for their care or custody;
  - someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not an appropriate officer or employed by the organisation which the appropriate officer works for;
  - failing these, some other responsible adult aged 18 or over who is not an appropriate officer or employed by the organisation which the appropriate officer works for.

## **Legal and Financial advice**

219. In this code, a “solicitor” means a solicitor who holds a current practising certificate, and in England and Wales only; a trainee solicitor, a duty solicitor representative or an accredited representative included on the register of representatives maintained by the Legal Aid Agency. Appropriate officers should consult the Law Society in cases where there is a doubt regarding the individual.
220. 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 1221 of the Companies Act 2006 as holding an approved overseas qualification.
221. In urgent cases a person who is not suspected of any unlawful conduct may be prepared to answer questions without the presence of a solicitor and/or qualified accountant. If a person to be interviewed requests access to legal or financial advice before complying with a requirement to be interviewed in a notice served under a disclosure order, the appropriate officer should normally consent and set a reasonable time limit for obtaining such advice. In the exceptional cases set out below the appropriate officer may refuse such a request depending on the circumstances of the case.
222. 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.
- (e) there is an urgent need to avoid serious adverse consequences for the life, liberty or physical integrity of a person;
- (f) there is an urgent need to prevent the destruction, alteration, interference or harm to evidence connected with the investigation; or
- (g) the particularly identified solicitor and/or qualified accountant is suspected of being involved in criminality. In these circumstances, the person should be allowed to choose another solicitor and/or qualified accountant to represent them.

Such a decision to proceed with the interview should usually be with the authorisation of a senior appropriate officer and recorded in writing.

223. In a case falling within paragraph 222(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 should cease until the interviewee has received legal or financial advice.
224. In a case falling within paragraph 222(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) should be recorded in the written interview record at the beginning or re-commencement of interview.
225. In England and Wales, if a solicitor wishes to send a non-accredited or probationary representative to provide advice on their behalf, then that person is also recognised as a "legal adviser" and should be admitted to the interview unless the appropriate officer considers that this will hinder the investigation.
226. In exercising their discretion as to whether to admit a legal adviser who is not a solicitor, the appropriate officer should take into account in particular whether the identity and status of the non-accredited or probationary representative has been satisfactorily established; whether they are 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 was not recent); and any other matters in any written letter of authorisation provided by the solicitor on whose behalf the person is attending.
227. If the appropriate officer refuses access to a non-accredited or probationary representative or a decision is taken that such a person should not be permitted to remain at an interview, this should be recorded in writing (together with the reasons) and they should notify forthwith the solicitor on whose behalf the non-accredited or probationary representative was to have acted or was acting, and give them an opportunity to make alternative arrangements. The person being interviewed should also be informed.

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

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

## **Vulnerable interviewees**

230. If an appropriate officer has any suspicion or is told in good faith that a person is or appears (without clear evidence to the contrary):
- to be under 18 years of age;
  - to have a mental disorder;
  - to have a learning disability or be mentally handicapped (or in Northern Ireland, otherwise mentally vulnerable); or
  - mentally incapable of understanding the significance of questions put to them or their replies,
- that person should not be interviewed unless an appropriate adult is present.
231. 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<sup>63</sup> and an appropriate adult should be called.

## **The Appropriate Adult**

232. In this code, the “appropriate adult” means,
- in the case of a juvenile:
    - the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation. 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 or the Children (Northern Ireland) Order 1995);
    - a social worker of a local authority;
    - failing these, some other responsible adult aged 18 or over who is not an appropriate officer or employed by the organisation which the

<sup>63</sup> Section 1(2) of the Mental Health Act 1983

appropriate officer works for, or any law enforcement or prosecuting body;

- in the case of a person who has a mental disorder, is mentally vulnerable, has a learning disability or is mentally handicapped:
  - a relative, guardian or other person responsible for their care or custody;
  - someone who has experience of working in the field of mental health and/or learning disability but who is not an appropriate officer or
  - employed by the organisation or any law enforcement or prosecuting body (such as an approved social worker as defined by the Mental Health Act 1983 or the Mental Health (Northern Ireland) Order 1986, a specialist social worker or a community psychiatric nurse);
  - failing these, some other responsible adult aged 18 or over who is not an appropriate officer or employed by the organisation which the appropriate officer works for, or any law enforcement or prosecuting body.

233. A person, including a parent or guardian, should not be an appropriate adult if they:

- are suspected of involvement in the unlawful conduct to which the investigation relates;
- are involved in the investigation;
- have received admissions from the juvenile prior to attending to act as the appropriate adult;
- are a victim;
- are a witness.

234. If a juvenile's parent is estranged from the juvenile, they should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to their presence.

235. In the case of people who suffer from a mental impairment, are mentally disordered or otherwise vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the person prefers a relative or objects to a particular person their wishes should, if practicable, be respected.

236. When an appropriate adult is called to the interview, a person should always be given an opportunity to consult privately with a solicitor and/or a qualified accountant in the absence of the appropriate adult if they wish to do so. A solicitor or qualified accountant present in that capacity may not be the appropriate adult.

#### **Role of persons who may be present at interviews - solicitor and qualified accountant**

237. The main role of any solicitor or qualified accountant is to see that the interview is conducted in a fair and proper manner. They may not answer questions on behalf of the person being interviewed, but they may intervene:

- to seek clarification of questions put during the interview;

- to challenge a question put by the appropriate officer which they consider improper;
  - to challenge the manner in which a question is put;
  - if the person being interviewed may have a reasonable excuse for failure to comply with the disclosure order, to advise them whether or not to reply to a question; or
  - to give the person being interviewed advice.
238. Any request for legal or financial advice and the action taken on it should be recorded on the record and/or taped. If a person has asked for legal 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 should be made in the interview record).
239. The solicitor or qualified accountant may read any documents shown to, or produced by, the person being interviewed.

### **Appropriate Adult**

240. Where the appropriate adult is present at an interview, he or she should be informed that they are not expected to act simply as an observer, and that the purposes of their presence are firstly, 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**

241. At all times, appropriate officers should have regard to, and consider the needs of, any person who appears to be blind, visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment and to take action accordingly.
242. A person who is blind or is seriously visually impaired may be accompanied by their guide dog. The appropriate officer should ensure that the person who is blind or seriously visually impaired has their solicitor, relative, appropriate adult, or some other person likely to take an interest in them (and who is not involved in the investigation) available to help in the checking of any documentation. Where the provisions of this code require written consent, the person who is assisting may be asked to sign instead if the person being interviewed so wishes.
243. A person being interviewed who is seriously physically impaired may be accompanied by an able-bodied adult aged 18 or over to provide such physical assistance as the person being interviewed requires. Such a person may take no part in the interview and has none of the rights of the appropriate adult.

## **Interpreters General**

244. A person should not be interviewed in the absence of a person capable of acting as an interpreter if they:
- are deaf or have difficulties with hearing or speaking; or
  - have difficulty in understanding English and the person conducting the interview cannot speak the person's own language
- unless the person being interviewed agrees in writing that the interview may proceed without an interpreter
245. An interpreter should also be present if a juvenile is interviewed and the appropriate adult appears to be deaf or there is doubt about their hearing or speaking ability, unless they agree in writing that the interview may proceed without one.
246. The interpreter should be provided at the agency's expense. The appropriate officer should ascertain, as far as practicable, that the interpreter and the person being interviewed understand each other, and this should be noted on the interview record. An appropriate adult may not act as the interpreter.
247. Action taken to call an interpreter and any agreement to be interviewed in the absence of an interpreter should be recorded in writing and/or taped.
248. Whenever possible, interpreters should be drawn from the National Register of Public Service Interpreters (NRPSI) or the Council for the Advancement of Communication with Deaf People (CACDP) or the Directory of British Sign Language/English Interpreters.
249. A sign language interpreter should make a note of the interview and certify its accuracy.

## **Foreign languages**

250. The appropriate officer should make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certify its accuracy. The appropriate officer should permit sufficient time for the interpreter to note each question asked and answered. The person should be permitted to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate.
251. In the case of a person making a statement to an appropriate officer other than in English:
- the interpreter should record the statement in the language it is made;
  - the person should be invited to sign it;

- an official English translation should be made in due course.
252. The interviewer should make sure the interpreter is allowed to read the interview record and certify its accuracy in the event of the interpreter being called to give evidence.
- Excluding persons from the interview**
253. The person conducting the interview may exclude from the interview a person whose presence is authorised by the provisions of this code if it appears to the appropriate officer that the person is mentally disordered.
254. Subject to paragraph 253, the person conducting the interview may exclude from the interview a person whose presence is authorised<sup>64</sup> only if they have 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 should state their 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 person being interviewed, to provide the person being interviewed with written answers to the questions, or to answer questions on behalf of the person being interviewed 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 appropriate officer should therefore be prepared to justify their decision.
255. If the appropriate officer has excluded a person from the interview room, they should adjourn the interview. The person being interviewed should be informed that they have the right to seek another person to act in the same role as the person who was excluded. If the person being interviewed wishes the interview to continue, the appropriate officer should record this decision and continue with the interview.
256. If the appropriate officer 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, they should cease questioning the person being interviewed, and whilst the tape recorder is still operating, speak to the solicitor or qualified accountant. After speaking to the solicitor or qualified accountant, the appropriate officer should decide whether the interview should continue in the presence of the solicitor or qualified accountant. If they decide that it should not, the person being interviewed should be given the opportunity to consult another solicitor or qualified accountant before the interview continues and that solicitor or qualified accountant should be given the opportunity to be present at the interview.

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<sup>64</sup> Persons whose presence is authorised are a solicitor, a qualified accountant, an appropriate adult, a person providing assistance and an interpreter.

257. The removal of a solicitor or qualified accountant from an interview is a serious step, and, if it occurs, the person conducting the interview should consider whether the incident should be reported to the Law Society, the Law Society of Northern Ireland, Legal Complaints Service, General Council of the Bar, or the Institute of Legal Executives (as appropriate). In the case of a qualified accountant, the person conducting the interview should consider whether the matter should be reported to their professional body, such as the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants in Northern Ireland.

### **Conduct of the interview**

258. As far as practical, interviews should take place in interview rooms which are adequately heated, lit and ventilated. People being questioned or making statements should not be required to stand.
259. Breaks from interviewing should be made at recognised meal times or at other times that take account of when the interviewee last had a meal. Short refreshment breaks should be provided at approximately two hour intervals, subject to the appropriate officer's discretion to delay a break if there are reasonable grounds for believing it would prejudice the outcome of the investigation.
260. Any decision to delay a break in an interview should be recorded, with reasons and duration, in the interview record.
261. Where an interview is adjourned for any reason and is to be resumed at the same place later the same day, it should be sufficient for the appropriate officer to inform the interviewee of the time or resumption and no notice in writing requiring attendance at that time should be necessary. The details of the adjournment should be noted in the interview record.
262. Where an interview is adjourned for any reason and is to be resumed either at a different place or on a different day, the appropriate officer should serve another notice under the disclosure order on the person requiring them to attend at that place and time on that day.

### **The appropriate officer's obligations at the interview**

263. At the beginning of the interview and immediately following any break, the appropriate officer should caution the person being interviewed as follows:
- 'You are required by law to answer all the questions I put to you unless you have a reasonable excuse for not doing so. If you fail, without reasonable excuse, to answer a question or if you knowingly or recklessly make a statement which is false or misleading you will be committing an offence for which you may be prosecuted. Do you understand?'*

264. The appropriate officer should also inform the person that this is not a criminal caution and any responses will not be used to incriminate the interviewee.
265. The appropriate officer should, if asked to do so, produce evidence of their authority to require the person being interviewed to answer questions under the disclosure order.
266. The appropriate officer may ask such further questions as appear to them to be necessary to ascertain the entitlement of any person to be present.
267. The appropriate officer should ask the interviewee whether they suffer from any condition which may impair their ability to understand what is taking place or if they are due to take any medication before the time at which the appropriate officer estimates that the interview will end. The person should be free to take medication during a routine break in the interview. Where 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, should be recorded.
268. The appropriate officer should remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the person's recorded evidence. After a break or at the beginning of a subsequent interview, the appropriate officer should consider summarising the reason for the break and that nothing happened and confirming this with the person.
269. The appropriate officer should pursue all reasonable lines of enquiry, whether these assist or undermine the investigation. What is reasonable will depend on the particular circumstances. Appropriate officers should keep this in mind when deciding what questions to ask in an interview.
270. The appropriate officer should offer the interviewee the opportunity to ask any questions to clarify the purpose, structure and conduct of the interview.
271. An appropriate officer should not try to obtain answers or elicit a statement by the use of oppression.
272. Before concluding the interview, the appropriate officer should ask the interviewee if they have any complaint to make about anything that has taken place at the interview.

273. If a question and answer record has been taken of the interview because it was not tape recorded, the appropriate officer should afford the person being interviewed the opportunity to read the record. If the person being interviewed is, for any reason, unable to read the note or if they decline to do so, the person conducting the interview should read, or cause it to be read, aloud. The appropriate officer should invite the person being interviewed to comment on the note and will add to it any comments made. The interviewee should be invited to sign the note. The appropriate officer should then record the time in the presence of the interviewee. If the interviewee is unable for any reason to sign the note, they may authorise any person present at the interview to sign it on their behalf. Where the interviewee refuses to sign the note, or have it signed on their behalf, the appropriate officer should record that fact and any reason given for the refusal on the note and have such note countersigned by a senior officer.
274. Whenever this code requires a person to be given certain information, they do not have to be given it if they are incapable at the time of understanding what is said to them, or is violent or likely to become violent or is in urgent need of medical attention, but they should be given it as soon as practicable.

### **Recording interviews**

275. Interviews should be recorded using recording media. "Recording media" means any removable, physical audio and visual 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 should also be made contemporaneously. The matters to be recorded in the note are listed at paragraph 275.
276. Recording of interviews should be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
277. One form of record shall be the master record and should be sealed before it leaves the presence of the interviewee. A second form of record will be used as a working copy.

### **Interviews with a written record**

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

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

### **Commencement of interviews**

289. When the interviewee is brought into the interview room the appropriate officer should, without delay but in the person's sight, load the recorder with new recording media and set it to record. The recording media should be unwrapped or opened in the person's presence.

290. The appropriate officer should tell the interviewee about the recording process and state on the record that the interview is being recorded using recording media (identifying what that media is) and that the person will be given a notice about what will happen to the copies of the recording.
291. The appropriate officer should:
- inform the interviewee of the authority they have to conduct the interview;
  - give their name and that of any other persons present (subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director);<sup>65</sup>
  - inform the interviewee of the purpose for which any person accompanying the appropriate officer is present;
  - ask the interviewee to state their full name and address and date of birth;
  - ask any person present with the interviewee to state their name, business address (or home address as relevant) and capacity in which they are present;
  - state the date, time of commencement and place of the interview;
  - state that the interviewee has the opportunity to request legal and/or financial advice;
  - state and obtain confirmation of the reasons for there being no legal representation if this is the case;
  - inform the interviewee of their right:
    - to consult in private at any time with any solicitor, qualified accountant or appropriate adult present with them;
    - to be questioned fairly;
    - to be given an opportunity at the end of the interview to clarify anything they have said or to say anything further if they wish;
    - to be allowed a break in any interview that lasts for more than two hours.
  - inform the interviewee that the interview is recorded and they will be given a copy of that record;
  - state that the interviewee will be given a notice about what will happen to the record, and
  - attempt to estimate the likely length of the interview and inform the interviewee.
292. For the purpose of voice identification the appropriate officer should ask the interviewee, and any other people present, to identify themselves.
293. If the interviewee is deaf or is suspected of having impaired hearing, the appropriate officer or the person assisting should make a written note of the interview, at the same time as the recording.
294. If the interviewee indicates that they want to tell an appropriate officer about matters not directly connected with the case and that they are unwilling for these matters to be recorded, the person should be given the opportunity to tell the appropriate officer at the end of the interview.

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<sup>65</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

## **Objections and complaints by the interviewee**

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

## **Changing recording media**

296. When the recorder shows the recording media only has a short time left, the appropriate officer should tell the interviewee the recording media is coming to an end and finish that part of the interview. If the appropriate officer conducting the interview wishes to continue the interview but does not already have a second set of recording media, they should obtain a set. If the appropriate officer leaves the room for a second set of recording media, the interviewee should not be left unattended.
297. The appropriate officer will remove the recording media from the recorder and insert the new recording media which should be unwrapped or opened in the person's presence. The recorder should be set to record on the new media. To avoid confusion between the recording media, the appropriate officer should mark the media with an identification number immediately after it has been removed from the recorder.

## **Taking a break during interview**

298. 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 should be recorded on the recording media. The recording media should then be removed from the recorder, and the procedures for the conclusion of an interview should be followed.
299. Where a break is to be a short one and both the interviewee and the appropriate officer are to remain in the interview room, the fact that a break is to be taken, the reasons for it, and the time, should 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 media should be continued on the same recording media. The time at which the interview recommences should be recorded on the recording media.

## **Failure of recording equipment**

300. Where the interview is being recorded and the media or the recording equipment fails, the appropriate officer should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media should be copied and sealed in the interviewee's presence and the interview recommenced using new equipment/media as required. Where the content of the interview has been lost in its entirety the media should be sealed in the interviewee's presence and the interview begun again.
301. If the equipment failure can be rectified quickly, for example by inserting new recording media, the recording of the interview may continue. When the recording is resumed the appropriate officer should explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue with a written record.

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

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

## **Conclusion of interview**

303. The appropriate officer should inform the interviewee that they have no further questions and offer the person an opportunity to clarify anything they have said and to say anything further that they wish. Any solicitor, qualified accountant or appropriate adult present at the interview along with the interviewee should be given the opportunity to ask the interviewee any question the purpose of which is to clarify any ambiguity in an answer given or to give the interviewee an opportunity to answer any question which they have refused previously to answer.
304. At the conclusion of the interview, including the taking and reading back of any written statement, the time should be recorded and the recorder switched off. The appropriate officer should seal the master recording with a master recording label. The appropriate officer should sign the label and ask the interviewee and any third party present during the interview to sign it. If the interviewee or third party refuses to sign the label a senior appropriate officer should be called into the interview room and asked to sign it. If the interviewee or third party present during the interview refuse to sign the label, the person conducting the interview should sign it and note the label that the interviewee has refused to do so.
305. The interviewee should be handed a notice which explains:
  - how the recording will be used;
  - the arrangements for access to it.

## **After the interview**

306. A copy of the recording media should be supplied as soon as practicable to the interviewee, if court proceedings connected to the interview are commenced.
307. Where the interview is not subsequently used in proceedings, the recording media should nevertheless be kept securely in accordance with the provisions below.

## **Recording media security**

308. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine.
309. The purpose of sealing the master recording in the interviewee's presence is to show that the integrity of the recording is preserved. If a single deck/drive machine is used the working copy of the master recording should be made in the interviewee's presence and without the master recording leaving their sight. The working copy should be used for making further copies if needed.
310. An appropriate officer has no authority to break the seal on a master recording media where proceedings may result. A senior appropriate officer should make arrangements for master recordings to be kept securely and their movements accounted for. The interviewee or their legal adviser should be informed and given a reasonable opportunity to be present if the seal on the master recording is to be broken. If the interviewee or their legal representative is present they should be invited to re-seal and sign the master recording.
311. When the master recording seal is broken, a record should be made of the procedure followed, including the date, time, place and persons present. Where the interview is not subsequently used in proceedings the recording media should nevertheless be kept securely. Where no court proceedings result, it is the responsibility of the appropriate officer to establish arrangements for the breaking of the seal on the master recording media, where this becomes necessary.
312. 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 actions taken under a disclosure order**

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

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

- a copy of the invitation to interview letter;
- the date and place and time of the interview;
- the time the interview began and ended, the time of any breaks in the interview and the names of all those present, subject to the provisions in POCA relating to pseudonyms of officers of the NCA and members of staff of a relevant Director;<sup>66</sup>
- any request made for financial and/or legal advice, and action taken on that request;
- that the appropriate officer told the interviewee everything they were required to tell them under this code;
- the name of person(s) excluded from the interview room, and the reason for that decision; and,
- the presence of an interpreter or appropriate adult, and the reason for this.

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

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<sup>66</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

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## **Obtaining evidence from abroad**

316. 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, detained property investigation, frozen funds investigation or an exploitation proceeds investigation. Detained property investigations and frozen funds investigations are not available in Northern Ireland. This process should be used to obtain “relevant evidence”.<sup>67</sup> This provision extends to civil investigations only.
317. A judge may request overseas assistance as a result of an application by an appropriate officer or a person subject to the investigation if the judge thinks there is relevant evidence in a country or territory outside the United Kingdom. Alternatively, a senior appropriate officer or a relevant Director<sup>68</sup> 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. A senior appropriate officer is defined according to the type of investigation being undertaken.<sup>69</sup> The relevant Directors are outside the scope of this code, but are within the scope of the code of practice issued by the Attorney General.
318. The appropriate officer or senior appropriate officer should ensure that there is material supporting their belief that there is relevant evidence overseas.
319. “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;
  - in relation to a detained property investigation, evidence is relevant for the purposes of investigating the derivation of property or part of property detained under Chapter 3A of Part 5 and whether property so detained is intended by any person to be used in unlawful conduct;

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<sup>67</sup> See section 375A(5) POCA

<sup>68</sup> Relevant Director has the meaning given by section 352(A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

<sup>69</sup> See sections 378(3), (3AA), (3D), (3F) and (6A) (b) POCA.

- in relation to a frozen funds investigation, evidence is relevant for the purposes of investigating the derivation of money or part of money held in an account subject to an account freezing order (section 303Z3), or whether money so held is intended to be used in unlawful conduct.
320. Requests for assistance may be sent by a judge, or the senior appropriate officer or a relevant Director<sup>70</sup> 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.
321. Alternatively, a request may be sent to the Secretary of State, who should forward the request to the court, tribunal, government or authority in the country or territory concerned.

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<sup>70</sup> See sections 449 and 449A. Relevant Director has the meaning given by section 352(A): in relation to England and Wales & Northern Ireland it means the Director of Public Prosecutions or the Director of the Serious Fraud Office.

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