



Department of

**Justice**

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# **CODE OF PRACTICE ISSUED UNDER SECTION 293A OF THE PROCEEDS OF CRIME ACT 2002**

## **Recovery of Cash: Search Powers (Northern Ireland)**

1 March 2016

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# Code of Practice issued under section 293A 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
PACE (NI)	Police and Criminal Evidence (Northern Ireland) Order 1989
POCA	Proceeds of Crime Act 2002

## Proceeds of Crime Act 2002

POCA has been amended since it was enacted. In relation to this code, the following legislation which has amended POCA is of particular relevance:

- the Serious Crime Act 2007
- the Policing and Crime Act 2009
- the Coroners and Justice Act 2009
- the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010
- the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012
- the Crime and Courts Act 2013
- the Finance Act 2013
- the Serious Crime Act 2015

## Introduction

1. The purpose of this code is to guide officers in relation to the exercise of certain powers in Northern Ireland and 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. In this code:
  - a reference to a statutory provision is to a provision of POCA, unless otherwise stated;

- “cash” means notes and coins in any currency, postal orders, cheques of any kind (including travellers’ cheques), bankers’ drafts, bearer bonds and bearer shares found at any place in the United Kingdom.<sup>1</sup> The Department of Justice can amend the definition of “cash” by order<sup>2</sup> (officers should ensure that they are aware of the current meaning). The power of search does not extend to any other property (for example, jewellery or pieces of art);
  - “judicial officer” is, in relation to Northern Ireland, a lay magistrate;
  - “officer” includes a constable and an AFI unless otherwise specified.
3. **This code of practice is made in connection with the exercise of the search powers conferred by section 289 by the following officers only:**
- **constables in Northern Ireland; and**
  - **AFIs<sup>3</sup> in Northern Ireland.**
4. This code is made by the Department of Justice under section 293A. It applies in Northern Ireland to all searches made under the powers in section 289 by the officers mentioned in paragraph 3 of this code, and to the application by officers for “prior approval” (from either a judicial officer or a senior officer) under section 290 in order to exercise the search powers, on or after 1 March 2016 (even if a search or exercise of other related powers began before that date). This code replaces the revised code of practice entitled “Code of Practice issued under section 292 of the Proceeds of Crime Act 2002” laid in draft before Parliament on 18 February 2008.
5. **There is a separate code of practice made by the Secretary of State under section 292 relating to the exercise of the powers in section 289 by officers of Revenue and Customs in England and Wales, Northern Ireland and Scotland; immigration officers in England and Wales, Northern Ireland and Scotland; constables in England and Wales; and AFIs in England and Wales. There is a separate code of practice relating to the exercise of the powers in section 289 by constables in Scotland, the relevant code is made by Scottish Ministers under section 293.**
6. The code does not apply to searches carried out under any other provisions in POCA, or other legislation. If such searches result in cash being seized under section 294, the provisions of this code do not apply to that search retrospectively. However, if an officer is exercising an additional and separate function or power, for example, investigation powers under Part 8, the officer should have regard to any code connected to the exercise of that function or power.

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<sup>1</sup> Section 289(6).

<sup>2</sup> Section 289(7).

<sup>3</sup> An AFI is an individual who is trained, accredited and monitored under section 3 of POCA as a financial investigator. Accreditation may be limited to specified purposes as set out in an order made by the Secretary of State under section 453.

7. The code should be made available for reference by officers using the powers and by members of the public. It should be available in particular at police premises and at ports where the powers are, or are likely, to be used. Government departments and other bodies who have AFIs operating these powers should also make arrangements for the code to be available, if practicable, at their public offices.
8. Where an officer fails to comply with any provision of this code, they would 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.<sup>4</sup>
9. If an officer is carrying out a search for cash under section 289, the officer should have regard to any connected code in relation to the exercise of those functions or powers.

## General

10. The right to respect for private and family life and the protection of property under the European Convention of Human Rights (ECHR) are safeguarded by the Human Rights Act 1998. Powers of search may involve significant interference with the privacy of those whose persons and premises are searched and therefore need to be fully and clearly justified before they are used. In particular, officers should consider at every stage whether the necessary objectives can be achieved by less intrusive means. In all cases officers should exercise their powers fairly, responsibly, with respect and without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender or disability and in accordance with any statutory duties on them.<sup>5</sup> Officers should ensure that in the exercise of their functions, they have regard to the need to safeguard and promote the welfare of all persons under the age of 18 years in compliance with obligations under Article 3 of the UN Convention on the Rights of the Child.
11. 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 possible thereafter.

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<sup>4</sup> Section 293A(7) and (8).

<sup>5</sup> This includes obligations under section 75 of the Northern Ireland Act 1998: [www.legislation.gov.uk/ukpga/1998/47/section/75](http://www.legislation.gov.uk/ukpga/1998/47/section/75).

12. The officer should consider whether any consultation could jeopardise an ongoing wider operation or investigation. In such circumstances consultation may not be advisable, but generally it is best practice to consult.
13. 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.
14. The officer should take special care and have particular regard to an individual's vulnerabilities and possible difficulties when conducting a search. This is particularly relevant in the case of a search of a person who is a juvenile or persons with a mental or physical disability.
15. A refusal by a person to allow a search of a person, premises or a vehicle may in some instances, constitute an offence of (including but not limited to) wilful obstruction of an officer in the execution of a duty or exercise of a power.<sup>6</sup> This would be a criminal matter and is not an issue for, or subject to, this code. Officers should be aware of other legislation and codes applicable in these circumstances.

## Scope of the search powers

16. Section 289 provides powers for officers to search for cash (subject to the limitations detailed at paragraphs 18 to 20 below) where:
  - the officer is on any private premises and has lawful authority to be present (for example when a constable is exercising his powers of entry under PACE (NI), and has reasonable grounds for suspecting that there is on the premises cash which satisfies the conditions in paragraph 17. The power to search premises includes to search a vehicle located on those premises<sup>7</sup> (see section 289(1D));
  - a vehicle is not on private premises on which an officer has lawful authority to be present (for example it is on the street), but the officer has reasonable grounds for suspecting that there is cash in a vehicle which satisfies the conditions in paragraph 17, and it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle (see section 289(1D)); or
  - the officer has reasonable grounds for suspecting that a person is carrying cash which satisfies the conditions in paragraph 17 (see section 289(2)).

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<sup>6</sup> Section 66 Police (Northern Ireland) Act 1998 (in relation to constables) and section 453A of POCA as inserted by section 81(2) of the Serious Crime Act 2007 (in relation to AFIs).

<sup>7</sup> The definition of 'premises' is the same as in Article 25 of PACE (NI), and includes a vehicle: see section 316 of POCA.

17. The conditions in section 289(1), (2) and (1E) are that:
- the cash is recoverable property<sup>8</sup> or is intended by any person for use in unlawful conduct;<sup>9</sup> and
  - the cash does not amount to less than the minimum amount specified in an order made by the Secretary of State (currently £1,000).<sup>10</sup> There is no maximum amount of cash that can be seized.

## Limitations relating to searches of vehicles and persons

18. Where a vehicle is not on private premises on which the officer is lawfully present, the search powers in relation to a vehicle only apply where the vehicle is in a place to which the public has access (such as on the street), or is within the environs of a dwelling, and the officer has reasonable grounds for believing that the person does not reside in that dwelling, and that the vehicle is there without the permission of the person who resides there. Otherwise the vehicle is on private property and the power to search premises is relevant instead.<sup>11</sup>
19. The powers conferred are civil in nature and exercisable only so far as is reasonably required for the purposes of finding relevant cash. In relation to vehicles being searched under section 289(1D), the officer may require the suspect to permit entry to the vehicle and permit a search of the vehicle, and in relation to a person suspected of carrying cash, the officer may require the person to permit a search of any article they have with them as well as permit a search of their person.<sup>12</sup>
20. A refusal by a person to permit a search of their person, of premises or of a vehicle may in some instances constitute an offence of (including but not limited to) wilful obstruction of an officer in the execution of a duty or exercise of a power.<sup>13</sup> This would be a criminal matter and is not an issue for, or subject to, this code. Officers should be aware of other legislation and codes applicable in these circumstances.

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<sup>8</sup> Cash is recoverable property if it is obtained through unlawful conduct or represents property obtained through unlawful conduct because the original property has been disposed of (see sections 304-305).

<sup>9</sup> Conduct occurring in any part of the United Kingdom is 'unlawful conduct' if it is unlawful under the criminal law of that part. Conduct which occurs in a country or territory outside the United Kingdom and is unlawful under the criminal law applying in that country or territory, and if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part, is also 'unlawful conduct' (see section 241).

<sup>10</sup> The Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 (SI 2006/1699). The statutory instrument should be made available along with the code. This amount may be amended by a further order made by the Secretary of State (under section 303) – officers should ensure that they are aware of the current order.

<sup>11</sup> Section 289(1).

<sup>12</sup> Sections 289(1D) and (3).

<sup>13</sup> Section 66 Police (Northern Ireland) Act 1998 (in relation to constables) and section 453A of POCA as inserted by section 81(2) of the Serious Crime Act 2007 (in relation to AFIs).

## Reasonable grounds for suspicion

21. In order to exercise the search powers an officer should have reasonable grounds for suspecting that relevant cash is on the premises or in a vehicle or being carried by a person.
22. All officers should recognise that searches are more likely to be effective, legitimate and 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.
23. 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, which are relevant to the likelihood that the object in question will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts and information and/or intelligence. The officer should take into account such factors as how the person(s), premises or vehicle(s) were identified, previous intelligence regarding the person(s), premises or vehicle(s), previous law enforcement involvement with the person(s), premises or vehicle(s), and suspected links with criminal activities, whether in the UK or overseas. 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.
24. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour. For example, a person's race, religion or age, could not be used alone or in combination with other personal factors as the reason for searching that person. Reasonable suspicion could not be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity.
25. This means that unless an officer has information or intelligence which provides a description of a person suspected of carrying property, the following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for searching any individual, including any vehicle:
  - a person's physical appearance, with regard to, for example, a person's racial group, age, gender or disability or with regard to their religious belief or political opinion, marital status or sexual orientation.
  - the fact that the person is known to have a previous conviction.



- generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity.
26. 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.

## **Approval to search for cash**

27. Section 290 requires the officer to obtain prior “appropriate approval” before the exercise of any of the search powers under section 289, unless in the circumstances it is not practicable to obtain that approval before exercising the power. “Appropriate approval” means approval from a lay magistrate or (if that is not practicable in any case) from a “senior officer”.
28. The officer will need to explain that the search is necessary because they have reasonable grounds to suspect that there is cash that is recoverable property, or is intended for use in unlawful conduct, and that the amount is not less than the minimum amount (section 289(2)). If, after obtaining prior approval and when it comes to the time to conduct the search, the grounds on which the officer obtained the prior approval could no longer apply, the officer may not exercise the powers.
29. Prior approval is only likely to be impracticable because of the immediacy of the circumstances of the case. This is more likely to be the case in relation to the search of a person or vehicle than the search of premises, but officers should assess each case on its merits. There should be no assumption that approval is impracticable for all searches. Officers should carefully consider and record the reasons for any decision not to obtain prior approval.

## **Seeking judicial approval**

30. In order to obtain approval from a lay magistrate, an officer will need to make contact with the chief clerk for a magistrates’ court in Northern Ireland to arrange a hearing which can be held without notice and in private. The usual reason to hold an application without notice and in private would be so as not to alert persons connected to the cash that such action is contemplated. Being so alerted may have the effect of the person(s) moving the cash and thereby frustrate the operation of the powers. However, if there is no concern that the cash could be moved, the person(s) connected to the cash should normally be notified of the intention to make an application for prior approval to search for cash. The officer will need to:
- identify themselves to the lay magistrate (giving name, seniority, any warrant or other identifying number, and home station or place of work).

- lodge their written application (having checked that the information on which the application relies is accurate, complete, recent and not provided maliciously or irresponsibly);
- explain to the lay magistrate the reasonable grounds for suspicion that they have for undertaking the search;
- identify the person(s), premises or vehicle(s) to be searched;
- answer any relevant questions that the lay magistrate may have.

### **Seeking senior officer approval**

31. If it is not practicable to seek prior judicial approval, appropriate approval may be given by a “senior officer”. A “senior officer” is:
- in relation to a search undertaken by a constable, a police officer of at least the rank of inspector;
  - in relation to a search undertaken by an AFI, an AFI who falls within a description specified in an order made by the Secretary of State under section 453 of POCA for this purpose. These officers are commonly/operationally known as SAOs (senior appropriate officers) and not AFIs.
32. The officer should explain to the senior officer the reasonable grounds for suspicion for undertaking the search. The senior officer should only give approval when satisfied that the relevant conditions are met. The senior officer should make a written record of the decision and the basis for making that decision. An oral approval should be supported by written approval as soon as that is reasonably practicable. In addition, the written approval should set out why it was necessary to seek and then give an oral approval in the first instance.

### **Issues of approval**

33. A prior approval to search given by a lay magistrate will continue in force for the period specified in the order, set according to the circumstances of the case. A senior officer approval should only continue in force for the time period required for the urgency of the case – if the search is not urgent then prior approval should be sought from a lay magistrate.

### **Refusal of prior approval**

34. If an application for prior approval is refused (either by a lay magistrate or a senior officer) the officer should not undertake a search or make a fresh application for a search of the same person(s), premises or vehicle(s) unless there are new reasonable grounds for suspicion. The officer, on any new application, should inform the lay magistrate or the senior officer of the

prior refusal and the reasons thereto. They should also detail any prior approval granted that did not lead to a search.

### **Prior approval impracticable**

35. If prior approval by a senior officer for a search is impracticable, a search may be conducted without approval. It is unlikely that approval by a senior officer will be impracticable unless, for example, there is some problem in making contact with the senior officer. If a search is conducted without any prior approval from a senior officer, the officer should explain to a senior officer the reasons for the search and for not obtaining prior approval as soon as that is reasonably practicable and, in any event, no later than 24 hours following the exercise of the power. The senior officer should make a written record of those reasons.
36. If prior approval has been obtained for one search power, that approval does not apply to the other search powers. For example, if prior judicial or senior officer approval was obtained for the search of a person and during that search the officer decides to undertake the search of a vehicle that the person is in control of, separate prior approval is required for that search.

### **Reports to the “appointed person”**

37. If a search under section 289 is conducted without prior judicial approval (irrespective of whether senior officer approval has been obtained) the appropriate officer must prepare a written report in the following circumstances:
  - if no cash is seized; or
  - any cash seized is detained for no more than 48 hours.
38. Cash may not be detained for more than 48 hours<sup>14</sup> except by order of a judicial officer (section 295(1) and (2)); the application for an order is commonly known as a ‘detention hearing’.
39. The written report should detail the information and circumstances which led the officer to believe that the search powers were exercisable and that it was not practicable to obtain prior judicial approval, these factors could include:
  - why the officer was on the premises when the search took place.
  - the reasonable grounds for suspicion.
  - why there was a need for a search without prior judicial approval.

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<sup>14</sup> When calculating the period of 48 hours, no account is taken of Saturday, Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland – which is either expressly listed or by royal proclamation: section 295(1).

40. If senior officer approval is obtained, the written report should also state which senior officer gave their approval together with the senior officer's reasons for that approval.
41. If no senior officer approval was obtained, this should be set out in the written report together with the reasons for the approval not being obtained as well as which senior officer was subsequently informed and when they were informed of the search.
42. A written report is required in relation to each exercise of the powers. In some cases, multiple searches from one investigation are carried out simultaneously in different locations, or multiple persons are searched at the same time, or a single search may be carried out by several officers. For the purposes of reporting to the "appointed person" in such cases, officers should consider whether a single report or multiple reports is the most appropriate way of making the report to the "appointed person". The information should be presented in the way which is most helpful to the "appointed person", but which is transparent about the facts pertaining to the case, and the decision making process. Where appropriate, cross-references to linked reports or relevant information appearing elsewhere in the report should be highlighted to bring it to the attention of the "appointed person".
43. For simultaneous searches at multiple locations, the justification for searching each location without prior judicial approval should be considered in relation to each location separately. For simultaneous searches of multiple persons, the justification for searching each person without prior judicial approval should be considered separately. However, there may be an overarching justification underlying the decision to conduct the searches, for example, to prevent the destruction of evidence at other locations owned by the same person; or in the case of a group of persons suspected of a common enterprise. In such cases, one report might be more appropriate. However, the justification for searching each location or each person without prior judicial approval should be set out separately. If there is no thread of common justification relating to the searches, separate reports would be more appropriate.
44. Where a single search is carried out by several officers a single report to the "appointed person" would be appropriate. Such a situation may arise as the result of a decision by one officer that prior judicial approval is not practicable, and other officers are asked to assist because of the size of the search. In such cases the officer who took the decision to proceed should make the report. It is less likely that several different officers working on an investigation will have come to separate independent decisions about carrying out a search, but if that were the case, then each officer should make their own report. If there were separate justifications, because of different strands of investigation carried out by different officers, then those justifications should be set out separately in the report or reports.

45. The written report must be submitted to the “appointed person” (the person appointed by the Department of Justice). Reports should be made to:

The Appointed Person for Northern Ireland  
c/o Department of Justice  
Organised Crime Branch  
Block B Castle Buildings  
Stormont Estate  
BELFAST  
BT4 3SG.

46. The written report should be submitted as soon as is reasonably practicable and, in any event, no later than 14 days following the exercise of the power. Following submission of the written report, the officer should also submit any supplementary information which the “appointed person” reasonably requires the officer to submit, within 14 days of the request for the supplementary information. The officer should co-operate, facilitate and assist the “appointed person”, wherever possible, so that the “appointed person” can effectively discharge their role and responsibilities.
47. The officer and “appointed person” should keep a copy of the report in a safe and secure place in accordance with the Data Protection Act 1998.

## **Search of a person – section 289(3)**

48. Where the power to search a person is exercised under section 289(3) the officer may (so far as they think necessary or expedient for the purposes of searching for cash to which the power applies) require the person:
- to permit a search of any article with the person; or
  - to permit a search of the person.
49. A refusal to permit a search may in some instances constitute an offence of (including but not limited to) wilful obstruction of an officer in the execution of a duty or exercise of a power.<sup>15</sup> This would be a criminal matter and is not an issue for, or subject to, this code. Officers should be aware of other legislation and codes applicable in these circumstances.
50. The officer may detain the person to carry out the search but the intrusion on the person's liberty should be for no longer than is necessary, unless the person is arrested or detained under another power.

### **Steps prior to search of a person**

51. If the officer has reasonable grounds for suspecting that the person has relevant cash concealed on their person, the officer should take the following steps:
- the officer should give the person their name or other identifier;
  - the person should be given the name and location of the office or station to which the officer is attached;
  - the person should be informed that there are reasonable grounds for suspecting that they are carrying cash on their person which is not less than the minimum amount and is recoverable property or is intended for use in unlawful conduct;
  - the person should be given a clear explanation of the reasonable grounds for suspecting that the cash is recoverable property or is intended for use in unlawful conduct;
  - the person should be informed that they can be required to permit a search under section 289 for the purposes of finding such cash and (where applicable) warned that failure to comply could amount to a criminal offence;
  - the officer should give or show the person any document authorising the search (if applicable);

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<sup>15</sup> Section 66 Police (Northern Ireland) Act 1998 (in relation to constables) and section 453A of POCA as inserted by section 81(2) of the Serious Crime Act 2007 (in relation to AFIs).

- the officer should ask the person to confirm or deny whether they have relevant cash on their person;
  - the officer should allow the person the opportunity to produce and hand over the relevant cash; and
  - the officer should inform the person of their entitlement to a copy of the record of the search.
52. These steps do not necessarily have to be followed in the order presented. The officer will have flexibility depending on the circumstances of an individual case, but all of the steps should be undertaken prior to the search.
53. Officers not in uniform should show their warrant cards or other suitable form of identification.
54. If the person to be searched 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 that the person is deaf or has difficulty with hearing or speaking, the officer should take reasonable steps to ensure that the person understands. Where desirable and practicable someone who can act as an interpreter should be identified, but if no such person can be identified, the search may not proceed if the officer cannot determine whether the person understands. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search or for abandoning one.

### **Conduct of searches – persons**

55. The power to search a person should be used fairly, courteously, responsibly, respectfully and without discrimination against the person concerned. The person should be searched by a person of the same sex unless the contrary has been specifically agreed by the person to be searched. This agreement should be obtained in writing. The co-operation of the person to be searched should be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate. If the officer believes they will be in danger undertaking the search, they should take appropriate precautions.
56. An officer who has reasonable grounds for suspicion may detain the person only for so long as is necessary to carry out the search.<sup>16</sup> Before carrying out the search the officer may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be eliminated. However, reasonable grounds for

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<sup>16</sup> Section 289(3) to (5).

suspicion cannot be founded retrospectively; the suspicion should exist prior to the questioning.

57. If, as a result of questioning before a search, or other circumstances come to the attention of the officer, there cease to be reasonable grounds for suspecting that the person is carrying relevant cash that is recoverable property or intended for use in unlawful conduct, no search of the person may take place. In the absence of any other lawful power to detain, the person in such circumstances is free to leave and should be so informed.
58. There is no power to detain a person under POCA so that grounds can be identified for a search. If reasonable grounds for suspicion emerge during an encounter with a person, the officer may search the person, even though no grounds existed when the encounter began. If an officer detains someone for the purpose of a search, they should inform the person as soon as the detention begins.
59. The length of time for which a person may be detained should be only for so long as is necessary for the exercise of the search. The thoroughness and extent of a search will depend on the type and amount of relevant cash that is suspected of being carried. If the person is being detained under some other power, this aspect of the code may not apply.
60. A person may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the relevant cash has been found and no search may continue once the officer is satisfied that the relevant cash is not on the person. This does not prevent a further search with prior approval if practicable if new information comes to light justifying such a search.
61. This search power under section 289 does not extend to requiring a person to undergo an intimate search or strip search.<sup>17</sup> An intimate search is one involving a physical (and not just a visual) examination of a person's body orifices. A strip search is any search that is not an intimate search but involves the removal of an article of clothing that:
  - is being worn (wholly or partly) on the trunk; and
  - is being so worn either next to the skin or next to an article of underwear.<sup>18</sup>
62. If a search reveals an item reasonably suspected of containing relevant cash but this is in an article of clothing being worn on the trunk and next to the skin or next to an article of underwear which is next to the skin (for example a money belt) the officer can only invite the person to remove it. If the person refuses there is no power to force the person to remove it.

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<sup>17</sup> Section 289(8).

<sup>18</sup> Section 289(8) within the meaning in section 164(5) of the Customs and Excise Management Act 1979.



63. A person should not be asked to remove any article of clothing in public other than an outer coat, jacket or gloves. A search in public of a person's clothing that has not been removed should be restricted to a superficial examination of outer garments. This does not, however, prevent an officer from placing their hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonable in the circumstances. Subject to the restrictions on the removal of headgear, a person's hair may also be searched in public. Particular sensitivity should be exercised where the person being searched is wearing items of clothing which the person says, or the officer believes, are of religious significance.
64. If on reasonable grounds it is considered necessary to conduct a more thorough search this should be undertaken out of the view of the public. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear may only be conducted by an officer of the same sex as the person searched. The search may not be made in the presence of anyone of the opposite sex unless the person being searched specifically agrees. This agreement should be obtained in writing.
65. If the officer discovers relevant cash during a search they should give the person who has possession of it an opportunity to provide an explanation for its ownership, origins, purpose and destination. If, in a particular case, the questioning covers whether the person has committed an offence, it is likely to constitute questioning that requires a caution.

#### **Recording requirements – searches of a person**

66. An officer who has carried out a search under section 289 should make a written record of the search at the time, unless there are exceptional circumstances that could make this impracticable. If such a written record is not made at the time then the officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the written record. There may be situations in which it is not practicable to obtain all the information necessary to complete a written record, but the officer should make every reasonable effort to do so and, if necessary, complete a partial record.
67. For the purposes of completing the search record, the officer should ask for the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched, but there is no obligation on the person to provide these details and no power of detention if the person is unwilling to do so. 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, therefore while they should be asked for this information they should not be compelled to provide it for the purpose of completing this record.
68. The following information should always be included in the search record, even if the person does not wish to provide any personal details:

- the name, address and date of birth of the person searched, (if provided) and, in appropriate cases, their estimated height, weight, build, clothing and distinguishing features;
- a note of the person's self-defined ethnic background (if provided);
- the date, time, duration and place that the person was first detained;
- the date, time and place the person was searched (if different);
- the names and details of any witnesses;
- the grounds for conducting the search;
- whether the prior approval of a lay magistrate or senior officer was obtained. If a search is conducted without prior judicial approval, the reason for not obtaining such approval;
- the outcome of the search (for example seizure of cash; no further action);
- a list/description of seized cash (if any) preferably signed by the person;
- any explanation given by the person as to the ownership, origins, purpose and destination of any relevant cash found;
- details of any damage to property or injury to person caused during the search and the circumstances in which it was caused;
- the identity of the officer or other identifier and others present;
- any other relevant information.

69. A record is required for each person searched. The record of the grounds for making a search should explain, with sufficient detail, the reasonable grounds for suspecting the person concerned was carrying relevant cash by reference to the person's behaviour and/or other circumstances. If a person is detained with a view to performing a search, but the search is not carried out due to the reasonable grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

70. A copy of any written record made at the time should be given immediately to the person who has been searched, unless it is impracticable to do so or would jeopardise a wider ongoing operation or investigation. If a record is not made at the time, the person should be told of the reasons and also how they can apply for a copy of the record once it is made. The officer should ask for the name, address and date of birth of the person searched, but

there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.

71. 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; and
  - the power used to search them.
72. 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 officers 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.
73. 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 in response to a reasonable request.

## **Search of premises (including vehicles located on those premises) – section 289(1)**

### **General**

74. No right of entry is conferred by section 289 in order to search premises for relevant cash. An officer should already be lawfully on the premises and, unless it was not practicable to obtain it, should have prior approval to conduct the search under section 290.<sup>19</sup> This could include a search of premises undertaken with the consent of a person entitled to grant entry to the premises. It could also include a search carried out where an officer has exercised a power of entry conferred by a search warrant or power of entry conferred under other legislation, for example, under PACE (NI).
75. A refusal to allow a search of premises may in some instances constitute an offence of (including but not limited to) wilful obstruction of an officer in the execution of a duty or exercise of a power.<sup>20</sup> This would be a criminal offence and is not an issue for, or subject to, this code. Officers should be aware of other legislation and codes applicable in these circumstances.
76. The term ‘premises’ has the same meaning as in Article 25 of PACE (NI). This includes any place and, in particular, would include any vehicle located on the premises, but note that there is a separate power under section 289(1A) to (1E) of POCA providing a power to search vehicles where the vehicle is not situated on private premises. See paragraph 98 on searches of vehicles using this power.
77. If the officer proposes to search premises with the consent of a person who is entitled to grant entry to the premises, the consent should be secured in writing before the search takes place. It is for the officer to make any necessary enquiries in order to be satisfied that the person is in a position to give consent. The officer should record their enquiries, together with any responses, in writing.
78. Before seeking consent the officer in charge of the search should explain to the person the purpose of the proposed search and its extent. This information should be as specific as possible. The person concerned should be clearly informed and should clearly understand that they are not obliged to give consent and that any consent given can be withdrawn at any time, including before the search starts or while it is underway. The officer should record what information they provided to the person, together with any responses, in writing.

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<sup>19</sup> Prior approval is covered in section 290; see paragraph 27 of this code.

<sup>20</sup> Section 66 Police (Northern Ireland) Act 1998 (in relation to constables) and section 453A of POCA as inserted by section 81(2) of the Serious Crime Act 2007 (in relation to AFIs).

79. Before undertaking a search the officer should make reasonable enquiries to:
- establish if anything is known about the likely owner(s) or occupier(s) of the premises or someone else entitled to grant entry and the nature of the premises themselves;
  - establish if the premises have been searched previously and when this occurred; and
  - obtain any other relevant information.
80. An officer cannot enter and search premises or continue to search premises if they entered with consent (and not under any other power), and that consent was given under duress or misrepresentation, is withdrawn or it becomes known that the person who gave consent was not actually in a position to do so. If the search ends because of those reasons, the officer should record this in writing.

### **Steps prior to search of premises**

81. If the officer has reasonable grounds for suspecting that relevant cash is on premises, the officer should take the following steps:
- the officer should give the person who is entitled to grant entry to the premises their name or other identifier;
  - the person should be given the name and location of the office or station to which the officer is attached;
  - the person should be informed that there are reasonable grounds for suspecting that the premises contains cash which is not less than the minimum amount and is recoverable property or is intended for use in unlawful conduct;
  - the person should be given a clear explanation of the reasonable grounds for suspicion;
  - the person should be informed that the officer has the power to search the premises under section 289(1) for the purposes of finding such cash and (where applicable) warned that failure to comply could amount to a criminal offence;
  - the officer should give or show the person any document authorising the search (if applicable);
  - the officer should ask the person to confirm or deny whether there is cash on the premises which is either recoverable property or is intended by any purpose for use in unlawful conduct;

- the officer should allow the person the opportunity to produce and hand over the relevant cash; and
  - the officer should inform the person of their entitlement to a copy of the record of the search.
82. The officer should ideally provide this information to the person who gave consent to entry to the premises searched, or if consent was not required, to the person in charge of the premises searched, being the owner or occupier as appropriate.
83. These steps do not necessarily have to be followed in the order presented. The officer will have flexibility depending on the circumstances of an individual case, but all of the steps should be undertaken prior to the search of the premises.
84. Officers not in uniform should show their warrant cards or other suitable form of identification.
85. 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 that the person is deaf or has difficulty with hearing or speaking, the officer should take reasonable steps to ensure that the person understands. Where desirable and practicable, someone who can act as an interpreter should be identified, but if no such person can be identified, the search may not proceed if the officer cannot determine whether the person understands. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search or abandoning one.

### **Conduct of searches – premises**

86. A search should be made at a reasonable hour, for example, in the case of domestic premises outside of normal sleeping hours and in the case of business premises during normal business hours, unless this might frustrate the purpose of the search. If a search takes place at an unreasonable hour, the officer should record their reasons for doing so in writing.
87. A person is not required to be cautioned prior to being asked questions that are necessary solely 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 to specified premises, to find a key to open a locked drawer or cupboard, or to otherwise seek co-operation during a search or to determine whether cash is liable to be seized.
88. Premises may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the relevant cash has been found and no search may continue once the officer in charge of the search is satisfied that relevant cash is not on the premises. This does not

prevent a further search, with prior approval, if practicable, if new information comes to light justifying such a search.

89. Searches should be conducted with due consideration for the premises and privacy of the owner or occupier and with no more disturbance than is necessary.
90. The person should be asked whether they would like a friend, neighbour or other person to witness the search. However a search need not be unreasonably delayed for this purpose (unless the officer is relying on the person's consent to conduct the search, in which case the person is entitled to refuse consent until a friend, neighbour or other person arrives to witness the search). The person nominated should be allowed to witness the search unless the officer has reasonable grounds for believing that the presence of the person asked for would significantly hinder the search, any connected investigation or endanger other officers or people. A record of the action taken, including the grounds for refusing a request, should be made on the premises search record. This requirement also relates to business and commercial premises if practicable, as well as private addresses.

### **Leaving the premises**

91. The officer 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.

### **Recording requirements – search of premises**

92. An officer who has carried out a search under section 289 should make a written record of the search at the time, unless there are exceptional circumstances that could make this impracticable. If such a written record is not made at the time then the officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the written record. There may be situations in which it is not practicable to obtain all the information necessary to complete a written record, but the officer should make every reasonable effort to do so and, if necessary, complete a partial record.
93. The following information should always be included in the search record, even if the person does not wish to provide any personal details:
  - the address of the premises searched, and if relevant and possible the part of those premises searched (where a vehicle is searched because it is on the premises, the location of the vehicle);
  - the date, time and duration of the search;
  - the name of the officer and the names of any other persons involved in the search;

- the grounds for conducting the search;
  - the prior approval of a lay magistrate or senior officer. If a search is conducted without prior judicial approval, the reason for not obtaining such approval;
  - the names and dates of birth of any people on the premises if they are known;
  - if appropriate, the written consent to undertake the search together with what information was given to the person about the search and their responses;
  - the name and details of any witness;
  - any grounds for refusing the person's request to have someone present during the search (if the consent of the person is not the basis for conducting the search);
  - any explanation given by the person as to the ownership, origins, purpose and destination of any relevant cash found;
  - confirmation that the premises were left secure and by what means;
  - details of any damage to property or injury to persons caused during the search and the circumstances in which it was caused;
  - the outcome of the search (for example seizure of cash; no further action);
  - a list/description of seized cash (if any) preferably signed by the person; and
  - any other relevant information.
94. 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; and
  - the power used to search the premises.
95. Unless it is impracticable to do so or it would jeopardise a wider ongoing operation or investigation, a copy of a record of the grounds for making the



search should be given immediately to the person who gave consent to entry to the premises searched, or if consent was not required to the person in charge of the premises searched, being the owner or occupier as appropriate. 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. If the search is not carried out due to the reasonable grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

96. 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 officers 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.
97. 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.

## **Search of Vehicles – section 289(1D)**

### **General**

98. An officer has no power to forcibly enter a vehicle. Where the officer has lawful authority to be present on private premises on which a vehicle is located and has reasonable grounds for suspecting that a vehicle contains relevant cash that may be seized under section 294, and it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle, the officer may require that person to permit entry to, and a search of, the vehicle.
99. In these circumstances, the search power applies only where the vehicle is in a place to which the public has access, or is within the environs of a dwelling, and the officer has reasonable grounds for believing that the person does not reside in that dwelling, and that the vehicle is there without the permission of the person who does reside there. Otherwise the vehicle is considered to be on private property and the power to search premises is relevant instead (see section 289(1)).
100. A refusal to permit entry to the vehicle may in some instances constitute an offence of (including but not limited to) wilful obstruction of an officer in the execution of a duty or exercise of a power.<sup>21</sup> This would be a criminal offence and is not an issue for, or subject to, this code. Officers should be aware of other legislation and codes applicable in these circumstances.

### **Steps prior to search of a vehicle**

101. If the officer has reasonable grounds for suspecting that a vehicle contains relevant cash, the officer should take the following steps:
- the officer should give the person in control of the vehicle their name or other identifier;
  - the person should be given the name and location of the office or station to which the officer is attached;
  - the person should be informed that there are reasonable grounds for suspecting that the vehicle contains cash which is not less than the minimum amount and is recoverable property or is intended by any person for use in unlawful conduct;
  - the person should be given a clear explanation of the grounds for suspecting that the vehicle contains relevant cash;

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<sup>21</sup> Section 66 Police (Northern Ireland) Act 1998 (in relation to constables) and section 453A POCA as inserted by section 81(2) of the Serious Crime Act 2007 (in relation to AFIs).

- the person should be given a clear explanation of the grounds for reasonable suspicion that the cash is recoverable property or is intended for use in unlawful conduct;
  - the person should be informed that the vehicle can be searched under section 289 for the purposes of finding such cash and (where applicable) warned that failure to comply could amount to a criminal offence;
  - the officer should give or show the person any document authorising the search (if applicable);
  - the officer should ask the person to confirm or deny whether there is relevant cash in the vehicle;
  - the officer should allow the person the opportunity to produce and hand over any relevant cash; and
  - the officer should inform the person in control of the vehicle of their entitlement to a copy of the record of the search.
102. These steps do not necessarily have to be followed in the order presented. The officer will have flexibility depending on the circumstances of an individual case, but all the steps should be undertaken prior to the search of the vehicle.
103. Officers not in uniform should show their warrant cards or other suitable form of identification.
104. If the person to be searched 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 that the person is deaf or has difficulty with hearing or speaking, the officer should take reasonable steps to ensure that the person understands. Where desirable and practicable someone who can act as an interpreter should be identified, but if no such person can be identified, the search may not proceed if the officer is in any doubt as to the person's understanding. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search or abandoning one.

### **Conduct of searches – vehicles**

105. Vehicles may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the object of the search has been found and no search may continue once the officer is satisfied that relevant cash is not in the vehicle. This does not prevent a further search, with prior approval if practicable, if new information comes to light justifying such a search.

106. Searches should be conducted with due consideration for the vehicle and the person in control of it. Searches should be conducted with no more disturbance than is necessary. The officer should, before leaving the vehicle, be satisfied that it is secure by arranging for the person in control of the vehicle to be present or by any other appropriate means.

### **Recording requirements – search of vehicles**

107. An officer should make a written record of the search, at the time of the search, unless there are exceptional circumstances that could make this impracticable. If such a written record is not made at the time then the officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the written record. There may be situations in which it is not practicable to obtain all the information necessary to complete a written record, but the officer should make every reasonable effort to do so and, if necessary, complete a partial record.
108. For the purposes of completing the search record, the officer should ask for the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched, but there is no obligation on the person to provide these details and no power of detention if the person is unwilling to do so. 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, therefore while they should be asked for this information they should not be compelled to provide it for the purpose of completing this record. The following information should always be included in the search record, even if the person does not wish to provide any personal details:
- the location of the vehicle searched;
  - the vehicle registration number;
  - the date, time and duration of the search;
  - the name of the officer and the names of any other persons involved in the search;
  - the grounds for conducting the search;
  - the prior approval of a lay magistrate or senior officer. If a search is conducted without prior judicial approval, the reason for not obtaining such approval;
  - the names and dates of birth of any person(s) in control of the vehicle if they are known;
  - the names and details of any witnesses;

- if appropriate, the written consent to undertake the search together with what information was given to the person(s) in control of the vehicle and their responses;
  - details of any damage to property or injury to person(s) caused during the search and the circumstances in which it was caused;
  - the outcome of the search (for example, seizure of cash; no further action);
  - a list/description of seized cash (if any) preferably signed by the person(s) in control of the vehicle;
  - any explanation given by the person(s) in control of the vehicle as to the ownership, origins, purpose and destination of any relevant cash found;
  - confirmation that the vehicle was left secured and by what means;
  - any other relevant information.
109. 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; and
  - the power used to search the vehicle.
110. Unless it is impracticable to do so or it would jeopardise a wider ongoing operation or investigation, the person(s) in control of the vehicle should be provided with a copy of the record. If a record is not made at the time the person should be told how they can apply for a copy of the record once it is made. If the search is not carried out due to the reasonable grounds for suspicion being eliminated as a result of speaking to any person, a written record should still be made.
111. 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 officers 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.

112. In order to promote public confidence in the use of the powers, bodies using these powers should make the records (anonymised as required) available 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.

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