



Home Office

Code of Practice Issued Under Section 377 of the Proceeds of Crime Act 2002

(Investigations)

Issued under section 377(4) and (8) and 459(2)(b) of the Proceeds of Crime Act 2002

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Contents

Introduction	4
Persons covered by the code	5
General provisions relating to all the orders and warrants	6
Production Orders	12
Search and Seizure Warrants	15
Customer Information Orders	23
Account Monitoring Orders	26
Disclosure Orders	28
ANNEX – Applications for Disclosure Orders Asset Recovery Agency Legacy Confiscation Cases	54

Introduction

1. This code of practice governs the exercise of the investigation powers in Chapter 2 of Part 8 of the Proceeds of Crime Act 2002 (“the Act”): This code is not a statement of law. It applies to all actions undertaken as part of an investigation under the Act on and after 1 April 2008, notwithstanding that they may have begun before that time and replaces the code issued on 24 February 2003, but see annex which provides for the Serious Organised Crime Agency (SOCA) the ability to apply for disclosure orders in ongoing confiscation cases they receive from the Assets Recovery Agency following the latter’s abolition.

The powers

- Production orders
- Search and seizure warrants
- Disclosure orders
- Customer information orders; and
- Account monitoring orders

2. This code is issued by the Home Secretary under section 377 of the Act. The code provides guidance as to how the powers in respect of confiscation, civil recovery, money laundering and detained cash investigations are to be used by certain investigators in England, Wales and Northern Ireland. Only production orders and search and seizure warrants are available in detained cash investigations and disclosure orders are not available in money laundering investigations. There is a separate code of practice in respect of the investigation powers conferred on prosecutors, the Director of Public Prosecutions, Director of Public Prosecutions for Northern Ireland, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office issued by the Attorney General or Advocate General for Northern Ireland¹ and for the Scottish powers in Chapter 3 of Part 8 issued by Scottish Ministers. These powers of investigation are not available for a civil recovery investigation where an interim receiving order or administration order is extant, proceedings for a civil recovery order have been started against the relevant property or cash is detained under section 295 of the Act, although they do remain available if a property freezing order has been obtained but proceedings for a civil recovery order have not started. These powers of investigation are not available for Revenue investigations (Part 6).

¹ Although accredited financial investigators who are members of staff of SFO are covered by this Code rather than the one issued by the Attorney General or Advocate General.

Persons covered by the code

3. This code places obligations on some of those (i.e. those who are not prosecutors) who either apply for or execute the five powers of investigation in England, Wales and Northern Ireland. Chapter 2 has a basic framework by which appropriate officers apply for and execute the investigation powers. The appropriate officers covered by this code are variously;

- The Director General of the SOCA and members of staff of SOCA,
- Accredited Financial Investigators (AFIs) ²,
- Constables; and
- Officers of Her Majesty's Revenue and Customs (HMRC).

In respect of SOCA, anything which it is authorised or required to do under the investigation powers of the Act may also be done by a person providing services under arrangements made by SOCA, if the person is authorised by SOCA (whether generally or specifically) for that purpose (see section 2B of the Act as inserted by paragraph 124 of Schedule 8 to the Serious Crime Act 2007).

4. The identities of the appropriate officers in each case depend on the type of investigation and the specific powers. The definitions of appropriate officers are found at section 378, and the identities of appropriate officers are outlined within this code under each power of investigation heading.

5. Where a person fails to comply with any provision of the code, he is not by reason only of that failure liable to any criminal or civil proceedings, but the code is admissible as evidence in such proceedings. A court may take account of any failure to comply with its provisions in determining any questions in the proceedings.

6. Models of the warrants and orders, and information in support of applications are annexed to this code. These act as models for appropriate officers, but are not prescribed forms. They have been designed for the purposes of confiscation and money laundering investigations; civil recovery and detained cash investigation applications may require significant adaptations.

7. The code must be readily available at all police stations for consultation by police and members of the public. It must also form part of the published instructions or guidance for officers of HMRC. Government Departments and other bodies who have accredited financial investigators operating the powers of investigation must also make arrangements for the code (whether in a hard copy form or electronically) to be available to both their staff and members of the public on request or at facilities, such as ports, if this is practicable.

8. This code only applies to certain functions carried out under Chapter 2 of Part 8. Those carrying out functions under Part 8 do not have to have regard to other codes of practice, e.g. those issued under the Police and Criminal Evidence Act 1984 ("PACE") or section 292 of the Act. However, if an officer is also performing an additional and separate function, e.g. a search for cash under section 289 of the Act, they must have regard to any connected code.

² An accredited financial investigator is a civilian investigator accredited by the Director of the Assets Recovery Agency or the National Policing Improvement Agency to have access to some or all of the powers of investigation. The accredited financial investigator will also have to fall within a category given in an order issued by the Home Secretary under section 453 of the Act.

General provisions relating to all the orders and warrants

Action to be taken before an application is made

9. The powers of investigation may involve significant interference with privacy of those whose premises are searched; on whom personal information is obtained; or whose personal information, material or documents are seen and/or seized by an appropriate officer or appropriate person. This places an obligation upon those operating the powers of investigation to ensure that the application for the order or warrant is fully and clearly justified. In particular, appropriate officers must consider at every stage whether the necessary objectives can be achieved by less intrusive means.

10. With particular reference to search and seizure warrants if there is reason to believe an action carried out pursuant to the powers covered by this code might have an adverse effect on relations between law enforcement and the community, the appropriate officer should consult the community liaison officer and/or any other relevant persons:

- Before any action is taken; or
- In particularly urgent cases, as soon as practicable after action has been taken.

The officer should also consider whether this consultation could jeopardize an ongoing (sensitive) wider operation or investigation. In such circumstances consultation may not be necessary, but it is best practice to consult.

11. Officers must be aware that the operation of the Act is subject to the Human Rights Act 1998 and consider their use of the powers of investigation accordingly. The use of the powers which impact upon individuals' Convention rights under the ECHR (European Convention on Human Rights) must be proportionate to the outcome being sought.

12. An appropriate officer will have to satisfy a judge that any infringement of, for example, a person's right to privacy under Article 8 of the ECHR is proportionate to the benefit to be gained from making an order or warrant. The appropriate officer must satisfy himself or herself of these issues, as with the other requirements for the making of orders/warrants, before an application is made.

13. The appropriate judges to grant these powers are, in relation to confiscation investigations and money laundering investigations, a judge entitled to exercise the jurisdiction of the Crown Court (in Northern Ireland, a Crown Court judge) and in relation to a civil recovery investigation and detained cash investigation, a judge of the High Court. Before a judge can grant any of the Part 8 orders or warrants, he will have to be satisfied that the statutory requirements are met. For each order or warrant to be granted, there is a statutory requirement that there must be reasonable grounds for suspecting that:

- in relation to a confiscation investigation, a person has benefited from criminal conduct
- in relation to a civil recovery investigation, property is recoverable or associated property
- in relation to a money laundering investigation, a person has committed a money laundering offence (although not in the case of a disclosure order as they are not available for money laundering investigations)

- in relation to a detained cash investigation into the derivation of the cash, that the property, or a part of it, is recoverable property (but only in the case of production orders and search and seizure warrants which are the only powers available in this type of investigation)
- in relation to a detained cash investigation into the intended use of the cash, the property, or a part of it, is intended by any person to be used in unlawful conduct (but only in the case of production orders and search and seizure warrants which are the only powers available in this type of investigation).

14. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, religion or age, cannot be used alone or in combination with each other as the reason for establishing suspicion. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity. Reasonable suspicion should normally be linked to accurate and current 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.

15. 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.

16. 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 made 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 order³, or that the appropriate officer suspects that the information will be of substantial benefit with regards to the serious nature of the investigation. The appropriate officer must satisfy himself or herself that all of these statutory requirements are satisfied before making the application.

17. The Act only requires appropriate officers to obtain authorisation for their applications in respect of customer information orders. However, appropriate officers must also, where practicable, obtain internal authorisation in respect of applications for the other orders and warrants. The appropriate officer must therefore obtain the authorisation of a senior officer (at least inspector rank in the police or police staff equivalent, or the equivalent rank of seniority within the department or agency for which the appropriate officer works). Disclosure orders are actually applied for by prosecutors but at the request of an appropriate officer. Consequently the appropriate officer must obtain authorisation from a senior officer to request a prosecutor to make an application. It is of note that prosecutors are covered under a separate code issued under section 377A of the Proceeds of Crime Act, but the powers that flow from a disclosure order may be executed by appropriate officers covered by this code.

³ The appropriate officer is under no obligation to divulge the anticipated cost he or she has decided.

Action to be taken in making an application

18. All the applications for the powers of investigation may be made ex parte to a judge in chambers ⁴. In deciding whether the application should be ex parte⁵, the appropriate officer must consider the benefit of not holding the proceedings inter partes . An obvious and probably most common reason would be so as not to alert the persons connected to an investigation that such is ongoing. Inter partes proceedings might enable the person to move material and thereby frustrate the investigation. However, where an order is directed at a financial institution (who would be the respondent), the institution should normally be notified of the intention of making an application for an investigation order – the application hearing could then be held inter partes.

19. An application in respect of a civil recovery investigation and detained cash investigation must be made to a judge of the High Court in accordance with any relevant civil procedure rules and Practice Direction.

20. Appropriate officers must familiarise themselves as to the requirements in the Act, but the following must be included in an application for an order or warrant:-

- the name of the person who is under investigation or (if possible) who holds property or owns the cash which is under investigation and confirmation that the information sought is for the purposes of the investigation. If the application is for an order against a different person to the main focus of the investigation, he or she must also be named on the application and there must be an explanation of the person's connection to the investigation;
- the grounds on which the application is made; and
- confirmation that none of the material or information sought is or consists of items subject to legal privilege or excluded material (with the exception of a lawyer's client's name and address requested under a disclosure order). This does not apply to customer information orders and account monitoring orders as the type of information requested will not be that which could be subject to legal privilege or could be excluded material.

21. The identity of an informant need not be disclosed when making an application, but the appropriate officer must be prepared to deal with any questions the judge may have about the accuracy of information provided by that source or any other related matters.

22. The person applying must be ready to satisfy the judge that he or she is an appropriate officer (see section 378) who may apply for the order or warrant ⁶.

Action to be taken in serving an order or warrant

23. In all cases, the investigatory powers must be exercised courteously and with respect for the persons and property of those concerned.

24. In deciding the method of service of the order, the appropriate officer must take into account all the circumstances of the investigation, including the possible need to prove that service was effected,

⁴ This means that an appropriate officer can apply for an order or warrant without notifying the respondent that the application is being contemplated or made.

⁵ Inter partes applications are those notified to the respondent of the contemplated order or warrant. They are therefore aware of the application and can be represented at the hearing.

⁶ This could be a police or Her Majesty's Revenue and Customs officer's warrant card. This could also be documentation confirming the status of accredited financial investigators or members of staff of SOCA.

and the person or body on whom the order is served. Search and seizure warrants are executed by an 'appropriate person' who must also have regard to these matters in execution of the warrant.

25. When serving the order, warrant or (in the case of a disclosure order and customer information order) notice under the order, a covering letter must be provided which includes the following information (unless it is already included in the order or the notice):

- the name of the subject of the order or the name by which he or she is known;
- a warning in plain language that failure without reasonable excuse to comply with the requirement is an offence and could result in prosecution;
- a statement to the effect that disclosure of information about the investigation may contravene section 342 ('offences of prejudicing investigation'), and that if anyone contacts the respondent about the investigation they should report this to the appropriate officer or appropriate person;
- that the warning given does not constitute a criminal caution, nor has the consequences of one;
- a general description of the investigation in connection with which the requirement is made; [it is not necessary to specify the name of the person, property or cash subject to the investigation on the order, although this information must be given to the judge as part of the application process];
- that the subject of the order 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;
- the duty not to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of relevant documents which are relevant to any Proceeds of Crime Act investigation which the subject of the order knows or suspects is being or is about to be conducted; and a warning that to do so is an offence punishable by up to five years imprisonment and an unlimited fine;
- the duty not to disclose to any other person information or any other matter which is likely to prejudice any Proceeds of Crime Act investigation which the subject of the order knows or suspects is being or is about to be conducted and a warning that to do so is an offence punishable by up to five years imprisonment and an unlimited fine, and
- the right to apply for a variation or discharge of the order (not applicable in search and seizure warrants).

26. When serving a notice under a disclosure order or a customer information order, the appropriate officer must inform the respondent of his right to refuse to comply with any requirement imposed on him or her unless the appropriate officer has, if required to do so, produced evidence of his authority to issue that notice. The evidence of the authority could include the actual order).

27. Where it appears to the appropriate officer or person that the recipient of an order or warrant has genuine difficulty in reading or understanding English he or she should attempt to serve a copy of the order on a person known to the recipient who, in the opinion of the appropriate officer or person, is able to explain or translate what is happening. If this is not practicable the appropriate officer or person should serve the order or warrant and attempt to ensure that the person understands what has occurred (e.g. by serving a multi-lingual explanation or engaging an interpreter or translator).

28. Sections 359(1) and 366(1) provide that an offence is committed if, without reasonable excuse, a person or financial institution fails to comply with a requirement imposed by a disclosure or customer information order. The other orders are treated as orders of the court against the named person and therefore attract contempt proceedings if they are not complied with. The recipient of the order must

be warned in plain language that failure without reasonable excuse to comply with the requirement of an order may be an offence that could result in prosecution, imprisonment and/or a fine.

29. 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.

30. Section 449 of the Act enables members of staff of SOCA to be identified by means of a pseudonym when authorised to carry out functions under the Act. An application may be made or service of an order or warrant may be carried out using a pseudonym. A certificate signed by an authorised person of SOCA is sufficient to identify a member of staff of the Agency and the member of staff may not be asked any question which is likely to reveal his or her true identity. The pseudonym provision does not extend to appropriate officers working outside SOCA, for example police officers or accredited financial investigators, working for a government department.

31. 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 the disclosure order as explained in that part of the code). A respondent has the right to withhold material and information sought which is subject to legal professional privilege. The Act relies upon the evolving definition of legal privilege as in case law which is relied upon in High Court proceedings. The current case law broadly defines two categories of privilege. The first is legal advice privilege which attaches to communications passing between lawyer and client created for the purpose of giving and receiving legal advice. The second is litigation privilege which attaches to communications and documents which come into existence for the sole or dominant purpose of either giving or obtaining legal advice with regard to contemplated litigation or collecting evidence for use in litigation. However such communications made in the furtherance of a criminal purpose are not privileged.

32. None of the powers of investigation allow access to excluded material. Excluded material is defined at section 11 of PACE and article 13 of PACE (NI) Order and includes journalistic material and medical records.

33. 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. They therefore take precedence over any contractual duties of confidentiality and the common law duty of confidence.

Action to be taken in receiving an application for an extension of a time limit

34. It is for the appropriate officer to set the time limit for replies to requirements made under disclosure orders and customer information orders. Where the subject of one of these orders asks for more time to comply with a requirement made under one of these orders, the appropriate officer must consider the request. When he has made his decision, the appropriate officer should normally set out his decision and the reasons for it in a letter to the subject of the order (unless reasons have been given orally). The circumstances in which it would be suitable for appropriate officers to consider an extension will vary from case to case but may include the need to obtain legal or other professional advice, difficulty in obtaining requested information and/or documents and an interviewee's unavailability. The letter conveying the appropriate officer's decision should normally be served in the same way as the original notice under the order was served.

35. Where a solicitor acting on behalf of the subject of the order makes the application for an

extension of time, the letter should be served on the solicitor and must also be served on his client.

36. Time limits for compliance with a production order and an account monitoring order are set out on the face of the order - (see sections 345(5) and 370(6)). Therefore they cannot be extended unless the subject of the order applies to the court for a variation of the order. If the appropriate officer receives a request for an extension of the time limit to comply with a production order or an account monitoring order, he or she must immediately direct the subject of the order to the court⁷.

Record of Proceedings

37. The appropriate officer must keep or cause to be kept a record of the exercise of the powers conferred by the provisions of Chapter 2 of Part 8.

38. The record must, in relation to each requirement, include:

- a copy of the order or warrant and copies of notices given under an order;
- a copy of the application for the order or warrant;
- the date on which the order, warrant or notice was served;
- the date of receipt of and reason for any request for an extension of the time allowed to comply with the order;
- the decision in respect of any such request and the date on which it was notified to the subject of the order;
- the date and place that the information or documents were received in response to the order; and,
- receipts provided in accordance with the provisions of this code.

Retention of documents and information

39. If documents or information are provided which were not required to be provided under the terms of the order, no account of that document or information must be taken of it in the investigation and it must be returned to whoever provided it.

40. Appropriate officers must follow established local procedures on the retention and return of documents, material and information. Intelligence that arises during the appropriate officer's investigation may be passed to SOCA, police, HMRC and/or other departments and agencies (provided there is a legal basis in place either in statute or common law for the passing of information between those bodies for that purpose).

⁷ This underlines the importance of an appropriate officer requesting a reasonable time limit at the time of his application for a production order or an account monitoring order. The appropriate officer should liaise where possible with the subject of the order. Realistic time limits in orders will reduce later applications to the court for extensions of time.

PRODUCTION ORDERS

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

Definition

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

Statutory requirements

45. The application must state that the order is sought for the purposes of a civil recovery, detained cash, confiscation or money laundering investigation. The application must specify the person who is subject to a confiscation investigation or a money laundering investigation or the property which is subject to a civil recovery investigation or the cash which is subject to a detained cash investigation. It must identify the specific material sought or describe the type of material sought and it must specify a person who appears to possess or be in control of the material. It must also state whether production of the material or access to the material is required.

46. The person named in the order must either produce the material, or provide access to it, as directed by the order. Section 345(5) provides seven days as the normal period, unless there are particular circumstances for a different period to be set by the judge.

Persons who may apply for a production order

47. As with the other orders, an application may be made by an appropriate officer; the definition depends on the type of investigation (section 378).

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

48. The appropriate officer must ascertain, as specifically as is possible in the circumstances, the nature of the material concerned and, where relevant, its location.

49. The appropriate officer should, in certain circumstances, also make enquiries to establish what, if anything, is known about the likely occupier of the premises where the material is believed to be located and the nature of the premises themselves; and to obtain any other information relevant to the application. This may well not be necessary if the premises are professional bodies or financial institutions.

50. The appropriate officer must consider whether he or she requires production of the material or access to it. In most circumstances he or she would want production, so as to retain it. There are occasions however where, for example, he or she may simply want sight of information contained in larger material, e.g. an entry in a register.

51. The 7 day time limit for the production of material will apply unless it appears to the judge that a shorter or longer period would be appropriate. Reasons which the appropriate officer might put to the judge for changing the 7 day period are that the investigation may be prejudiced unless there is a shorter time limit, or that it would not be reasonably practicable for the subject of the production order to comply with the seven day time limit due to the nature or amount of documentation required. There will

be cases when the best practice is to contact the subject of the production order (e.g. a financial institution) before the application is made to discuss a reasonable time limit.

Particular action to be taken executing a production order

52. When a production order is served on a person, business or institution under section 345(4)(a) of the Act, the order or the covering letter must, in addition to the matters specified in paragraph 25 of the general section, state:

- that the order was made under section 345(4)(a) of the Act;
- the material or class of material required to be furnished;
- the period of time within which such documents must be furnished.

53. Where an order is made under section 345(4)(b) of the Act (for access to material), the order or covering letter must, in addition, state:

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

54. Section 350 deals with service of a production order on a government department. Where a production order is served on a government department, it must be served as if the proceedings were other civil proceedings in relation to the department. This means that officers should look at the list of government departments published by the Cabinet Office under section 17 of the Crown Proceedings Act 1947 in order to find the correct address for service. A list is available on the Treasury Solicitor's website (www.tsol.gov.uk/contact_us.htm#legalproc). In many cases, the correct procedure will be to serve the order on the Treasury Solicitor. A production order served on a government department can contain a requirement for the person on whom the order is served and anyone else who receives to bring it to the attention of the official who holds the material even if they are unknown at that stage.

Particular provisions relating to the handling and retention of documents produced or accessed in response to a production order

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

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

57. An appropriate officer may remove any material covered by the production order, except where the production order is made under section 345(4)(b) and only allows access to, rather than removal of, the material.

58. An appropriate officer may photograph or copy or have photographed or copied any material which he or she has power to remove or have access to. If a copy of the material is sufficient, it must be copied on site and the original returned. If this is not practicable and the order was for production rather than providing access, the material can be taken away, be copied and the original returned as soon as possible after it has been removed.

59. Where an appropriate officer requires material to be produced from a computer in a form which may be taken away or to which access can be given in a legible form (for example a computer printout or

a removable computer disk), in accordance with section 349, care must be taken to ensure that, the person producing the material in this form does not delete evidence from the computer, either deliberately or accidentally.

60. The appropriate officer must complete, unless it is impracticable to do so, a list of the articles or documents removed and give a copy of it and receipt to the occupier and the subject of the order, if present, before leaving the premises. In any event, the appropriate officer must make or have made a record of the articles removed and or accessed in compliance with a production order. A copy of any such record must be given to the subject of the order within 7 days of the removal or access of the material.

Order to grant entry

61. An appropriate officer must consider at the application stage if he or she considers the right to enter premises is necessary in order to satisfy the production order. It might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order had been made in respect of material in a particular company's office in that building.

62. An order granting entry differs from a search and seizure warrant in that the order to grant entry is to overcome any physical obstacle in serving the production order and having access to the material. It does not include the power to search the premises.

SEARCH AND SEIZURE WARRANTS

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

Definition

64. A search and seizure warrant (defined at section 352(4)) can be issued in the three circumstances set out below, and enables the appropriate person to enter and search the premises specified in the warrant, and to seize material which is likely to be of substantial value to the investigation. A warrant may be issued if one of the three statutory requirements is met:

- The first requirement is met if a production order has not been complied with and there are reasonable grounds for believing that the material specified in the production order is on the premises specified in the search and seizure warrant.
- The second requirement is met if the material which is sought can be identified, but it is not practicable to communicate with the person against whom a production order might be made or with any person against whom an order to grant entry to premises might be made or that the investigation might be seriously prejudiced unless immediate access to the material is secured. This 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. In such circumstances, it is clear that a production order in respect of that person would have no effect. The appropriate officer must also provide his or her reasonable grounds for suspecting that the person specified in the application has benefited from his criminal conduct or has committed a money laundering offence or that the named property is recoverable property or associated property or that the cash is either recoverable property or is intended by any person to be used in unlawful conduct. The appropriate officer must also satisfy the judge that the material which would be subject to the warrant is likely to be of substantial value (whether or not by itself) to the investigation and that it is in the public interest for the material to be obtained.
- The third requirement is met if there are reasonable grounds for believing that there is material on the premises and the material cannot be identified at the time of the application for the warrant but the material relates to property or a person specified in the application or certain questions (appropriate officers must refer to and have regard to section 353 of the Act for full details). This might be satisfied where it is impossible to describe the material in precise detail, but it is known that material belonging to a person is on the premises. In order for this requirement to be met, the judge must also be satisfied that it is not practicable to communicate with anyone who might grant entry to the premises or that entry to the premises will not be granted unless a warrant is produced or that the investigation might be seriously prejudiced unless immediate access to the premises is secured. The appropriate officer must also provide his or her reasonable grounds for suspecting that the person specified in the application has benefited from his criminal conduct or has committed a money laundering offence or that the named property is recoverable property or associated property or that the cash is either recoverable property or is intended by any person to be used in unlawful conduct. The appropriate officer must also satisfy the judge that the material which would be subject to the

warrant is likely to be of substantial value (whether or not by itself) to the investigation and that it is in the public interest for the material to be obtained.

65. The search and seizure warrant does not include a power to stop a person, make an arrest or to search a person. The legislation and the code only apply to searches of premises. For the purpose of this code and the legislation "premises" is defined in section 23 of PACE and article 25 of the PACE (NI) Order. The definition provides that premises includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft, any offshore installation, any tent or moveable structure.

66. This code does not apply to searches conducted under other legislation or section 289 of the Act, and does not apply to searches conducted with consent without a search and seizure warrant.

Persons who can apply for and/or execute search and seizure warrants

67. As with the other powers of investigation, the code deals with appropriate officers' power to make an application for a search and seizure warrant and their right to retain material. This part of the code also deals with appropriate persons' powers to execute the warrants, namely to search the premises and seize and retain relevant material found on premises.

68. As detailed in the general section it is an appropriate officer who must make an application for a search and seizure warrant. This is defined at section 378 for the purposes of this code as a member of staff of SOCA, an accredited financial investigator, a constable or an officer of HMRC, depending on the type of investigation in respect of which the warrant is being requested. The person who is carrying out the investigation will normally make the application. The search warrant must be executed by an appropriate person. As detailed in the introduction, section 352(5) of the Act provides that an appropriate person is a constable, officer of HMRC or a suitably accredited financial investigator for search and seizure warrants in respect of confiscation, detained cash and money laundering investigations, and a member of the staff of SOCA for warrants in respect of civil recovery investigations.

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

69. The appropriate officer must at all times bear in mind that a search and seizure warrant is the most invasive of the powers of investigation.

70. The appropriate officer must consider why he needs a search and seizure warrant rather than a production order with an order to grant entry.

71. The appropriate officer must ascertain as specifically as is possible in the circumstances the nature of the material to be specified in the application and its location.

72. The appropriate officer must also make reasonable enquiries to establish what, if anything, is known about the likely occupier 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.

Particular action in making an application for a search and seizure warrant

73. An application for a search and seizure warrant must include:

- the name of the person who is subject to a confiscation investigation or a money laundering investigation or the property which is subject to a civil recovery investigation or the cash subject to a detained cash investigation;

- that the warrant is sought for the purposes of that investigation;
- which of the conditions under section 352(6)(a), 353(3) or (5) [with reference to section 353(2)] of the Act apply to the application – and, if relevant, why a production order is not appropriate;
- 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) or (8) on the premises;

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

Particular action to be taken executing a search and seizure warrant

75. If the appropriate officer who made the application is different from the appropriate person authorised to execute the warrant, the appropriate officer must explain the background and decision to apply for the warrant to the appropriate person. The appropriate person will thereby have the relevant information which will help him to execute the warrant.

Time limit for conducting searches

76. Searches carried out under a warrant must be conducted;

- within three calendar months of the date of the issue of the warrant for confiscation and money laundering investigations; or
- within one calendar month of the date of the issue of the warrant for civil recovery and detained cash investigations.

77. 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 Criminal Justice and Police Act 2001 (additional powers of seizure) may appropriately be used.

Entry other than with consent

78. Before entering the premises, the appropriate person must first attempt to communicate with the 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 occupier to allow entry, unless:

- the premises to be searched are known to be unoccupied;
- the 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 occupier or any other person entitled to grant access by attempting to communicate with them would frustrate the object of the search or endanger the person concerned or other people.

79. Before a search begins, the appropriate person must identify him or herself (subject to the provisions at section 449 of POCA as amended by paragraph 140 of Schedule 8 to the Serious Crime Act 2007) relating to pseudonyms of SOCA staff) 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 of an occupier not being present detailed at paragraph

81 apply.

Notice of powers and rights

80. The appropriate person must, unless it is impractical to do so, provide the occupier of the premises with a copy of the warrant and in addition to the matters specified in paragraph 25 of the general section of this code, a notice in a standard format⁸:

- summarising the extent of the powers of search and seizure conferred in the Act;
- stating that a copy of this code is available to be consulted and giving a contact point at which it can be obtained.

81. If the occupier is present, copies of the notice mentioned above, and of the warrant must, if practicable, be given to the occupier before the search begins, unless the appropriate person reasonably believes that to do so would frustrate the object of the search or endanger the officers concerned or other people. If the occupier is not present, copies of the notice and of the warrant must be left in a prominent place on the premises or appropriate part of the premises and endorsed with the name of the appropriate person (or, if authorised, the pseudonym used by a member of staff of SOCA) and the date and time of the search. The warrant itself must be endorsed to show that this has been done.

Conduct of searches

82. Premises may be searched only to the extent necessary to achieve the object of the search, having regard to the size and nature of whatever is sought. No search may continue once the appropriate person is satisfied that whatever is being sought is not on the premises. This does not prevent the issue of further search warrants in respect of the same premises if additional grounds come to light. Examples would be when as a result of new information it is believed that articles previously not found or additional articles are on the premises.

83. Searches must be conducted with due consideration for the property and privacy of the occupier of the premises searched, and with no more disturbance than necessary. They must be conducted at a reasonable time of day unless there are reasonable grounds to suspect that this would frustrate the search.

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

85. 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 occupier 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.

⁸ If this information is on the warrant then there is no need for it to be also detailed and served on a separate notice.

Leaving premises

86. If premises have been entered by force the appropriate person must, before leaving them, be satisfied that they are secure either by arranging for the occupier or the occupier's agent to be present or by any other appropriate means.

Seizure of material

87. An appropriate person may seize:

- anything covered by the warrant;
- anything covered by the powers in Part 2 of the Criminal Justice and Police Act 2001 (“the 2001 Act”) which allow an appropriate person to seize property from premises where it is not reasonably practicable to determine on the premises whether he is entitled to seize it and retain it for sifting or examination in secure conditions elsewhere; and
- anything that the appropriate person has the power to seize not covered by the warrant which is discovered during the course of the search (e.g. cash under section 294 of the Act). However, this is incidental to the search powers and a warrant must not be applied for to search for other material other than that specified in the application. A search must not continue after it appears that there is no more material covered by the warrant on the premises, even if the appropriate person suspects that there are other items which he or she may want to seize.

88. Appropriate persons must be aware of section 59 of the Criminal Justice and Police Act 2001 which allows persons with a relevant interest in material which has been seized to make an application to a judicial authority for the return of the material. Appropriate persons must also be aware of the subsequent duty to secure in section 60.

89. An appropriate person may photograph, image or copy, or have photographed, copied or imaged, any material which he has power to seize. An appropriate person must have regard to his or her statutory obligation not to retain any original material when a photograph or copy would be sufficient – section 22(4) of PACE and article 24 of PACE (NI) Order apply by virtue of The Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989) Order 2003 [SI 2003 No. 174].

90. Where an appropriate person considers that information which is held in a computer and is accessible from the premises specified in the warrant is relevant to the investigation, he or she may require the information to be produced from the computer in a form which can be taken away (for example a computer printout or a removable computer disk). Care must be taken to ensure that the person producing the material in this form does not delete evidence from the computer, either deliberately or accidentally.

Particular record of proceedings in executing a search and seizure warrant

91. Where premises have been searched under a warrant issued under Chapter 2 of Part 8 of the Act, the appropriate person must make or have made a record of the search. The record must include:

- the address of the premises searched;
- the date, time and duration of the search;
- the warrant under which the search was made (a copy of the warrant must be appended to the record or kept in a place identified in the record);
- subject to the provisions relating to pseudonyms of members of staff of SOCA, the name of

the appropriate person and the names of all other persons involved in the search;

- the names of any people on the premises if they are known;
- any grounds for refusing the occupier's request to have someone present during the search as set out in paragraph 84;
- 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;
- whether force was used, and, if so, the reason why it was used; and
- details of any damage caused during the search, and the circumstances in which it was caused; and,
- confirmation that premises were left secured and by what means.

92. The warrant must be endorsed by the appropriate person to show:

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

Search register

93. In the case of searches undertaken by constables the record of the search must be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search must be maintained in a suitable form.

Specific procedures for seize and sift powers

94. Part 2 of the Criminal Justice and Police Act 2001 provides persons who are lawfully on any premises and exercising powers of search and seizure with limited powers to seize material from premises so that they can sift through it or otherwise examine it elsewhere. These powers may be exercised for the reasons stated in section 50 of the Criminal Justice and Police Act 2001; appropriate persons must refer to and have regard to this provision. All appropriate persons conducting searches under the Act are permitted to use these powers. Appropriate persons must be careful that they only exercise these powers where it is essential to do so and that they do not remove any more material than is absolutely necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners, particularly where they are involved in business. Appropriate persons must always give careful consideration to whether removing copies or images of relevant material or data would be a satisfactory alternative to removing the originals. Where originals are taken, appropriate persons must always be prepared to facilitate the provision of copies or images for the owners where that is reasonably practicable.

95. Property seized under section 50 of the 2001 Act must be kept securely and separately from any other material seized under other powers. Section 51 is not relevant as the search and seizure powers under the Act do not extend to seizing material from the person. An examination under section 53 to determine what material may be retained in accordance with the Act must be carried out as soon as practicable, allowing the person from whom the material was seized, or a person with an interest in the

material, an opportunity of being present or represented. The appropriate person must ensure that he or she has the facilities for the sift to be conducted in suitable surroundings and that persons from whom the material was seized or who have an interest in the material or their representative can be present.

96. All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend or their representative, the appropriate person who exercised the search and seizure warrant must give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality, appropriate persons may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it.

97. 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 2001 Act. Material which is not retainable (i.e. because it is legally privileged material, excluded material or falls outside the terms of the warrant) must be separated from the rest of the seized property and returned as soon as reasonably practicable after the examination of all the seized property has been completed. Delay is only warranted if very clear and compelling reasons exist; for example, the unavailability of the person to whom the material is to be returned or the need to agree a convenient time to return a very large volume of material. Legally privileged or excluded material which cannot be retained must be returned as soon as reasonably practicable and without waiting for the whole examination to be completed. As set out in section 58 of the 2001 Act, material must be returned to the person from whom it was seized, except where it is clear that some other person has a better right to it.

98. Where an officer involved in the investigation has reasonable grounds to believe that a person with a relevant interest in property seized under section 50 of the 2001 Act intends to make an application under section 59 for the return of any legally privileged or excluded material, the officer in charge of the investigation must be informed and the material seized must be kept secure in accordance with section 61.

99. The responsibility for ensuring property is properly secured rests ultimately with the appropriate person and the appropriate officer, even if there is a separate person delegated with this specific task. Securing involves making sure that the property is not examined, copied or put to any other use except with the consent of the applicant or in accordance with the directions of the appropriate judicial authority. Any such consent or directions must be recorded in writing and signed by both the applicant or judicial authority and the appropriate person.

100. Where an appropriate person exercises a power of seizure conferred by section 50 of the 2001 Act that appropriate person must at the earliest opportunity and unless it is impracticable to do so, provide the occupier of the premises or the person from whom the property was seized with a written notice:

- specifying what has been seized in reliance on the powers conferred by that section;
- specifying the grounds on which those powers have been exercised;
- setting out the effect of sections 59 to 61 of the 2001 Act which cover the grounds on which a person with a relevant interest in seized property may apply to a judicial authority for its return and the duty of officers to secure property in certain circumstances where such an application is made;
- specifying the name and address of the person to whom notice of an application to the appropriate judicial authority in respect of any of the seized property must be given; and

- specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination of the property (e.g. police station, HMRC office or other building).

101.If the occupier is not present but there is some other person there who is in charge of the premises, the notice must be given to that person. If there is no one on the premises to whom the notice may appropriately be given, it must either be left in a prominent place on the premises or attached to the exterior of the premises so that it will easily be found.

Retention

102.Anything which has been seized may be retained only for as long as is necessary in connection with the investigation for the purposes of which the warrant was issued or (in the case of confiscation or money laundering investigations) in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

103.Property must not be retained if a photograph or copy would suffice for the purposes of evidence in the prospective court proceedings following the investigation.

Rights of owners etc.

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

105.That person or their representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must be provided with a photograph or copy, in either case within a reasonable time of any request and at their own expense, unless the appropriate officer has reasonable grounds for believing that this would prejudice the investigation or any proceedings. A record of the grounds must be made in any case where access is denied.

CUSTOMER INFORMATION ORDERS

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

Definition

107. 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. ‘Customer information’ is defined at section 364 of the Act. A ‘financial institution’ means a person carrying on a business in the regulated sector. Regulated sector is defined at Schedule 9 to the Act, as amended by the Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2003 [SI 2003 No. 3074] and the Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2007 [SI 2007 No. 208].

Persons who can apply for a customer information order

108. An appropriate officer must have the authorisation of a senior appropriate officer to make an application for a customer information order. A senior appropriate officer for a confiscation investigation is a senior member of staff of SOCA⁹ or a police officer who is not below the rank of superintendent, an HMRC officer who is a senior officer or above or an accredited financial investigator who falls within a description specified in an order under section 453 of the Act. For money laundering investigations, a senior appropriate officer is a police officer who is not below the rank of superintendent, an HMRC officer at Pay Band 9 or above or a financial investigator accredited for the function of authorising such applications. For civil recovery investigations, the senior appropriate officer is a senior member of staff of SOCA. If an investigator is accredited to both apply for and authorise the making of an application for a customer information order, he or she can make such an application without an additional separate authorisation. A police officer who is not below the rank of superintendent, an HMRC officer at Pay Band 9 or above or a senior member of staff of SOCA can also make such an application without an additional separate authorisation.

Statutory requirements

109. The application must specify a person who is subject to a confiscation investigation or money laundering investigation or property (and the holder of such property) subject to a civil recovery investigation. It must state that the order is sought for the purposes of that investigation. It must specify the financial institutions from which the appropriate officer wishes to obtain customer information, whether this is done by a list or a description of financial institution. A description of financial institutions may include all financial institutions within a specific geographical area or who specialise in a particular form of account.

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

110. The appropriate officer must carefully consider his existing evidence and information so as to limit

⁹ A senior member of SOCA staff is the Director General of SOCA or any member of SOCA’s staff authorised by the Director General (whether generally or specifically) for this purpose.

the number or scope of financial institutions. This may include researching his own employer's or SOCA's intelligence systems and the Police National Computer. He or she must consider what benefit the customer information he or she may obtain may have, either in itself or as the lead to other avenues of investigation. He or she must also consider whether the information he or she wishes to gain could not be acquired as effectively and efficiently from material which could be obtained by way of a production order. The appropriate officer must consider the cost both to his or her employer and the financial institutions.

111. On receiving a request for authorisation for an application for a customer information order, the senior appropriate officer must consider similar issues. He or she must particularly consider the proportionality of requesting the customer information, against the believed benefit to the investigation. The senior appropriate officer must also consider the broader issues of law enforcement such as the benefit to the community of removing the suspected proceeds from circulation.

Particular action to be taken executing a customer information order

112. Section 363(5) of the Act requires a financial institution to provide any customer information which it has relating to the person specified in the application if it is given notice in writing by an appropriate officer. Section 363(6) gives the appropriate officer power to request in the manner and the time by which the financial institution provides the information. The appropriate officer is expected to impose a reasonable time limit depending on the nature of the institution and the information which is requested. There will be cases where the best practice is to contact the financial institution before the notice is served to discuss a reasonable time limit.

113. A notice given under a customer information order must include the following:

- the name of the financial institution;
- the name of the person (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 his authority;
- the period of time within which the customer information must be furnished;
- the manner in which such information must be furnished;
- the place at which the information is to be furnished;
- where the appropriate officer thinks that the customer information includes information in relation to accounts held in any other name which it appears to the appropriate officer that the specified person may have used, that other name;
- where the appropriate officer thinks that the customer information includes information in relation to accounts held in the name of any company or limited liability partnership, which the specified person is or in which it appears to the appropriate officer that the specified person has or had an interest, the name and all known addresses of that company or limited liability partnership;
- all addresses known by the appropriate officer to have been used by the specified person possibly relating to accounts that may have been or are held by the financial institution;
- the date of birth or approximate age of that person if an individual, or any known identification information in respect of a company or limited liability partnership ;
- such other information as the appropriate officer considers would assist the respondent in

complying with the requirement; and

- the financial institution's right not to have information furnished used in evidence against it in criminal proceedings other than in the circumstances specified in section 367(2).

Particular record of proceedings under a customer information order

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

115. The appropriate officer must consider the customer information he or she has obtained and consider whether a production order or account monitoring order would be the next step to obtain further information and material to support the investigation.

ACCOUNT MONITORING ORDERS

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

Definition

117. An account monitoring order is an order that requires a specified financial institution to provide account information on a specified account for a specified period, up to 90 days in the manner and at or by the times specified in the order. 'Account information' is information relating to an account held at a financial institution – this would most commonly be transaction details. There is no bar on an appropriate officer making a repeat application for an account monitoring order immediately after an account monitoring order has expired.

Persons who can apply for an account monitoring order

118. As with the other orders, an application may be made by an appropriate officer; the definition depends on the type of investigation (see section 378 of the Act as amended by paragraph 116 of Schedule 8, paragraph 13 of Schedule 10 and section 80(7) of the Serious Crime Act 2007).

Statutory requirements

119. The application must specify a person who is subject to a confiscation investigation or money laundering investigation or property subject to a civil recovery investigation and the person who holds that property. It must state that the order is sought for the purposes of that investigation. It must specify the financial institution from which the appropriate officer wishes to obtain the account information. The application must state that the order is sought in relation to account information about the specified person. It must specify the account information which is sought, whether by reference to specific accounts or accounts of a general description.

120. The order also sets the manner and deadline by which the financial institution must produce account information and the period for which the order should last.

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

121. The appropriate officer has to consider the benefit of obtaining information from an account to his investigation, and whether this information could be as easily obtained by using a production order. He must consider whether in relation to a confiscation investigation he should make (or where he is not a suitably accredited financial investigator, asking someone else to make) an application for a restraint order on the account (under section 42 or 191).

122. The appropriate officer must also consider what account information he or she should request. If, for example, the appropriate officer requires information on certain transactions, he or she must consider whether he or she could meaningfully limit the information he or she requires to amounts over a certain threshold or identity of the source of the deposit or destination of a transaction.

123. The period to be specified for compliance with any requirement must be set by the judge in the

order. A reasonable time limit to suggest to the judge might be that the information should be provided within 24 hours on all transactions unless it appears that it would not be reasonably practicable for the subject of the account monitoring order to comply with this time limit. There will be cases when the best practice is to contact the subject of the account monitoring order (i.e. the relevant financial institution) before the application is made to discuss types of transaction and the reporting process.

124. Appropriate officers must consider the time period they wish the account monitoring order to cover. The appropriate officer must not treat the 90 day maximum as the standard time limit. They must carefully consider and justify to the judge the requirement for the time period requested.

Particular action to be taken executing an account monitoring order

125. When an account monitoring order is served on a financial institution, the covering letter, in addition to the matters specified in paragraph 25 of the general section, must include the following (unless it is already included in the order):

- the name of the financial institution
- the identity of the person(s) who hold the account to be monitored, including as much identity information as is known by the appropriate officer;
- the accounts in relation to which the information is required, whether this is a specific account or a general description of accounts;
- the account information required (in as specific detail as possible, for example a general description of the nature of the transactions);
- the period for which the account monitoring order will have effect;
- the period of time within which such information must be furnished to the appropriate officer (e.g. within 24 hours of a particular transaction taking place);
- the manner in which such information must be furnished;
- such other information as the appropriate officer considers would assist the respondent in complying with the requirements of the account monitoring order;
- the financial institution's right not to have information furnished used in evidence against it in criminal proceedings other than in the circumstances specified in section 372(2).

Particular record of proceedings under an account monitoring order

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

DISCLOSURE ORDERS

127. Members of staff of SOCA, officers of HMRC, Constables and accredited financial investigators must familiarise themselves with the introduction section which sets out general instructions relating to all the orders and warrants.

128. In applying for these orders, prosecutors must refer to the code issued by the Attorney General or the Advocate General for Northern Ireland as appropriate.

Definition

129. A disclosure order under the Proceeds of Crime Act is an order authorising an appropriate officer to give notice in writing to any person requiring him or her to answer questions, to provide information or to produce documents with respect to any matter relevant to the investigation in relation to which the order is sought. This code does not provide guidance on the use of disclosure notices under the Serious Organised Crime and Police Act 2005.

130. Once a disclosure order has been made, members of staff of SOCA, officers of HMRC, Constables and accredited financial investigators may use the extensive powers set out in section 357(4) of the Act throughout their investigation. Thus, unlike the other orders which have to be applied for separately on each occasion, a disclosure order gives continuing powers for the purposes of the investigation. The appropriate officer must serve a notice on any person he wishes to question or to ask to provide information or documents. The disclosure order is not available for revenue investigations under Part 6 of the Act or for money laundering investigations or for detained cash investigations.

131. Under section 357(6), where a person is given a notice under a disclosure order, that person is not bound to comply with any requirement imposed by the notice unless evidence of the authority to give the notice is provided. Where this happens, a copy of the disclosure order must be given to the person.

Persons who can apply for a disclosure order

132. In relation to criminal confiscation only prosecutors may apply for disclosure orders on the request of an appropriate officer. The scope of this code does not extend to the guidance of prosecutors in making these applications. Members of staff of SOCA, officers of HMRC, constables or accredited financial investigators must identify a suitable prosecutor to make the application on their behalf and explain why, guided by this code, a disclosure order is necessary in the investigation. Once a disclosure order is granted by the judge in a confiscation investigation, the powers provided by those orders may be exercised by members of staff of SOCA, officers of HMRC, constables or accredited financial investigators.

133. In relation to civil recovery investigations both prosecutors and appropriate members of staff of SOCA may apply for disclosure orders in respect of their own investigations. As already stated in the introduction, the appropriate officers are defined in section 378 of the Act.

Statutory requirements in applications for civil recovery investigations

134. The member of SOCA staff has to satisfy the judge that a civil recovery investigation is ongoing and the order is sought for the purposes of that investigation. The member of SOCA staff must also

satisfy the judge that there are reasonable grounds for suspecting that the property specified in the application is recoverable property or associated property, that information which may be provided is likely to be of substantial value (whether or not by itself) to the investigation and that there are reasonable grounds for believing that it is in the public interest to require the provision of such information.

Particular action to be taken in making an application

135. An application made by a member of SOCA staff for a disclosure order for a civil recovery investigation must state:

- the name of the property which is subject to a civil recovery investigation;
- that the order is sought for the purposes of that investigation;
- whether the appropriate officer is likely to require answers to questions and/or information and/or documents;
- if practicable, the name of the person or persons against whom the power may be used; and
- the grounds on which the application is made (including details of the investigation);
- why a disclosure order is required in preference to the other powers of investigation.

Providing of information and production of documents

136. Production of documents or information in response to a disclosure order must follow, so far as relevant, the processes set out for production orders in paragraphs 56 to 60 above. The appropriate officer must give notice in writing to anyone whom he wishes to provide information or documents. In addition to the general requirements at paragraph 25, this notice must include, where applicable;

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

Interview

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

Invitation to interview

138. The appropriate officer must send the interviewee a notice served under the disclosure order which must contain:

- the right of the appropriate officer to interview the interviewee under section 357(4)(a) of the Act;
- the purpose of the interview, which may be as detailed as the appropriate officer thinks necessary;
- the interviewee's right not to have statements made by him used in evidence in criminal proceedings against him or her other than in the circumstances specified in section 360(2);
- his or her right to be accompanied at any interview by a solicitor and/or a qualified accountant;

- his or her right, if he or she is a juvenile ¹⁰, is mentally disordered or mentally handicapped, to be accompanied at any interview by an appropriate adult;
- details of the place at which the interview is to take place, and
- where attendance is not required at once, the time and date of the interview.

Legal and Financial advice

139. In this code, a ‘solicitor’ means a solicitor who holds a current practising certificate, a trainee solicitor, a duty solicitor representative or an accredited representative included on the register of representatives maintained by the Legal Services Commission. A ‘qualified accountant’ means a person who is a member or fellow of the Institute of Chartered Accountants in England and Wales, or the Institute of Chartered Accountants of Scotland, or the Institute of Chartered Accountants in Ireland, or the Association of Chartered Certified Accountants or who would, for the purposes of the audit of company accounts be regarded by virtue of section 33 of the Companies Act 1989, as holding an approved overseas qualification.

140. 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 must normally consent and set a reasonable time limit for obtaining such advice. In the exceptional cases set out below the appropriate officer can refuse such a request depending on the circumstances of the case and the information or material which is being requested.

141. 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.

¹⁰ if anyone appears to be under the age of 17 then he or she must be treated as a juvenile for the purposes of this code in the absence of clear evidence to show that he or she is older

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

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

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

144. If a solicitor wishes to send a non-accredited or probationary representative to provide advice on his behalf, then that person is also recognised as a 'legal adviser' and must be admitted to the interview unless the appropriate officer considers that this will hinder the investigation.

145. In exercising his discretion as to whether to admit a legal adviser who is not a solicitor, the person conducting the interview must take into account in particular whether the identity and status of the non-accredited or probationary representative have been satisfactorily established; whether he or she is of suitable character to provide legal advice (a person with a criminal record is unlikely to be suitable unless the conviction was for a minor offence and is not recent); and any other matters in any written letter of authorisation provided by the solicitor on whose behalf the person is attending.

146. If the person conducting the interview refuses access to a non-accredited or probationary representative or a decision is taken that such a person should not be permitted to remain at an interview, he or she must forthwith notify a solicitor on whose behalf the non-accredited or probationary representative was to have acted or was acting, and give him or her an opportunity to make alternative arrangements. The interviewee must also be informed.

Persons who may be present at interviews

147. Interviews must be conducted in private with at least two members of staff present at all times. Only persons whose presence is sanctioned by this code should be present. It is up to the interviewee to arrange the presence of any solicitor and/or qualified accountant. When doing so he or she must ensure that the person he or she selects is available to attend. Where the provisions of this code require the presence of an appropriate adult or an interpreter and no such person attends with the interviewee the person conducting the interview must, before commencing or restarting any interview, secure the attendance of such a person.

148. The person conducting the interview may be accompanied by a person to assist in handling documents and carrying out such other support tasks as will assist the person conducting the interview to perform his duties. Such a person has no power to require the interviewee to do anything and need not disclose his name or address provided a record of these is made by the person conducting the interview.

149. If the person conducting the interview has any suspicion, or is told in good faith, that a person is or appears to be (without clear evidence to the contrary)

- under seventeen years of age;
- mentally disordered;

- mentally handicapped; or
- mentally incapable of understanding the significance of questions put to him or her or his or her replies ¹¹
- he or she must not be interviewed unless an appropriate adult is present.

The 'appropriate adult'

150. In this code 'the appropriate adult' means:

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

151. A person, including a parent or guardian, must not be an appropriate adult if he or she is suspected of involvement in the unlawful conduct to which the civil recovery investigation relates or the criminal conduct to which the confiscation investigation relates is involved in the investigation or has received admissions from the juvenile prior to attending to act as the appropriate adult. If the parent of a juvenile is estranged from the juvenile, he or she must not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to his presence.

152. A person must always be given an opportunity, when an appropriate adult is called to the interview, to consult privately with a solicitor and/or a qualified accountant in the absence of the appropriate adult if they wish to do so.

Role of persons who may be present at interviews

¹¹ 'Mental disorder' is defined in section 1(2) of the Mental Health Act 1983 as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind'. Where the person conducting the interview has any doubt about the mental state or capacity of an interviewee, that person should be treated as mentally vulnerable and an appropriate adult should be called.

Solicitor and Qualified Accountant

153. The main role of any solicitor or qualified accountant is to see that the interview is conducted in a fair and proper manner. He or she may not answer questions on behalf of the interviewee but he or she may intervene:

- to seek clarification of questions put during the interview;
- to challenge a question put by the appropriate officer which he or she considers improper;
- to challenge the manner in which a question is put;
- if the client may have a reasonable excuse for failure to comply with the disclosure order, to advise him or her whether or not to reply to a question; or
- to give the interviewee advice.

154. Any request for legal or financial advice and the action taken on it must be recorded on the record and/or taped. If a person has asked for legal or financial advice and an interview is begun in the absence of a solicitor or qualified accountant (or the solicitor or qualified accountant has been required to leave an interview), a note must be made in the interview record.

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

Appropriate Adult

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

Physical Disability

157. A person who is blind or seriously visually impaired may be accompanied by his guide dog. The person conducting the interview must ensure that the person who is blind or seriously visually impaired has his or her solicitor, relative, the appropriate adult or some other person likely to take an interest in him or her (and not involved in the investigation) available to help in the checking of any documentation. Where this code requires written consent then the person who is assisting may be asked to sign instead if the interviewee so wishes.

158. An interviewee who is seriously physically impaired may be accompanied by an able-bodied adult aged 18 or over to provide such physical assistance, as the interviewee requires. Such a person may take no part in the interview and has none of the rights of an appropriate adult.

Interpreters

159. A person must not be interviewed in the absence of a person capable of acting as interpreter if:

- he or she has difficulty in understanding English and the person conducting the interview cannot speak the person's own language; or
- he or she is deaf or has difficulty with hearing or speaking, unless the interviewee agrees in writing that the interview may proceed without an interpreter.

160. An interpreter must also be present if a juvenile is interviewed and the appropriate adult appears to

be deaf or there is doubt about his or her hearing or speaking ability, unless he or she agrees in writing that the interview should proceed without one.

161. The interpreter must be provided at the appropriate officers' expense. The person conducting the interview must ascertain, as far as is practicable, that the interpreter and interviewee understand each other and this must be noted on the interview record. An appropriate adult may not act as the interpreter.

162. Action taken to call an interpreter under this section and any agreement to be interviewed in the absence of an interpreter must be recorded in writing and or taped.

Excluding Persons from the Interview

163. The person conducting the interview may exclude from the interview a person whose presence is authorised¹² by the provisions of this code if it appears to the person conducting the interview that the person is mentally disordered (see footnote 11).

164. Subject to paragraph 163, the person conducting the interview may exclude from the interview a person whose presence is authorised¹³ only if he or she has reason to believe that the person is personally involved in the matter under investigation or that the person has, by improper conduct, hindered the proper conduct of the interview. Before excluding any person the person conducting the interview must state his or her reason and note this on the interview record. What amounts to improper conduct will depend on the circumstances of each case. It would almost always be improper conduct for a person to prompt the interviewee, to provide the interviewee with written answers to the questions, to answer questions on behalf of the interviewee or to interrupt the interview for any reason other than to make a proper representation. Exclusion of any person from an interview is a serious matter which may be subject to comment in court. The person conducting the interview must therefore be prepared to justify his decision.

165. If the person conducting the interview has excluded a person from the interview room under paragraph 163 or 164, he or she must adjourn the interview. The interviewee must then be informed that he has the right to seek another person to act in the same role as the person who was excluded. If the interviewee wishes the interview to continue, then the interviewer must record this decision and continue with the interview.

166. If the person conducting the interview considers that a solicitor or qualified accountant is acting in such a way as to hinder the proper conduct of the interview, he or she must cease questioning the interviewee, and whilst the tape recorder is still operating, speak to the solicitor or qualified accountant. After speaking to the solicitor or qualified accountant, the person conducting the interview must decide whether or not the interview should continue in the presence of that solicitor or qualified accountant. If he or she decides that it should not, the interviewee must be given the opportunity to consult another solicitor or qualified accountant before the interview continues and that solicitor or qualified accountant must be given an opportunity to be present at the interview.

167. The removal of a solicitor from an interview is a serious step and, if it occurs, the person conducting the interview must consider whether the incident should be reported to the Law Society, Legal Complaints Service, General Council of the Bar or the Institute of Legal Executives (as

¹² Persons whose presence is authorised are a solicitor, a qualified accountant, an appropriate adult, a person providing assistance and an interpreter.

¹³ Ibid.

appropriate). In the case of a qualified accountant the matter should be reported to their professional body, such as the Institute of Chartered Accountants in England and Wales.

Conduct of interviews

168. As far as practicable interviews should take place in interview rooms which must be adequately heated, lit and ventilated. People being questioned or making statements must not be required to stand.

169. Breaks from interviewing must be made at recognised meal times. Short breaks for refreshment must also be provided at intervals of approximately two hours, subject to the interviewer's discretion to delay a break if there are reasonable grounds for believing that it would prejudice the outcome of the investigation.

170. Where an interview is adjourned for any reason and is to be resumed at the same place later the same day it shall be sufficient for the person conducting the interview to inform the interviewee of the time or resumption and no notice in writing requiring attendance at that time shall be necessary. The details of the adjournment must be noted in the interview record.

171. Where an interview is adjourned for any reason and is to be resumed either at a different place or on a different day the person conducting the interview must serve another notice under the disclosure order on the interviewee requiring him to attend at that place on that day.

The interviewer's obligations at the interview

172. At the beginning of the interview and immediately following any break, the person conducting the interview must then caution the interviewee as follows:

'You are required by law to answer all the questions I put to you unless you have a reasonable excuse for not doing so. If you fail, without reasonable excuse, to answer a question or if you knowingly or recklessly make a statement which is false you will be committing an offence for which you may be prosecuted. Do you understand?'

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

173. The person conducting the interview must, if asked to do so, produce evidence of his authority to require the interviewee to answer questions under the disclosure order.

174. The person conducting the interview may ask such further questions as appear to him or her to be necessary to ascertain the entitlement of any person to be present.

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

176. The person conducting the interview must offer the interviewee the opportunity to ask any questions to clarify the purpose, structure and conduct of the interview.

177. Before concluding the interview the person conducting the interview must ask the interviewee if he or she has any complaint to make about anything which has taken place at the interview.

178. If a question and answer record has been taken of the interview because it was not tape-recorded,

the person conducting the interview must afford the interviewee the opportunity to read the record. If the interviewee is for any reason unable to read the note or if the interviewee declines to do so the person conducting the interview must read, or cause it to be read, aloud. The person conducting the interview must invite the interviewee to comment on the note and will add to it any comments made. The interviewee must be invited to sign the note. The person conducting the interview must then record the time in the presence of the interviewee. If the interviewee is unable for any reason to sign the note he or she may authorise any person present at the interview to sign it on his behalf. Where the interviewee refuses to sign the note, or to have it signed on his behalf; the person conducting the interview must record that fact and any reason given for the refusal on the note and have such note countersigned by a senior officer.

179. Whenever this code requires a person to be given certain information, he or she does not have to be given it if he or she is incapable at the time of understanding what is said to him or her, or is violent or likely to become violent or is in urgent need of medical attention, but he or she must be given it as soon as practicable.

Recording

180. Interviews should be recorded by recording media (but see paragraph 183). Recording media is any removable, physical audio recording medium (such as magnetic tape, optical disc, or solid state memory) which can be played and copied – it includes audio tapes, recordable discs and video tapes. A record of certain matters arising from the interview must also be made contemporaneously. The matters to be recorded in the note are listed at the end of this section.

181. Recording of interviews must be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

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

Interviews to be recorded

183. The person conducting the interview may authorise that the interview not be recorded where it is not reasonably practicable to do so. This could be due to failure of the equipment or lack of a suitable interview room or recorder if the person conducting the interview has reasonable grounds for considering that the interview must not be delayed until the failure has been rectified or a suitable room or recorder becomes available.

184. In such cases the interview must be recorded in writing. In all cases the person conducting the interview must make a note in specific terms of the reasons for not recording

Commencement of interviews

185. When the interviewee is brought into the interview room the person conducting the interview must without delay, but in the sight of the interviewee, load or start the recorder with clean recording media and set it to record. The recording media must, if possible, be unwrapped or otherwise opened in the presence of the interviewee.

186. The person conducting the interview must:

- inform the interviewee that he or she is the appropriate officer or has delegated authority (see section 1(6) of the Act);

- give his or her name and that of any other persons present (subject to the provision on pseudonyms of SOCA staff);
- inform the interviewee of the purpose for which any person accompanying the person conducting the interview is present;
- ask the interviewee to state his full name and address and date of birth;
- ask any person present with the interviewee to state their name, business address¹⁴ and capacity in which he or she is present;
- state the date, time of commencement and place of the interview;
- state that the interviewee has the opportunity to request legal and/or financial advice;
- state and obtain the confirmation of the reasons under paragraph 139 et seq for there being no legal representation if this be the case;
- inform the interviewee of his or her right:
 - (a) to consult in private at any time with any solicitor, qualified accountant or appropriate adult present with him or her at any interview;
 - (b) to be questioned fairly;
 - (c) to be given an opportunity at the end of the interview to clarify anything he or she has said or to say anything further if he or she wishes;
 - (d) to be allowed a break in any interview which last for more than two hours.
- inform the interviewee that the interview is being recorded;
- state that the interviewee will be given a notice about what will happen to the recording media, and
- attempt to estimate the likely length of the interview and inform the interviewee.

Objections and complaints by the suspect

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

Changing recording media

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

¹⁴ If persons present do not have a business address (e.g. a parent) , they should provide a home address

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

Taking a break during interview

189. When a break is to be taken during the course of an interview and the interview room is to be vacated by the interviewee, the fact that a break is to be taken, the reason for it and the time must be recorded on the recording media. The recording media must then be removed from the recorder and the procedures for the conclusion of an interview as set out below followed.

190. When a break is to be a short one and both the interviewee and the person conducting the interview are to remain in the interview room the fact that a break is to be taken, the reasons for it and the time must be recorded on the recording media. The recorder may be turned off. There is, however, no need to remove the recording media and when the interview is recommenced the recording must be continued on the same recording media. The time at which the interview recommences must be recorded on the recording media.

Failure of recording equipment

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

Removing recording media from the recorder

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

Conclusion of interview

193. The person conducting the interview must inform the interviewee that he or she has no further questions and offer the interviewee an opportunity to clarify anything he or she has said and to say anything further he or she wishes. Any solicitor, qualified accountant or appropriate adult present at the interview along with the interviewee, must be given the opportunity to ask the interviewee any question the purpose of which is to clarify any ambiguity in an answer given by the interviewee or to give the interviewee an opportunity to answer any question which he or she has refused previously to answer.

194. At the conclusion of the interview, including the taking and reading back of any written statement, the time must be recorded and the recorder switched off. The master recording media must be sealed with a master label. The appropriate officer must sign the label and ask the interviewee and any appropriate adult and other third party present during the interview to sign it also. If the interviewee or the appropriate adult refuses to sign the label, the person conducting the interview must sign it and note

the label that the interviewee has refused to do so.

195. The interviewee must be handed a notice, which explains the use which will be made of the recording and the arrangements for access to it. A copy of the recording media must be supplied as soon as practicable to the interviewee, if court proceedings are connected to interview are commenced (i.e. confiscation or civil recovery proceedings).

After the interview

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

Recording media security

197. The person conducting the interview must make arrangements for master recording media to be kept securely and their movements accounted for.

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

199. Where no court proceedings result, it is the responsibility of the appropriate officer to establish arrangements for the breaking of the seal on the master recording media, where this becomes necessary.

Particular record of action taken under a disclosure order

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

201. The record of an interview must contain the following, as appropriate

- a copy of the invitation to interview letter;
- the date and place and time of the interview;
- the time the interview began and ended, the time of any breaks in the interview and, subject to the provisions relating to pseudonyms of SOCA staff, the names of all those present;
- any request made for financial or legal advice, and action taken on that request;
- that the person conducting the interview told the interviewee everything he was required to tell him or her under this code;
- the name of person(s) excluded from the interview room, and the reason for that decision; and,
- the presence of an interpreter, and the reason for this.

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

interviewee and this should also be recorded.

203. In respect of requests for information under section 357(4)(b) or documents under section 357(4)(c), the appropriate officer must keep a copy of the disclosure order together with all the notices requesting information and/or documents under the disclosure order. The appropriate officer must also keep a record of all the documents and information submitted in response to the notices. Receipts must be sent to the supplier of the material if requested.

APPLICATION FOR PRODUCTION ORDER (SECTION 345 PROCEEDS OF CRIME ACT 2002)

The application of **{appropriate officer}** an appropriate officer as defined by section 378 Proceeds of Crime Act 2002 of the **{name of force/agency}** who upon **{oath/affirmation}** states:

{name of person} is subject to a **{confiscation investigation / money laundering investigation}** and

- (i) There are reasonable grounds for suspecting that **{name of person}** has **{benefited from criminal conduct} {committed a money laundering offence}**;
- (i) There are reasonable grounds for believing that material 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
- (ii) There are reasonable grounds for believing it is in the public interest for the material to be provided or for access to be given to it having regard to the benefit likely to accrue to the investigation if the information is obtained and the circumstances in which the material is held.

An order is sought against **{specify the person who appears to be in possession or control of material}** who appears to be in possession or control of material, specifically **{specify the material sought, including where applicable account numbers and the period required}** which does not include material or information that is or consists of items subject to legal privilege or excluded material to **{produce it to {name of appropriate officer} or another appropriate officer} {give {name of appropriate officer} or another appropriate officer access to it} within {seven days/other as appropriate}**

The order is sought for the purposes of the investigation on the grounds outlined in the **{written} {oral}** information.

Signature _____ Date _____

PRODUCTION ORDER

(SECTION 345 PROCEEDS OF CRIME ACT 2002)

IN THE CROWN COURT AT

DATE

Penal Notice

A failure to comply with the terms of this order may constitute a contempt of court for which you may be imprisoned or fined.

To: **{person/organisation}**

An application having been made in pursuance of Section 345 **{(4)(a)}** **{(4)(b)}** Proceeds of Crime Act 2002

By: **{appropriate officer}**

Of the **{name force/agency}**

I am satisfied, having heard the application, that the requirements for making a production order under section 346 Proceeds of Crime Act 2002 are fulfilled.

You are ordered to **{produce to {name of appropriate officer} or another appropriate officer}** **{give {name of appropriate officer} or another appropriate officer access to}** material, specifically **{insert details of material to be provided or given access to}** which does not consist of items subject to legal privilege for a period **{state dates between}** within **{7 days / other period as appropriate}** from the date of this order.

Where the material consists of information contained on a computer, it must be **{produced/access given to it}** in a form which is visible and legible **{and can be taken away}**.

1. It is an offence to prejudice a confiscation or money laundering investigation or prospective investigation by making a disclosure about it or by tampering with documents relevant to the investigation. You should not therefore falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, destruction or disposal of, relevant documents, nor disclose to any other person information or any other matter which is likely to prejudice any investigation into confiscation or money laundering investigation. The penalty for this offence on summary conviction is imprisonment for six months or a fine or both and on conviction on indictment of 5 years imprisonment or a fine or both.
2. Anyone served with, notified or affected by this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant **{giving 2 clear days notice}**.

3. If you have any doubts or concerns about this order you should seek legal advice and / or contact **{address and contact details of appropriate officer}**

Court Stamp

Signature of Judge _____

Date _____

APPLICATION FOR SEARCH AND SEIZURE WARRANT (SECTION 352 PROCEEDS OF CRIME ACT 2002)

The application of **{appropriate officer}** an appropriate officer as defined by section 378 Proceeds of Crime Act 2002 of the **{name of force/agency}** who upon **{oath/affirmation}** states:

{name of person} is subject to a **{confiscation investigation / money laundering investigation}** and a search warrant is sought in relation to material which does not consist of or include privileged or excluded material held on premises situated at **{specify premises}** and:

{On **{date}** a production order under section 345 Proceeds of Crime Act 2002 was made at **{name of Court}** Crown Court by **{His/Her}** Honour **{name of Judge}** which has not been complied with and there are reasonable grounds for believing that the material is on the premises.}

Alternatively

There are reasonable grounds for suspecting that **{name of person}** has **{benefited from criminal conduct}** **{committed a money laundering offence}**, and the **{first/ second}** set of conditions are satisfied; that

[first]

- (i) **{There are reasonable grounds for believing that material on the specified premises is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought ,**
- (ii) **There are reasonable grounds for believing it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the information is obtained, and**
- (iii) **It would not be appropriate to make a production order for the following {reason/s};}**

[second]

- (i) **{there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material;**
{In relation to a confiscation investigation cannot be identified at the time of the application but it –
 - a) **relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct, and**
 - b) **is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.}**
{In relation to a money laundering investigation it cannot be identified at the time of the application but it -
 - a) **relates to the person specified in the application or the question whether he has committed a money laundering offence, and**
 - b) **is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.}**

(ii) It is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is to be obtained, and}

[applies to first and second]

- i. {that it is not practicable to communicate with any person against whom the production order could be made;}**
- ii. {that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises;}**
- iii. {that the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.}**

The warrant is sought for the purposes of the investigation on the grounds outlined in the written information.

Signature _____

Applicant Name _____

Date _____

SEARCH AND SEIZURE WARRANT (SECTION 352 PROCEEDS OF CRIME ACT 2002)

IN THE CROWN COURT AT...

DATE...

Penal Notice

A failure to comply with the terms of this order may constitute a contempt of court for which you may be imprisoned or fined.

To: **{person/organisation}**

An application having been made in pursuance of Section 352 Proceeds of Crime Act 2002

By: **{appropriate officer}** Of the **{name force/agency}**

I am satisfied, having heard the application, that the requirements for issuing a search and seizure warrant under section 352 Proceeds of Crime Act 2002 are fulfilled.

I hereby authorise **{name and address of appropriate person (and ...)}** to enter and search premises situated at **{specify premises}** and seize and retain material which does not consist of items subject to legal privilege or excluded material.

Court Stamp

Signature of Judge _____

Date _____

APPLICATION FOR CUSTOMER INFORMATION ORDER (SECTION 363 PROCEEDS OF CRIME ACT 2002)

The application of **{appropriate officer}** an appropriate officer as defined by section 378 Proceeds of Crime Act 2002 of the **{name of force/agency}** who upon **{oath/affirmation}** states:

{name of person} is subject to a **{confiscation investigation / money laundering investigation}** and

- (1) There are reasonable grounds for suspecting that **{name of person}** has **{benefited from criminal conduct} {committed a money laundering offence}**;
- (2) There are 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,
- (3) There are reasonable grounds for believing it is in the public interest for the customer information to be provided or for access to be given to it having regard to the benefit likely to accrue to the investigation if the information is obtained

An order is sought against **{specify all financial institutions, particular description/s of institutions or a particular institution/s}** in relation to customer information as defined by section 364 Proceeds of Crime Act to provide the information to **{name of appropriate officer}** or another appropriate officer in such manner, and at or by such time or times specified in the written notice.

The order is sought for the purposes of the investigation on the grounds outlined in the **{written} {oral}** information.

Signature _____ Date _____

Authorised by **{name of Senior Authorising Officer}**
{rank / position}

CUSTOMER INFORMATION ORDER (SECTION 363 PROCEEDS OF CRIME ACT 2002)

IN THE CROWN COURT AT...

DATE...

Penal Notice

A failure to comply with the terms of this order may constitute a contempt of court for which you may be imprisoned or fined.

To: **{specify all financial institutions, particular description/s of institutions or a particular institution/s}**

An application having been made in pursuance of section 363 Proceeds of Crime Act 2002

By: **{appropriate officer}** of the **{name force/agency}**

I am satisfied, having heard the application, that the requirements for making a customer information order under section 365 Proceeds of Crime Act 2002 are fulfilled.

You are ordered, on receipt of written notice from an appropriate officer, to provide any customer information, as defined by section 364 Proceeds of Crime Act 2002, held by you in relation to **{name of person and any other information that could assist in identification}** to **{name and address of appropriate officer}** or another appropriate officer in such a manner, and at such a time, as an appropriate officer requires.

Court Stamp

Signature of Judge _____

Date _____

CUSTOMER INFORMATION ORDER

NOTICE IN WRITING

To **{details of institution}**

This is a notice in writing in pursuance of the terms of a customer information order granted on **{date of order}** at **{details of Crown Court}** by **{His/Her}** Honour **{name of judge}**

Penal Notice

By virtue of section 363 of the Proceeds Crime Act 2002, you are required, on receipt of this written notice, to provide any customer information, as defined by section 364 Proceeds of Crime Act 2002, held by you in relation to **{name of person and any other information that could assist in identification}** to **{name of appropriate officer}** or another appropriate officer by **{insert details of the manner in which the information is to be provided}** **{at or by}** **{insert the time or times at or by the information is to be provided}**.

Failure to do so is an offence under section 366 of the Proceeds of Crime Act 2002.

“Customer information” is information whether a person holds, or has held, an account or accounts (whether solely or jointly with another) and where that person is an individual

- a. the account number or numbers;
- b. the person’s full name;
- c. date of birth;
- d. most recent and any previous address;
- e. date or dates on which he or she began to hold the account or accounts, and if he or she has ceased to hold the account or any accounts, the date or dates on which he or she did so;
- f. such evidence of his or her identity obtained by you under or for the purposes of any legislation relating to money ;
- g. the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at your institution jointly with him or her;
- h. the account number or numbers of any other account or accounts held at your institution to which he or she is a signatory and details of the person holding the other account or accounts;

and where the specified person is a company, limited liability partnership or similar body incorporated or established outside the UK,

- i. the account number or numbers;
- j. the person’s full name;

- k. a description of any business which the person carries on;
- l. the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 1985 (c.6) or the Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I. 6)) or corresponding legislation of any country or territory outside the United Kingdom;
- m. any number assigned to it for the purposes of value added tax in the United Kingdom;
- n. its registered office, and previous registered offices, under the Companies Act 1985 (c.6) or the Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I. 6)) or anything similar under corresponding legislation of any country or territory outside the United Kingdom under the Companies Act 1985 or corresponding legislation of any country or territory outside the United Kingdom;
- o. its registered office, and previous registered offices, under the Limited Liability Partnerships Act 2000 (c.12) or corresponding legislation of any country or territory outside Great Britain;
- p. the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date on which it did so;
- q. such evidence of its identity as was obtained by you for the purposes of any legislation relating to money laundering;
- r. the full name, date of birth and most recent address and any previous addresses of any person who is signatory to the account or any of the accounts.

A financial institution has a right to refuse to comply with any requirement under the terms of a customer information order unless the appropriate officer has, if required to do so, produced evidence of authority to issue notice.

A financial institution commits an offence if, without reasonable excuse, it fails to comply with a requirement imposed on it under a customer information order and is liable on summary conviction to a fine.

A financial institution commits an offence if, in purported compliance with a customer information order, it makes a statement it knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular and is liable on summary conviction or on conviction on indictment to a fine.

A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings except on a prosecution for an offence outlined above, on a prosecution for another offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement made in response, or in confiscation proceedings in England and Wales or Northern Ireland

It is an offence to prejudice a confiscation or money laundering investigation or prospective investigation by making a disclosure about it or by tampering with documents relevant to the investigation. You should not therefore falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, destruction or disposal of, relevant documents, nor disclose to any other person

information or any other matter which is likely to prejudice any investigation into confiscation or money laundering investigation. The penalty for this offence on summary conviction is imprisonment for six months or a fine or both and on conviction on indictment of 5 years imprisonment or a fine or both.

Anyone served with, notified or affected by this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant {giving 2 clear days notice}. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant in advance.

If you have any doubts or concerns about this order you should seek legal advice and / or contact **{contact details of appropriate officer}**

Signature _____

Applicant Name _____

Date _____

APPLICATION FOR ACCOUNT MONITORING ORDER (SECTION 370 PROCEEDS OF CRIME ACT 2002)

The application of **{appropriate officer}** an appropriate officer as defined by section 378 Proceeds of Crime Act 2002 of the **{name of force/agency}** who upon **{oath/affirmation}** states:

{name of person} is subject to a **{confiscation investigation / money laundering investigation}** and

- (1) There are reasonable grounds for suspecting that **{name of person}** has **{benefited from criminal conduct}** **{committed a money laundering offence}**;
- (2) There are 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,
- (3) There are reasonable grounds for believing it is in the public interest for the material to be provided or for access to be given to it having regard to the benefit likely to accrue to the investigation if the information is obtained

An order is sought against **{name/details of financial institution}** in relation to account information, specifically **{description of account information}** to provide the information to **{name of appropriate officer}** or another appropriate officer in such manner, and at or by such time or times specified in the order.

The order is sought for the purposes of the investigation on the grounds outlined in the **{written}** **{oral}** information.

Signature _____ Date _____

ACCOUNT MONITORING ORDER (SECTION 370 PROCEEDS OF CRIME ACT 2002)

IN THE CROWN COURT AT...

DATE...

Penal Notice

A failure to comply with the terms of this order may constitute a contempt of court for which you may be imprisoned or fined.

To: **{person/organisation}**

An application having been made in pursuance of Section 370 Proceeds of Crime Act 2002

By: **{appropriate officer}** Of the **{name force/agency}**

I am satisfied, having heard the application, that the requirements for making an account monitoring order under section 371 Proceeds of Crime Act 2002 are fulfilled.

You are ordered to provide account information, specifically **{insert details of information to be provided including the description of the material}** for a period **{enter amount of days}** from the date of this order, to **{name of appropriate officer}** or another appropriate officer by **{insert details of the manner in which the information is to be provided} {at or by} {insert the time or times at or by the information is to be provided}**

1. It is an offence to prejudice a confiscation or money laundering investigation or prospective investigation by making a disclosure about it or by tampering with documents relevant to the investigation. You should not therefore falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, destruction or disposal of, relevant documents, nor disclose to any other person information or any other matter which is likely to prejudice any investigation into confiscation or money laundering investigation. The penalty for this offence on summary conviction is imprisonment for six months or a fine or both and on conviction on indictment of 5 years imprisonment or a fine or both.
2. Anyone served with, notified or affected by this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant **{giving 2 clear days notice}**.
3. If you have any doubts or concerns about this order you should seek legal advice and / or contact **{address and contact details of appropriate officer}**

Court Stamp

Signature of Judge _____

Date _____

ANNEX – APPLICATIONS FOR DISCLOSURE ORDERS ASSET RECOVERY AGENCY LEGACY CONFISCATION CASES

1. SOCA will be able to apply for disclosure orders directly in confiscation investigations, rather than instructing a prosecutor, for ongoing confiscation cases that they have taken from the Assets Recovery Agency. What appears below is essentially reproduced from the previous Code of Practice. In new confiscation investigations, SOCA will be required to apply for disclosure orders via a prosecutor and the main body of this Code will apply. Once SOCA has obtained a disclosure order in relation to a legacy case the provisions of this Code above on the execution etc. of a disclosure order will apply as normal.

Definition

2. A disclosure order is an order authorising SOCA to give notice in writing to any person requiring him or her to answer questions, to provide information or to produce documents with respect to any matter relevant to the confiscation investigation in relation to which the order is sought.
3. Once a disclosure order has been made, SOCA may use the extensive powers set out in section 357(4) of the Act throughout their confiscation investigation. The member of staff of SOCA must serve a notice on any person they wish to question or to ask to provide information or documents.
4. Under section 357(6), where a person is given a notice under a disclosure order, he is not bound to comply with a requirement in the notice unless evidence of the authority to give the notice is produced to him. Where a request to see an authority is made, a copy of the disclosure order should be given to the person.

Statutory requirements

5. The member of staff of SOCA has to satisfy the judge that a confiscation investigation is going on and the order is sought for the purposes of that investigation.

Particular action to be taken in making an application

6. An application for a disclosure order must state:
 - the name of the person who is subject to a confiscation investigation;
 - that the order is sought for the purposes of that investigation;
 - that the investigation is being undertaken by SOCA and that the case was originally accepted and/or commenced by the Assets Recovery Agency;
 - whether SOCA is likely to require answers to questions and/or information and/or documents;

- if practicable, the name of the person or persons against whom the power may be used; and
- the grounds on which the application is made (including details of the investigation);
- why a disclosure order is required in preference to the other powers of investigation.

7. The requirements for making a disclosure order are set out in section 358 of the Act and a person applying for an order must consult the relevant statutory provisions. SOCA must satisfy the judge that there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct. SOCA must also satisfy the judge that there are reasonable grounds for believing that:

- information which may be provided in compliance with a requirement imposed under 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 information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.