

Draft Code of Practice on the Exercise by Constables in Scotland of Search Powers Conferred by Sections 289 and 303C of the Proceeds of Crime Act 2002

November 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

CONTENTS

CHAPTER 1 – GENERAL

- Introduction
- Purpose and scope of the Code
- Principles governing searches under sections 289 and 303C of POCA

CHAPTER 2 – SEARCH POWERS UNDER SECTIONS 289 AND 303C OF POCA: GENERAL REQUIREMENTS

- Items that may be searched for: seizable cash and seizable listed assets
- Legal basis for carrying out a search
- Prior approval to search
- Report on the exercise of search powers without prior judicial approval

CHAPTER 3 – SEARCH OF A PERSON UNDER SECTION 289(3) OR 303C(6) OF POCA

- Scope of the power
- Steps to be taken prior to a search
- Conduct of searches

CHAPTER 4 – SEARCH OF PREMISES (INCLUDING VEHICLES LOCATED ON THOSE PREMISES) UNDER SECTION 289(1) OR 303C(1) OF POCA

- Scope of the power
- Steps to be taken prior to a search
- Conduct of searches

CHAPTER 5 – SEARCH OF VEHICLES UNDER SECTION 289(1D) OR 303C(5) OF POCA

- Scope of the power
- Steps to be taken prior to a search
- Conduct of searches

CHAPTER 6 – RECORDING REQUIREMENTS

- General
- Searches of persons
- Searches of premises
- Searches of vehicles
- Steps to be taken immediately after a search

ANNEXES

- Annex A** **Conduct of Searches – additional considerations where a child or young person is involved**
- Annex B** **Conduct of Searches – additional considerations where a vulnerable adult is involved**
- Annex C** **Establishing a person’s gender for the purpose of searching the person**

GUIDANCE NOTES

Chapter 1 - General

Introduction

- 1.1 It is a fundamental value of our society that we respect the right of every person to go about their lawful business without unjustified interference from the State. Where the State does interact with any person, that interaction should be governed by a respect by the State for that person, and for that person's freedoms and rights. In all its interactions, the State must act with fairness and integrity, and in compliance with the law. Police work is an example of the interaction between the State and the individual, sometimes when the individual is at their most vulnerable. This Code must therefore be read in light of that fundamental value.
- 1.2 Police work in Scotland is carried out in accordance with fundamental policing principles, agreed by Parliament and exemplified in the Police and Fire Reform (Scotland) Act 2012. These are:
- that the main purpose of policing is to improve the safety and wellbeing of persons, localities and communities; and
 - that the police should be accessible, engage with communities, and promote measures to prevent crime, harm and disorder.

These principles inform all police work and, by extension, this Code.

Purpose and scope of the Code

- 1.3 This Code is made under sections 293 and 303H¹ of the Proceeds of Crime Act 2002 ("POCA"), and replaces the Code which was issued in 2015². It governs all searches carried out under Part 5 of POCA, which provides for the civil recovery of the proceeds etc. of unlawful conduct.
- 1.4 More specifically, the Code applies to all searches carried out by constables in Scotland under the following provisions of POCA:
- section 289 – i.e. searches for cash that may be seized and forfeited under of Chapter 3 of Part 5 of POCA (sections 294 and 298, respectively); and
 - section 303C – i.e. searches for certain personal (or moveable) property, referred to as "listed assets" that may be seized and forfeited under Chapter 3A of Part 5 of POCA (sections 303J and 303O, respectively).
- 1.5 The Code does not apply to any other types of search that may result in cash or a listed asset being seized under Part 5 of POCA. So, searches under Part 8 of POCA (investigations), or searches under any other statute or the common law, are not subject to this Code.
- 1.6 The purpose of this Code is to:
- set out the principles under which a search is undertaken;
 - ensure consistency in the exercise of the search powers;
 - explain why, when and how a search may be carried out;
 - specify the information to be recorded in relation to a search; and

¹ Sections 303B to 303Z were inserted into POCA by section 15 of the Criminal Finances Act 2017.

² Entitled "Code of Practice for Constables in Scotland issued under section 293 of the Proceeds of Crime Act 2002", and brought into operation on 1 June 2015 by S.S.I. 2015/220.

- set the standard to which constables can be scrutinised and evaluated.
- 1.7 Nothing in this Code alters or otherwise affects any existing rule of law or legal test, for instance, as to what amounts to reasonable grounds for suspicion or as regards admissibility of evidence. Nor is the Code a statement of the law.
- 1.8 The Code is admissible in evidence in criminal or civil proceedings and must be taken into account by a court or tribunal in any case where it appears to be relevant. However, a failure by a constable to comply with any of its provisions will not of itself make the constable liable to criminal or civil proceedings³.
- 1.9 The Guidance Notes are not part of this Code, but are guidance to constables and others about its application and interpretation. The Annexes are part of the Code.
- 1.10 This Code of Practice must be available to view online⁴ and at all police stations, including those at ports where the powers are (or are likely) to be used.

Principles governing searches under sections 289 and 303C of POCA

- 1.11 Recognising that searches under sections 289 and 303C of POCA involve a significant interference with the personal liberty and privacy of those whose person, vehicle or premises are searched, all search activity must be appropriate, as defined by this Code. To be appropriate it must be:
- **In accordance with law** – that means in accordance with any legal duties imposed on constables, in particular under the Human Rights Act 1998 and the Equality Act 2010, as well as the requirements of sections 289 and 303C (and related provisions under Part 5) of POCA;
 - **Necessary** – that means that the search is required to locate cash or a listed asset that may be seized, detained and forfeited under Part 5 of POCA; and
 - **Proportionate** – both in the decision to carry out a search and in the way in which a search is conducted. In every case, a constable must balance the perceived benefit of the search against the rights of the individual (particularly the right to respect for private and family life, home and correspondence and the right to peaceful enjoyment of possessions, which are both safeguarded by the Human Rights Act 1998).
- 1.12 In addition, any search must be carried out in accordance with the constable's declaration⁵ and, in particular, the following values:
- **Fairness** – a search must be carried out fairly and impartially, and without unlawful discrimination;
 - **Integrity** – a search must not be carried out in a manner which is abusive, discriminatory, or which amounts to harassment or intimidation; the purpose of the search must be genuinely to find cash or a listed asset which is seizable under Part 5 of POCA; and it must reflect the principles of good conduct and personal responsibility;

³ See sections 293(6) and (7) and 303H(6) and (7) of POCA.

⁴ The Code of Practice will be published on the Scottish Government's website at www.gov.scot.

⁵ As set out in section 10 of the Police and Fire Reform (Scotland) Act 2012.

- **Respect** – this involves two aspects: (i) a constable must ensure that, so far as is reasonably practicable, the person being searched understands why they are being searched; and (ii) the procedure must be carried out with respect for individual needs, including religious and cultural values and beliefs; and
- **Accountability** – the principle that constables carrying out a search are fully accountable for their actions, and that all search activity is accurately recorded and open to scrutiny.

Chapter 2 – Search powers under sections 289 and 303C of POCA: general requirements

Items that may be searched for: seizable cash and seizable listed assets

2.1 Section 289 of POCA allows a constable to search for cash which is:

- recoverable property (i.e. cash obtained through unlawful conduct) or is intended by any person for use in unlawful conduct; and
- of an amount not less than the minimum amount (currently £1,000)⁶.

2.2 “Cash” is defined⁷ as any of the following:

- notes and coins in any currency;
- postal orders;
- cheques of any kind, including travellers’ cheques;
- bankers’ drafts;
- bearer bonds and bearer shares;
- gaming vouchers;
- fixed-value casino tokens;
- betting receipts;
- any kind of monetary instrument which the Secretary of State has specified by order made under section 289(7) of POCA.

2.3 Section 303C of POCA allows a constable to search for a listed asset if:

- all or part of it is recoverable property (i.e. property obtained through unlawful conduct) or is intended by any person for use in unlawful conduct; and
- the value of the asset, or the relevant part of the asset, is not less than the minimum value (currently £1,000)⁸.

2.4 The section 303C search powers may be used in respect of more than one listed asset. In that case, they are to apply as if the value of each asset (or part of an asset) was equal to the aggregate value of all of those assets (or parts).

2.5 “Listed asset” is defined⁹ as an item of property that falls within one of the following descriptions of property:

- precious metals;
- precious stones;
- watches;
- artistic works;
- face-value vouchers;
- postage stamps.

⁶ See section 303 of POCA and the Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 (S.I. 2006/1699). A copy of the Order is available [here](#).

⁷ See section 289(6) to (7B) of POCA (as amended/inserted by section 14 of the Criminal Finances Act 2017).

⁸ See section 303Y(1) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

⁹ See section 303B(1) and (4) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

2.6 In this Code:

- “seizable cash” means the cash that may be searched for under section 289 of POCA (and which may be subsequently seized and forfeited under sections 294 and 298, respectively); and
- “seizable listed asset” means a listed asset that may be searched for under section 303C of POCA (and which may be subsequently seized and forfeited under sections 303J and 303O, respectively). “Asset” includes “assets”.

Legal basis for carrying out a search

2.7 Reasonable grounds for suspicion is the legal test that a constable must satisfy before they can exercise any of the search powers under section 289 or 303C of POCA.

2.8 The test must be applied to the particular circumstances in each case and is in two parts:

- First, the constable must have formed a genuine suspicion in their own mind that they are likely to find seizable cash or a seizable listed asset; and
- Second, the suspicion must be reasonable. This means that there must be an objective basis for that suspicion based on facts, information and/or intelligence which are relevant to the likelihood that the cash or listed asset will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts, information and/or intelligence.

Personal factors alone can never support reasonable grounds for suspicion

2.9 The following cannot be used alone as the reason for searching any individual:

- a person’s physical appearance with regard to the relevant protected characteristics set out in section 149 of the Equality Act 2010 – i.e. age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation;
- a person’s clothing or general appearance;
- generalisations or stereotypical images that certain categories of people are more likely to be involved in criminal activity;
- the fact that a person has any previous convictions.

Reasonable grounds for suspicion based on information and/or intelligence

2.10 However, reasonable suspicion can be supported by information or intelligence that refers to personal factors – e.g. intelligence might include a description of a person suspected of carrying seizable cash or a seizable listed asset. Such a description may refer to a person’s physical appearance. Intelligence relating to a person’s previous convictions or pending cases may be relevant in certain circumstances – e.g. where prior behaviour, in combination with other information or intelligence, provides reasonable grounds for suspicion for a search.

2.11 Reasonable grounds for suspicion should normally be linked to accurate and current intelligence or information that seizable cash or a seizable listed asset is being carried by a certain individual (or individuals), or is in a particular vehicle or premises. This would include reports from members of the public or other constables describing:

- a person who has been seen carrying such cash or listed asset; or
- a vehicle or premises in which such cash or listed asset has been seen.

2.12 Searches are more likely to be effective, legitimate and secure public confidence when a constable's reasonable grounds for suspicion are based on a range of objective factors. The use of the section 289 or 303C search powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to constables and they are well-informed about local crime patterns. Constables must therefore be provided with (or otherwise have access to) such information, and acquaint themselves with it.

Reasonable grounds for suspicion based on behaviour and surrounding circumstances

2.13 Reasonable suspicion may also exist without specific information or intelligence and on the basis of a person's behaviour. For instance, if a constable encounters someone on the street who is obviously trying to hide something, the constable may have reasonable grounds for suspicion (depending on the other surrounding circumstances) based on the fact that the behaviour in question is often linked to the carrying of seizable cash or a seizable listed asset.

2.14 A constable must be able to explain why they formed that suspicion, with reference to specific aspects of the person's behaviour or conduct which the constable observed. A hunch or an instinct, which cannot be explained or justified to an objective observer, can never amount to reasonable grounds. A constable should always be alert to the possibility of innocent explanations for apparently suspicious behaviour.

Questioning to decide whether to carry out a search

2.15 A constable who has reasonable grounds for suspicion may detain¹⁰ a person in order to carry out a search. If a constable detains someone for the purpose of a search, the constable must inform them of this as soon as the detention begins.

2.16 In some cases, a constable will have specific information and/or intelligence about a person, the quality and nature of which is such that the constable may reasonably decide that it is unnecessary to ask the person any questions before searching them.

2.17 However, in other cases, reasonable grounds for suspicion may emerge during a constable's encounter with a person. Constables have many encounters with members of the public and this Code does not affect their ability to speak to, and engage with, any member of the public. There is no power under section 289 or 303C of POCA to detain a person in order to find grounds for a search. But if reasonable grounds for suspicion emerge during such an encounter, a constable may detain the person to search them even though no grounds for a search existed when the encounter began. Before carrying out the search in such a case, the

¹⁰ See section 289(4)(b) of POCA (as amended by paragraph 2(4) of Schedule 11 to the Serious Crime Act 2007 and section 63(3) of the Policing and Crime Act 2009) and section 303C(8)(b) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

constable may consider it appropriate to ask questions about the person's behaviour or presence which gave rise to the suspicion.

- 2.18 A constable must inform the person being detained that they do not have to provide any personal details, or to say anything (see paragraph 3.4). But the person has the right to volunteer information with a view to avoiding a search. The constable should therefore give the person an opportunity to provide information if the person wishes to do so. So far as reasonably practicable, the constable must ensure that the person understands what has been explained to them.
- 2.19 As a result of questioning the detained person, the constable's reasonable suspicion may be confirmed or, because of a satisfactory explanation, be allayed. Reasonable grounds for suspicion cannot be founded retrospectively by such questioning during a person's detention, or by the person's refusal to answer any questions asked; the suspicion must have existed before the questioning.
- 2.20 If questioning the detained person confirms the constable's reasonable grounds for suspicion, the constable may proceed to search the person in accordance with Chapter 3.
- 2.21 No search may take place, however, if there cease to be reasonable grounds for suspicion as a result of the questioning (or any other circumstances which come to the constable's attention). In the absence of any other lawful power to detain the person, the person is free to leave and must be told that (see Guidance Note 1).

Prior approval to search

- 2.22 The search powers under section 289 or 303C of POCA may be exercised only with prior approval unless, in the circumstances, it is not practicable to obtain such approval before exercising the power¹¹.
- 2.23 Prior approval must be obtained from a sheriff or, if that is not practicable in any case, from a senior officer (i.e. a police constable of at least the rank of inspector).
- 2.24 Obtaining prior approval might be impracticable, for instance, because of the immediacy of the particular circumstances. This is more likely to be the case in relation to the search of a person or vehicle, rather than the search of premises. But constables must assess each case on its merits. There should be no assumption that prior approval is impracticable for certain types of search. Constables must carefully consider and record the reasons for any decision to proceed with the search without obtaining prior approval.

Seeking judicial approval

- 2.25 In order to obtain the prior approval of a sheriff, a constable will need to contact the clerk of the sheriff court to arrange a hearing which can be held without notice and in private.
- 2.26 The usual reason for an application to be made without notice, and heard in private, is to avoid alerting any person(s) reasonably suspected of holding seizable cash or a seizable listed asset that such action is being considered. Otherwise, the person(s) concerned may try to move or conceal the cash or asset so as to frustrate the operation of the powers. If there is no concern that the seizable cash or seizable

¹¹ Section 290(1) of POCA and section 303E(1) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

listed asset could be moved, then the person(s) connected to the cash or asset should be notified of the intention to make an application for prior approval to carry out a search.

2.27 The constable will need to:

- identify themselves to the sheriff (giving name, rank, any warrant or other identifying number, and details of the police station to which they are attached);
- lodge a written application;
- explain to the sheriff the reasonable grounds for suspicion which the constable has to justify exercising the relevant search power(s) under section 289 or 303C;
- identify the person(s), premises and/or vehicle(s) to be searched; and
- answer any relevant questions that the sheriff may have.

Seeking senior officer approval

2.28 Prior approval from a senior officer is only to be obtained if it is not practicable, in the circumstances, to seek prior approval from a sheriff. The senior officer should make a written record of the decision and the basis for making it.

2.29 The constable seeking such approval should explain to the senior officer:

- the reasonable grounds for suspicion which the constable has to justify exercising the relevant search power(s) under section 289 or 303C; and
- the reasons why it is impracticable to obtain prior approval from a sheriff.

2.30 Prior oral approval from a senior officer is only to be obtained in circumstances where such approval cannot be obtained from a Sheriff, and where timescales dictate that written authority cannot be obtained immediately. The senior officer should only give oral approval if satisfied that the necessary grounds for suspicion exist, and that obtaining prior judicial approval is not practicable. Any oral approval should be supported by written approval as soon as is reasonably practicable; and, in that case, the written approval should set out why it was necessary for oral approval to have been sought and given in the first instance. Senior officer oral approval should not be given as a matter of routine.

Prior approval

2.31 A search should be carried out as soon as practicable after obtaining prior approval (and, in the case of a judicial approval, subject to any time limit specified by the sheriff).

2.32 If a constable requires to exercise more than one of the search powers under section 289 or 303C, the constable must (so far as practicable) obtain prior approval for each search. Prior approval for one type of search does not apply to any other. For instance, if prior judicial or senior officer approval is obtained to search a person, and during that search the constable decides to search a vehicle under the person's control, separate prior approval is required to search the vehicle.

Refusal of prior approval

2.33 If an application for prior approval is refused (either by a sheriff or a senior officer) the constable should not undertake a search or make a fresh application for prior approval of a search of the same person(s), premises or vehicle(s) unless there are

new reasonable grounds for suspicion. In any new application for prior approval, the constable should inform the sheriff or the senior officer of the prior refusal and the reasons for such refusal. The constable should also detail any prior approval granted that did not lead to a search, and the reasons for the search not being carried out.

Searches conducted without prior approval

2.34 If obtaining prior approval from a senior officer for a search is impracticable, a search may be conducted without approval. It is unlikely that obtaining such approval will be impracticable unless, exceptionally, there is some problem in making contact with a senior officer.

2.35 If a constable carries out a search without any prior approval from a senior officer, the constable must explain the following to a senior officer as soon as is reasonably practicable (and, in any event, no later than 24 hours after exercising the relevant search power):

- the reasonable grounds for suspicion which led the constable to exercise the relevant search power(s) under section 289 or 303C; and
- the reason(s) why it was impracticable to obtain prior approval.

2.36 The senior officer must make a written record of this information.

Report on the exercise of search powers without prior judicial approval

2.37 If a search is conducted without a sheriff's prior approval – whether with or without a senior officer's approval – the constable who exercised the relevant search power must give a written report to “the appointed person” in accordance with section 290(6)¹² and (7) or 303E(6) and (8)¹³ of POCA as set out below.

2.38 Such a report must be provided where:

- in the case of a search under section 289:
 - the search does not result in the seizure of cash under section 294 of POCA; or
 - any cash so seized is not detained for more than 48 hours¹⁴ (calculated in accordance with section 295(1B) of POCA);
- in the case of a search under section 303C:
 - the search does not result in the seizure of a listed asset under section 303J of POCA; or
 - any listed asset so seized is not detained for more than 48 hours¹⁵ (calculated in accordance with section 303K(5) of POCA).

2.39 The report must set out the circumstances which led the constable to believe that:

- the search powers were exercisable; and
- it was not practicable to obtain prior judicial approval.

¹² As amended by section 100(3) of the Serious Organised Crime and Police Act 2005, paragraph 3(3) of Schedule 11 to the Serious Crime Act 2007 and paragraph 3(b) of Schedule 48 to the Finance Act 2013.

¹³ As inserted by section 15 of the Criminal Finances Act 2017.

¹⁴ Detention of cash for more than 48 hours requires authorisation by a sheriff: see section 295(2) of POCA (as amended by section 64(1) of the Policing and Crime Act 2009).

¹⁵ Detention of listed assets for more than 48 hours requires authorisation by a sheriff: see section 303L(1) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

2.40 This should include details of:

- the reasons for the constable being on any premises which were searched under section 289(1) or 303C(1);
- the reasonable grounds for the constable suspecting that there was seizable cash or a seizable listed asset on the premises, in the vehicle or on the person concerned; and
- the necessity for an immediate search.

2.41 If the prior approval of a senior officer was obtained, the report should state which senior officer gave the approval and their reasons for doing so. If the prior approval of a senior officer was not obtained, the report should state the reasons for this, and specify which senior officer was subsequently informed of the search and when that notification was given.

2.42 Some investigations may involve multiple searches – e.g. various premises, vehicles and/or persons may require to be searched using a combination of the powers under section 289 and/or 303C. In those cases, a report is required in relation to each search that is conducted under section 289 or 303C without prior judicial approval. Whether it is appropriate to provide a single (combined) report, or separate reports, will depend on the level of detail in common. Regardless, the information should be presented to the appointed person in the way which is most helpful and transparent about the facts of the case and the decision-making involved.

2.43 The report must be submitted to the independent person appointed by the Scottish Ministers under section 290 or 303E of POCA. Reports should be sent to:

**The Appointed Person for Scotland
c/o Organised Crime Unit
1WR, St Andrews House
2 Regent Road
EDINBURGH
EH1 3DG**

2.44 The report must be submitted as soon as is reasonably practicable and, in any event, no later than 14 days after the exercise of the relevant search power(s). Any supplementary information which the appointed person reasonably requires should also be submitted within 14 days of the request.

Chapter 3 – Search of a person under section 289(3) or 303C(6) of POCA

Scope of the power

- 3.1 A constable may search a person under section 289(3)¹⁶ or 303C(6)¹⁷ of POCA if the constable has reasonable grounds for suspecting that the person is carrying seizable cash or a seizable listed asset. The power allows a constable, so far as they think it necessary or expedient for the purpose of finding such cash or listed asset, to require the person:
- to permit a search of any article the person has with them; or
 - to permit a search of their person.
- 3.2 The constable may detain the person¹⁸, but only for as long as is necessary to carry out the search (unless the person is arrested or detained under another power). Every reasonable effort should be made to minimise disruption to the person being searched and to respect their dignity.
- 3.3 The search power under section 289(3)(b) or 303C(6)(b) does not extend to requiring a person to undergo an intimate search or a strip search¹⁹. An intimate search is one involving a physical, and not just a visual, examination of a person's body orifices. A strip search is any search which is not an intimate search but which involves the removal of an article of clothing that is being worn (wholly or partly) on the trunk, and is being so worn either next to the skin or next to an article of underwear.

Steps to be taken prior to a search

- 3.4 Before searching a person who is detained for the purpose of a search under section 289(3) or 303C(6) of POCA, a constable must take reasonable steps:
- if not in uniform, to show their warrant card to the person to be searched; and
 - whether or not in uniform, to inform the person of the following:
 - the constable's name and number (except where the constable reasonably believes that giving their name might put the constable, or another constable, in danger, in which case a warrant or other identification number must be given);
 - the name of the police station to which the constable is attached (except where the constable reasonably believes that giving the name of the police station might put the constable, or another constable, in danger);
 - that the constable has reasonable grounds for suspecting that the person is carrying cash or a listed asset, which is of an amount/value not less than the minimum amount/value and which has been obtained through unlawful conduct or is intended for use in unlawful conduct (the basis for the suspicion should be explained by reference to (a) any information and/or intelligence about the person concerned, and/or (b) some specific aspect of the person's behaviour);

¹⁶ As amended by paragraph 2(4) of Schedule 11 to the Serious Crime Act 2007.

¹⁷ As inserted by section 15 of the Criminal Finances Act 2017.

¹⁸ See section 289(4)(b) of POCA (as amended by paragraph 2(4) of Schedule 11 to the Serious Crime Act 2007 and section 63(3) of the Policing and Crime Act 2009) and section 303C(8)(b) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

¹⁹ Within the meaning of section 164 of the Customs and Excise Management Act 1979: see section 289(8) of POCA and section 303D(2) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

- that the person is required to permit a search under section 289(3) or 303C(6) of POCA for the purpose of finding such cash or listed asset, and that they are being detained for the purpose of that search;
- that the person does not have to provide any personal details, or to say anything – although, the person has the right to volunteer information with a view to avoiding a search and, so, the constable must give the person an opportunity to confirm or deny whether they are carrying seizable cash or a seizable listed asset and to hand over any such cash or listed asset;
- that the constable is required to make a record of the search, and that the person is entitled to receive a copy of that record in accordance with the requirements of this Code (the constable must explain what those requirements are).

- 3.5 These steps do not necessarily have to be followed in the above order, as the individual circumstances of a case may require some flexibility. However, all of the steps must be undertaken before any search is conducted.
- 3.6 In dealing with the person, the constable should use everyday language and build a rapport where possible. The constable must ensure, so far as reasonably practicable, that the person understands why they are to be searched and what the search will involve.
- 3.7 There may be cases where the person to be searched does not appear to understand what is being said, or is deaf or has difficulty with hearing and/or speaking, or there is doubt about the person's ability to understand and/or speak English. In those cases, the constable must take reasonable steps to bring information regarding the person's rights and any relevant provision(s) of this Code to their attention. Where appropriate and practicable, the constable should arrange for a suitable person to interpret or otherwise help the constable to give the required information (see also Annexes A and B). If no such support is available, the constable should not proceed with the search if they cannot determine that the person understands what is being explained. In each case, the constable must record any communication difficulties encountered and the reasons for either proceeding with or abandoning the search (including details of any additional support arrangements made).

Conduct of searches

- 3.8 All searches should be carried out with fairness, integrity and respect for the person concerned. A constable must also take account of the additional considerations set out in:
- Annex A, if searching a child or young person; or
 - Annex B, if searching a vulnerable adult.
- 3.9 The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A constable may use reasonable force only if the person refuses to co-operate, and it is considered to be necessary and proportionate in all the circumstances. This means using the minimum amount of force required to achieve the lawful objective of the search.

- 3.10 The search must be carried out at, or near, the place where the person is first detained (see Guidance Note 2).
- 3.11 The length of time for which a person may be detained must be reasonable and kept to the minimum necessary to carry out the search.
- 3.12 The thoroughness and extent of the search will depend on the circumstances, including what is suspected of being carried, and by whom. For instance, the suspicion may relate to a particular item (whether seizable cash or a seizable listed asset) which is seen to be, or there is good reason to suspect has been, slipped into a person's pocket or bag. Subject to reasonable consideration of the searching constable's safety, the search in that case must be confined to that pocket or bag if there are no other grounds for suspicion and no opportunity for the item to have been moved elsewhere. In the case of a small item which can readily be concealed anywhere on the person, a more extensive search may be necessary. Similarly, the recovery of a certain seizable listed asset may provide reasonable grounds for the constable to suspect that the person has additional seizable listed assets in their possession which would warrant a more extensive search.
- 3.13 A search must stop as soon as its objective has been fulfilled or, alternatively, as soon as the constable is satisfied that the person is not carrying seizable cash or a seizable listed asset. This does not prevent a further search, with prior approval so far as practicable, if new information comes to light to justify such a search.
- 3.14 A person must not be asked to remove any article of clothing in public other than an outer coat, a jacket, gloves, headgear or footwear (see Guidance Note 3). Particular sensitivity and discretion should be exercised where a constable reasonably requires the removal of any headgear which the constable believes the person is wearing as part of their religious observance, cultural identity or gender expression (see Guidance Note 4). A search in public of a person's clothing which has not been removed must be restricted to a superficial examination of outer garments. This does not, however, prevent a constable from placing their hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to find seizable cash or a seizable listed asset. Subject to any special considerations concerning the removal of headgear, a person's hair may also be searched in public having due regard to gender, identity or other relevant religious or cultural differences (see Guidance Note 4).
- 3.15 If on reasonable grounds it is considered necessary to conduct a more thorough search, this should be done out of public view (e.g. in a police van or in a nearby police station). Any search involving the removal of more than an outer coat, a jacket, gloves, headgear or footwear may only be made by a constable of the same sex as the person searched, and may not be made in the presence of anyone of the opposite sex (see Annex C for exceptions). The number of persons who witness the search must, so far as possible, be kept to an absolute minimum.
- 3.16 It may be that such a search reveals an item reasonably suspected of containing seizable cash or a seizable listed asset (e.g. precious stones) which is in an article of clothing being worn on the trunk, either next to the skin or next to an article of underwear (e.g. a money belt). Although there is no power under section 289 or 303C of POCA to require the person to submit to a strip search (and this should be explained to the person), there is nothing to prevent a constable from asking the person to voluntarily remove the item and hand it over. If the person refuses, however, there is no power to force the person to remove it.

3.17 If the constable finds seizable cash or a seizable listed asset during a search, they should give the person who has possession of it an opportunity to provide an explanation for its ownership, origins, purpose and destination. If, in a particular case, the questioning covers whether the person has committed an offence, it is likely to constitute questioning that requires a caution.

Chapter 4 – Search of premises (including vehicles located on those premises) under section 289(1) or 303C(1) of POCA

Scope of the power

- 4.1 If a constable is lawfully on any premises and has reasonable grounds for suspecting that there is seizable cash or a seizable listed asset on the premises, the constable may search for such cash or listed asset there under section 289(1)²⁰ or 303C(1)²¹ of POCA.
- 4.2 No right of entry is conferred by either section 289(1) or section 303C(1). In order to search for seizable cash or a seizable listed asset on any premises, a constable must already be lawfully on the premises and have obtained prior approval so far as practicable. This would include a search of premises undertaken with the consent of a person entitled to grant entry to the premises. It would also include a search carried out when a constable has exercised a power of entry conferred by another statute, the common law or by a search warrant granted in some other connection, and circumstances lead the constable to reasonably suspect that there is seizable cash or a seizable listed asset on the premises.
- 4.3 “Premises” has the same meaning as in the Police and Criminal Evidence Act 1984; it includes any place and, in particular, includes any vehicle²². So, a constable who is lawfully on private premises may use section 289(1) or 303C(1) to search for seizable cash or a seizable listed asset in any vehicle located on those premises. Otherwise, there is a separate power to search vehicles under section 289(1D) or 303C(5) of POCA (see Chapter 5). None of the powers to search a vehicle, however, permit a constable to force entry into the vehicle.

Steps to be taken prior to a search

Consent

- 4.4 If a constable proposes to search premises by virtue of consent, rather than by virtue of any other power or authority, the consent must be given (without coercion or duress) by the person entitled to do so before any search can take place. The constable must:
- make such enquiries as are necessary to be satisfied that the person is entitled to give such consent;
 - explain to the person so entitled that they are not obliged to give consent, and that any consent given may be withdrawn at any time before the search is completed (i.e. either before the search starts or while it is underway); and
 - make a written record of any consent given and, so far as possible, get the person who gives consent to sign this.
- 4.5 The constable must not enter and search the premises if the consent is not being given freely, or it comes to light that the person purporting to give consent is not entitled to do so.

²⁰ As amended by paragraph 2(2) of Schedule 11 to the Serious Crime Act 2007 and paragraph 2(2) of Schedule 48 to the Finance Act 2013.

²¹ As inserted by section 15 of the Criminal Finances Act 2017.

²² See section 316(1) of POCA; section 23 of the Police and Criminal Evidence Act 1984 defines “premises”.

Information to be provided

4.6 Before searching any premises under section 289(1) or 303C(1) of POCA, a constable must take reasonable steps:

- if not in uniform, to show their warrant card to the appropriate person – i.e. the person in charge of the premises at the time of search (e.g. an owner or occupier) or, where consent is the lawful basis for the search, the person giving such consent;
- whether or not in uniform, to explain the purpose of the proposed search to the appropriate person; and
- if applicable, to show the person in charge of the premises any search warrant or other document authorising the constable to be there.

4.7 In particular, the constable must inform the appropriate person of the following:

- the constable's name and number (except where the constable reasonably believes that giving their name might put the constable, or another constable, in danger, in which case a warrant or other identification number must be given);
- the name of the police station to which the constable is attached (except where the constable reasonably believes that giving the name of the police station might put the constable, or another constable, in danger);
- that the constable has reasonable grounds for suspecting that there is on the premises cash or a listed asset which is of an amount/value not less than the minimum amount/value and which has been obtained through unlawful conduct or is intended for use in unlawful conduct (the basis for the suspicion should be explained by reference to (a) any information and/or intelligence about the premises concerned, and/or (b) any other circumstances);
- that section 289(1) or 303C(1) of POCA (whichever power is being used) allows the constable to search the premises for the purpose of finding such cash or listed asset;
- that the person does not have to provide any personal details, or to say anything – although, the person has the right to volunteer information with a view to avoiding a search and, so, the constable must give the person an opportunity to confirm or deny whether there is seizable cash or a seizable listed asset on the premises and to hand over any such cash or listed asset;
- that the constable is required to make a record of the search, and that the person is entitled to receive a copy of that record in accordance with the requirements of this Code (the constable must explain what those requirements are).

4.8 These steps do not necessarily have to be followed in the above order, as the individual circumstances of a case may require some flexibility. However, all of the steps must be undertaken before any search is conducted.

4.9 When explaining the situation to the appropriate person, the constable should use everyday language and ensure, so far as reasonably practicable, that the person understands why the premises are to be searched and what the search will involve.

4.10 There may be cases where the person does not appear to understand what is being said, or is deaf or has difficulty with hearing and/or speaking, or there is doubt about the person's ability to understand and/or speak English. In those cases, the constable must take reasonable steps to bring information regarding the person's rights and any relevant provision(s) of this Code to their attention. Where appropriate and practicable, the constable should arrange for a suitable person to interpret or otherwise help the constable to give the required information (see also Annex B). If no such support is available, the constable should not proceed with the search if they cannot determine that the person understands what is being explained. In each case, the constable must record any communication difficulties encountered and the reasons for either proceeding with or abandoning the search (including details of any additional support arrangements made).

Conduct of searches

4.11 All searches must be conducted with fairness, integrity and respect for the property and privacy of the owner or occupier of the premises searched. Every reasonable effort should be made to minimise any disruption caused.

4.12 A search must be made at a reasonable hour – i.e. a search of domestic premises must be conducted outwith normal sleeping hours, and a search of business premises must be conducted during its normal business hours, unless this might frustrate the purpose of the search.

4.13 The premises may be searched only to the extent necessary to achieve the objective of the search, and the length of time taken to carry out the search must be reasonable and kept to a minimum. A search must stop as soon as its objective has been fulfilled or, alternatively, as soon as the constable in charge of the search is satisfied that there is no seizable cash or seizable listed asset on the premises. This does not prevent a further search, with prior approval so far as practicable, if new information comes to light to justify such a search.

4.14 If the constable finds seizable cash or a seizable listed asset during a search, they should give the appropriate person an opportunity to provide an explanation for its ownership, origins, purpose and destination. If, in a particular case, the questioning covers whether the person has committed an offence, it is likely to constitute questioning that requires a caution.

4.15 On completion of the search, the constable in charge must ensure that the premises are left secure (as appropriate).

Chapter 5 – Search of vehicles under section 289(1D) or 303C(5) of POCA

Scope of the power

- 5.1 A constable has no power under section 289 or 303C of POCA to force entry into a vehicle.
- 5.2 The search power under section 289(1D)²³ or 303C(5)²⁴ may be used if a constable has reasonable grounds for suspecting that there is seizable cash or a seizable listed asset in a vehicle. It allows a constable to require a person who is in (or is in the vicinity of) the vehicle – and under whose control the vehicle appears to be – to permit entry to, and a search of, that vehicle.
- 5.3 The constable may detain the vehicle for so long as is necessary to carry out the search²⁵.
- 5.4 The power can generally only be exercised if the vehicle is in a public place, or any other place (other than a dwelling) to which people have ready access. However, where the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the power may be used only if the constable has reasonable grounds for believing that:
- the person who has control over the vehicle does not reside in the dwelling; and
 - the vehicle is there without the express or implied permission of a person who does reside there.
- 5.5 Otherwise, if the vehicle is considered to be on private property, the power to search premises under section 289(1) or 303C(1) may apply instead (see Chapter 4).

Steps to be taken prior to a search

- 5.6 Before searching a vehicle which is detained for the purpose of a search under section 289(1D) or 303C(5) of POCA, a constable must take reasonable steps:
- if not in uniform, to show their warrant card to the person with control over the vehicle; and
 - whether or not in uniform, to inform the person of the following:
 - the constable's name and number (except where the constable reasonably believes that giving their name might put the constable, or another constable, in danger, in which case a warrant or other identification number must be given);
 - the name of the police station to which the constable is attached (except where the constable reasonably believes that giving the name of the police station might put the constable, or another constable, in danger);
 - that the constable has reasonable grounds for suspecting that there is in the vehicle cash or a listed asset, which is of an amount/value not less than the minimum amount/value and which has been obtained through unlawful conduct or

²³ As inserted by section 63(2) of the Policing and Crime Act 2009, and amended by paragraph 2(3) of Schedule 48 to the Finance Act 2013.

²⁴ As inserted by section 15 of the Criminal Finances Act 2017.

²⁵ See section 289(4)(a) of POCA (as amended by paragraph 2(4) of Schedule 11 to the Serious Crime Act 2007 and section 63(3) of the Policing and Crime Act 2009) and section 303C(8)(a) of POCA (as inserted by section 15 of the Criminal Finances Act 2017).

is intended for use in unlawful conduct (the basis for the suspicion should be explained by reference to (a) any information and/or intelligence about the vehicle concerned, and/or (b) any other circumstances);

- that the person is required to permit entry to, and a search of, the vehicle under section 289(1D) or 303C(5) of POCA for the purpose of finding such cash or listed asset, and that the vehicle is being detained for the purpose of that search;

- that the person does not have to provide any personal details, or to say anything – although, the person has the right to volunteer information with a view to avoiding a search and, so, the constable must give the person an opportunity to confirm or deny whether there is seizable cash or a seizable listed asset in the vehicle and to hand over any such cash or listed asset;

- that the constable is required to make a record of the search, and that the person is entitled to receive a copy of that record in accordance with the requirements of this Code (the constable must explain what those requirements are).

5.7 These steps do not necessarily have to be followed in the above order, as the individual circumstances of a case may require some flexibility. However, all of the steps must be undertaken before any search is conducted.

5.8 When explaining the situation to the person with control over the vehicle, the constable should use everyday language and ensure, so far as reasonably practicable, that the person understands why the vehicle is to be searched and what the search will involve.

5.9 There may be cases where the person does not appear to understand what is being said, or is deaf or has difficulty with hearing and/or speaking, or there is any doubt about the person's ability to understand English. In those cases, the constable must take reasonable steps to bring information regarding the person's rights and any relevant provision(s) of this Code to their attention. Where appropriate and practicable, the constable should arrange for a suitable person to interpret or otherwise help the constable to give the required information (see also Annex B). If no such support is available, the constable should not proceed with the search if they cannot determine that the person understands what is being explained. In each case, the constable must record any communication difficulties encountered and the reasons for either proceeding with or abandoning the search (including details of any additional support arrangements made).

Conduct of searches

5.10 All searches must be conducted with fairness, integrity and respect for the vehicle being searched as well as the privacy of the person with control over it. Every reasonable effort should be made to minimise any disruption caused.

5.11 The vehicle may be searched only to the extent necessary to achieve the objective of the search, and the length of time taken to carry out the search must be reasonable and kept to a minimum. A search must stop as soon as its objective has been fulfilled or, alternatively, as soon as the constable in charge of the search is satisfied that there is no seizable cash or seizable listed asset in the vehicle. This does not prevent a further search, with prior approval so far as practicable, if new information comes to light to justify such a search.

- 5.12 If the constable finds seizable cash or a seizable listed asset during a search, they should give the person with control over the vehicle an opportunity to provide an explanation for its ownership, origins, purpose and destination. If, in a particular case, the questioning covers whether the person has committed an offence, it is likely to constitute questioning that requires a caution.
- 5.13 On completion of the search, the constable in charge must ensure that the vehicle is left secure (as appropriate).

Chapter 6 – Recording requirements

General

- 6.1 A constable who has carried out a search under section 289 or 303C of POCA must make a written record of it at the time, unless there are exceptional circumstances which make this impracticable (see Guidance Note 5). If a written record is not made at the time, the constable must make one as soon as reasonably practicable afterwards and also note the reasons for the delay. There may be situations in which it is not practicable to obtain all the information required to complete a written record, but the constable must make every reasonable effort to do so and, if necessary, make a partial record of the search.
- 6.2 A separate written record is required for each person, premises or vehicle searched.
- 6.3 There is no obligation on any of the following persons to give their name, address and date of birth (see paragraphs 3.4, 4.7 and 5.6):
- a person who is searched under section 289(3) or 303C(6) of POCA;
 - a person who is in charge of premises that are searched under section 289(1) or 303C(1) of POCA or (where appropriate) a person who gives consent for such a search;
 - a person who has control over a vehicle that is searched under section 289(1D) or 303C(5) of POCA.
- 6.4 Also, sections 289 and 303C do not confer any power of detention for the purpose of obtaining those personal details if the person concerned is unwilling to provide them. If (at an earlier stage) the person has already opted not to give those details, the constable should not ask for them (again) for the purpose of completing the record.
- 6.5 Even though the person concerned may choose not to provide any personal details, the information detailed below should always (so far as possible) be included in the written record of a search.
- 6.6 However, nothing in this Code requires the names of constables to be recorded in the written record of the search where a constable reasonably believes that disclosing names might endanger the constable, or any other constable. In such cases, the record should disclose the constable's warrant or identification number and the police station to which the constable is attached – unless the constable reasonably believes that giving the name of the police station might also put the constable, or any other constable, in danger.

Searches of persons

- 6.7 Where a person is searched under section 289(3) or 303C(6) of POCA, the following information must (so far as possible) be recorded:
- details of the constable conducting the search, the corroborating constable and any other constable(s) present during the search (including the police station to which they are attached – but see paragraph 6.6);
 - the name of the person searched (if provided) and, in appropriate cases, a description of the person (including estimated height and weight, build, clothing and any distinguishing features);
 - the person's date of birth and age (if provided);

- the constable's estimate of the person's age, if date of birth/age is not provided and the constable estimates the person to be under 18 years of age;
- the person's self-defined ethnicity and national origin (if provided – see Guidance Note 6);
- the person's gender (see Annex C and Guidance Note 7);
- the person's address (if provided);
- the details of any other person present during the search (if provided);
- the date, time and locus of detention;
- the date, time and locus of search (if different from when and where the person was first detained);
- the specific search power used – i.e. section 289(3) or 303C(6) of POCA;
- the grounds for carrying out the search;
- whether the prior approval of a sheriff or senior officer was obtained and, if a search was conducted without prior judicial approval, the reason for not obtaining such approval;
- the outcome of the search (e.g. seizure of cash under section 294 of POCA, seizure of a listed asset under section 303J of POCA, or no seizure/further action);
- details or a description of any cash or listed asset(s) found and seized – if possible, signed by the person searched;
- a note of any explanation given by the person as to the ownership, origins, purpose and destination of any cash or listed asset(s) found and seized;
- a note of any injury to the person, or damage to property, which was caused as a result of the search (and the circumstances in which it was caused);
- the date and time at which the detention and search ended; and
- any other relevant information.

6.8 The record of the grounds for carrying out the search must, briefly but informatively, explain the reasonable grounds for suspecting that the person was carrying seizable cash or a seizable listed asset by reference to (a) any information and/or intelligence about the person concerned, and/or (b) some specific aspect of the person's behaviour and/or any other circumstances.

6.9 Even if a person who is detained for the purpose of a search under section 289(3) or 303C(6) is not subsequently searched (e.g. because information comes to light which removes the reasonable grounds for suspicion), a written record must still be made.

Searches of premises

6.10 Where any premises are searched under section 289(1) or 303C(1) of POCA, the following information must (so far as possible) be recorded:

- details of the constable in charge of the search and the names of all other constables who conducted, or were present during, the search (including the police station to which they are attached – but see paragraph 6.6)
- the address of the premises searched (and, if relevant, the specific part of those premises searched or the registration number of any vehicle searched on the premises);
- the name, date of birth and any alternative address of the person in charge of the premises or (where appropriate) of the person consenting to the search (if provided);
- the details of any other person on the premises and present during the search (if provided);
- the date and time of the search;

- the specific search power used – i.e. section 289(1) or 303C(1) of POCA;
- the grounds for carrying out the search;
- whether the prior approval of a sheriff or senior officer was obtained and, if a search was conducted without prior judicial approval, the reason for not obtaining such approval;
- the outcome of the search (e.g. seizure of cash under section 294 of POCA, seizure of a listed asset under section 303J of POCA, or no seizure/further action);
- details or a description of any cash or listed asset(s) found and seized – if possible, signed by the person in charge of the premises or (where appropriate) the person consenting to the search;
- a note of any explanation given by the person as to the ownership, origins, purpose and destination of any cash or listed asset(s) found and seized;
- a note of any injury to a person, or damage to property, which was caused as a result of the search (and the circumstances in which it was caused);
- the date and time at which the search ended;
- the arrangements made (if any) to secure the premises after the search; and
- any other relevant information.

6.11 The record of the grounds for carrying out the search must, briefly but informatively, explain the reasonable grounds for suspecting that there was seizable cash or a seizable listed asset on the premises by reference to (a) any information and/or intelligence about the premises concerned, and/or (b) any other circumstances.

6.12 A written record must still be made even if –

- the premises are not ultimately searched (e.g. because information comes to light which removes the reasonable grounds for suspicion);
- the search is not completed (e.g. because any necessary consent is withdrawn).

Searches of vehicles

6.13 Where any vehicle is searched under section 289(1D) or 303C(5) of POCA, the following information must (so far as possible) be recorded:

- details of the constable conducting the search, the corroborating constable and any other constable(s) present during the search (including the police station to which they are attached – but see paragraph 6.6)
- the registration number of the vehicle searched;
- the name, date of birth and address of the person with control over the vehicle (if provided);
- the details of any other person present during the search (if provided);
- the date and time of the search;
- the location of the vehicle;
- the specific search power used – i.e. section 289(1D) or 303C(5) of POCA;
- the grounds for carrying out the search;
- whether the prior approval of a sheriff or senior officer was obtained and, if a search was conducted without prior judicial approval, the reason for not obtaining such approval;
- the outcome of the search (e.g. seizure of cash under section 294 of POCA, seizure of a listed asset under section 303J of POCA, or no seizure/further action);
- details or a description of any cash or listed asset(s) found and seized – if possible, signed by the person with control over the vehicle;

- a note of any explanation given by the person with control over the vehicle as to the ownership, origins, purpose and destination of any cash or listed asset(s) found and seized;
- a note of any injury to a person, or damage to property, which was caused as a result of the search (and the circumstances in which it was caused);
- the date and time at which the search ended;
- the arrangements made (if any) to secure the vehicle after the search; and
- any other relevant information.

6.14 The record of the grounds for carrying out the search must, briefly but informatively, explain the reasonable grounds for suspecting that there was seizable cash or a seizable listed asset in the vehicle by reference to (a) any information and/or intelligence about the vehicle concerned, and/or (b) the behaviour or conduct of the person who had control over the vehicle and/or any other circumstances.

6.15 Even if a vehicle which is detained for the purpose of a search under section 289(1D) or 303C(5) is not subsequently searched (e.g. because information comes to light which removes the reasonable grounds for suspicion), a written record must still be made.

Steps to be taken immediately after a search

6.16 The constable must give a receipt to the person concerned – i.e. the person who was searched, the person in charge of the premises that were searched (or the person who gave consent for such a search), or the person with control over the vehicle that was searched. The receipt should include the following information:

- the particular search power(s) used by the constable under section 289 or 303C of POCA;
- the person's right to obtain a copy of the record of the search (subject to the person having provided their name, address and date of birth); and
- the person's right to complain, including how to go about making a complaint.

6.17 The constable should explain that the person is entitled (unless they have chosen not to give their name, address and date of birth) to obtain a copy of the record of the search, provided the person asks for it from the police within 6 months of the date of the search.

6.18 There may be exceptional circumstances which make it impracticable to provide a receipt – e.g. where the constable conducting the search is called away to an urgent incident. In that event, the constable should verbally explain the circumstances and advise the person concerned that they can access a copy of the record of the search by calling at any police station – unless either the exceptional circumstances make it wholly impracticable to make a record of the search, or the person concerned has not provided their name, address and date of birth.

Annex A

Conduct of searches – additional considerations where a child or young person is involved

Introduction

- A.1 This Annex is designed to offer constables assistance in recognising and understanding the needs of children and young people in relation to searches. It acknowledges that children and young people have different needs to adults, and that they may require additional support to help them comprehend and participate in the search process.
- A.2 It does not replace any requirements placed on constables elsewhere in the Code. Rather, it provides additional guidance and suggests ways in which constables can tailor their approach towards children and young people.
- A.3 For the purposes of this Code, children and young people are defined as those being under the age of 18.

Protection of rights and wellbeing of children and young persons

- A.4 In taking a decision to search a child or a young person, a constable must treat the need to safeguard and promote the wellbeing of that child or young person as a primary consideration. Where a constable believes it to be more harmful to a child or young person to carry out a search than not, then the search should not proceed and other measures to safeguard them should be considered.
- A.5 Constables should ensure that the principles of fairness, integrity and respect apply equally to children and young people, as they do to adults.
- A.6 Constables' actions should be compatible with the child's or young person's human rights. This Code has been designed to comply with the UN Convention on the Rights of the Child²⁶. It is also consistent with the Scottish Government's GIRFEC (Getting It Right for Every Child)²⁷ approach.

General considerations

- A.7 Constables should generally be aware of how the minimum age of criminal responsibility might affect their interactions with children and young people. However, the search powers conferred by sections 289 and 303C of POCA do not depend on the person concerned being suspected of committing an offence in relation to the object of the search. They simply require a reasonable suspicion that the person is carrying seizable cash or a seizable listed asset. For instance, there may be cases where an adult uses a child's pram, a child or a young person to conceal seizable cash or a seizable listed asset. A constable who has reasonable grounds to suspect that a child or young person is in innocent possession of such cash or listed asset may search the child or young person (see Guidance Note 8). The constable must carry out the search in such a way as to minimise distress to the child or young person.

²⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

²⁷ <http://www.gov.scot/Topics/People/Young-People/gettingitright>.

- A.8 Where a constable believes a search is necessary, they should be aware of the inherent power imbalance that exists between the constable and the child or young person, and how this may affect their interactions with the child or young person. It should not be assumed that, because a child or young person is compliant and/or silent, they are fully comfortable with a search being carried out. Equally, if a child or young person appears to be acting unreasonably, the root of such behaviour may be in fear or confusion.
- A.9 Constables should be aware that, on occasion, children and young people may display behaviour which arouses suspicion, but which is in fact related to a communication impairment, disability or additional learning support need. This may include gesturing, shouting or avoiding eye contact. When a search of a child or a young person is being considered, a constable should check whether the child or young person considers themselves to have such a disability and, if so, what additional support they might require to participate in a search (bearing in mind that a person with such a disability may have difficulty articulating the nature of that disability or what support they need).
- A.10 Constables should use age-appropriate terms when engaging with children and young people, and avoid the use of technical or legal language unless this is required by law. Where, for example, a constable is required to state the statutory basis for a search, then they should also be prepared to explain this in terms the child or young person can easily understand. Constables should be aware that not all children of the same age will have the same level of understanding and, where practicable, should allow time for the child or young person to ask questions before a search begins.
- A.11 Where it appears to a constable that a child or young person lacks the capacity to understand why a search may be necessary, or what it may entail, the presumption is that the search should not proceed unless appropriate support can be arranged for the child or young person (see Annex B). Consideration should then be given to how best to safeguard that child or young person, where it is believed that they are being used to carry seizable cash or a seizable listed asset.
- A.12 Constables should ensure that the wellbeing of the child or young person is the primary consideration in deciding whether to proceed with a search of a child or young person. That applies equally to children and young people with a learning disability or other type of disability (see also Annex B). For example, someone who is autistic may be particularly sensitive to touch and might find a physical search overwhelming. Where a search is considered likely to have a detrimental effect on a child or young person, then alternative safeguarding measures should be considered.
- A.13 Constables should be aware that the status of a child or young person as looked-after or care experienced can be relevant to how such people engage with constables – e.g. they may find it more difficult to engage with the police as a result of previous trauma. Constables should be alert to the possibility that a child or young person may be looked-after or care experienced and, if so, consider what additional support they might require. In doing so, constables should be sensitive about whether and how they ask questions about a person's status, bearing in mind that some looked-after and care experienced children and young people can regard questions about their status as stigmatising and, also, that their peers may be unaware of their status.

- A.14 Children or young people who have experienced abuse may also react strongly to the prospect of being searched, particularly if they (mistakenly) believe that the search is likely to involve a strip search or an intimate search.
- A.15 Even where there is no history of abuse, children and young people have reported that being searched by someone who is a stranger to them is both uncomfortable and intrusive.
- A.16 Where a child or young person is becoming distressed during a search, consideration should be given to stopping or pausing the search until a responsible adult can be present (if this is practicable and the child or young person wishes this to happen).
- A.17 For the purposes of this Code, a 'responsible adult' is defined as someone over the age of 18, with responsibility for the child or young person. This might include a parent, a carer, an older sibling or a key worker. The responsible adult's role is to support the child or young person, and help them understand what is happening. Constables should note that a 'responsible adult' is distinct from an 'appropriate adult', a term which has its own meaning.
- A.18 When considering a search of a child or young person, a constable should attempt to minimise any embarrassment they might feel – e.g. by carrying out a search discreetly and away from a peer group. Where practicable, a constable should involve the child or young person in considering where the search should take place. A constable should not assume that places considered suitable for adults will be where a child or a young person would feel most at ease.
- A.19 Any search of a child or a young person should be carried out by a person of the same sex. All searches should respect the dignity and privacy of the child or young person.
- A.20 A constable should explain at each stage of a search of a child or young person what the constable is doing and why. Where a child requests a brief pause in the search (e.g. to compose themselves), this should be accommodated where practicable. Otherwise, the search should be completed as swiftly as possible.
- A.21 Where a search takes place and no item is found, and the child or young person has provided their name, address and date of birth, a constable should clearly explain how the information will be stored, the length of time for which it will be kept and the purposes for which it may be used.

Receipts and complaints

- A.22 Following completion of a search, a child or a young person should be supplied with a receipt, which should include age-appropriate information about the search, and details of how to make a complaint if the child or young person feels that they have been treated unfairly.
- A.23 Constables should be aware that children and young people can find it difficult to access complaints processes, which are often designed by adults for adults. Where a complaint is received by the police from (or on behalf of) a child or young person, consideration should be given to how best to respond in an age-appropriate, timely and child-centred manner.

Notifying parent(s) or caregiver(s) of search

- A.24 Where no seizable cash or seizable listed asset is found, a constable should consider the child's or young person's individual needs and circumstances when deciding whether or not to make their parents (or other caregivers) aware of the fact that the child or young person has been searched. Factors to be considered by constables may include: the age of the child or young person; the circumstances in which the search took place; any views expressed by the child or young person, and any perceived on-going risk to the child or young person and/or others.
- A.25 Where a child or young person has expressed a view about whether their parents (or other caregivers) should be informed of a search, and a decision is taken which appears to contradict that view, the constable concerned should clearly explain to the child or young person the reasons for the constable's decision.
- A.26 Constables should be aware that some children and young people may be placed at increased risk by their parents (or caregivers) being notified of a search. This would include, for example, a child or young person living in a household where there is a history of domestic abuse.
- A.27 More generally, constables should consider whether informing a child's or young person's parents (or caregivers) might inadvertently suggest that the child or young person has been involved in wrongdoing, when they have not.

Children and young people as witnesses to searches

- A.28 As well as being the subject of a search, children and young people may also be witnesses to searches. Where an adult in the company of a child or young person is being searched, constables should be aware of the effect that such a search may have on the child or young person. For younger children, witnessing something that they do not understand, or being parted from their parent/caregiver for the duration of the search, can be particularly upsetting. Care should be taken to ensure that the child is reassured and that any separation from the parent/caregiver is either avoided or kept to an absolute minimum.

Promoting positive relations between the police and children and young people

- A.29 Carrying out a search in a respectful and age-appropriate manner is likely to minimise the damage it can cause to children's and young people's perceptions of the police. Constables should therefore be aware of the potential to build positive relationships with children and young people in the local community by following the steps outlined in this Code.

Additional support needs

- A.30 Children and young people may have additional support needs beyond those outlined in this Annex. It is therefore important that constables also familiarise themselves with the content of Annex B, and consider how this may apply to children and young people.

Annex B

Conduct of searches – additional considerations where a vulnerable adult is involved

Introduction

- B.1 This Annex is designed to offer constables assistance in recognising the needs of vulnerable adults in relation to a search.
- B.2 Vulnerability in this context refers to difficulties a person may have with understanding what is going on or communicating with the police.

General considerations

- B.3 In practice, it may not always be obvious that a person has a vulnerability which might impact on the way that the search powers should be exercised. Constables must therefore always be aware of the possibility that a person to be searched may be vulnerable and tailor their approach accordingly.
- B.4 Vulnerability is most likely to be encountered in situations where a person has a mental illness, a personality disorder, autism or a learning disability. These conditions are likely to impact on the way that the person is able to understand and communicate, and constables must be aware of the need to modify their language, tone of voice and physical behaviours to assist in communicating.
- B.5 Vulnerability impacts on whether a constable can search a person, and how any search should be conducted.
- B.6 It is important to identify vulnerability early, and constables need to consider the best method of identifying significant communication needs. This may require collaboration and communication between the police, other agencies and the individuals being searched, and may involve obtaining support for the vulnerable person.
- B.7 Constables must focus on assessing the individual's communication ability and consider whether any support is required to meet that need. That may often be achieved simply by asking the person to explain any difficulties they have. Some people carry documents which explain the issues they have, such as an 'Autism Alert card' or a 'Keep Safe' card. Or it may be that the person is with friends or family members who can assist, or that there are others nearby (or contactable) who are able to help – including any professional who knows the person well. In some circumstances, constables may require to seek suitable support (e.g. a responsible adult or interpreter) to assist them in communicating with the vulnerable person. Constables should explore all avenues to ensure that the person is fully aware of what is happening to them. The vulnerable person must be able to understand the nature and potential significance of police actions and questioning, as well as the nature and extent of their own rights, and to be able to exercise those rights in a meaningful way.
- B.8 If suitable support is available, constables must balance the need to search the person with the proportionality of detaining the person until the person who is to provide support can attend, which may take some time. In some circumstances, this

may not be justifiable, and constables will need to consider any other options available to them, always having regard to the person's wellbeing.

B.9 If suitable support is not available and it appears that the person lacks the capacity to understand why a search may be necessary, or what it will involve, then the presumption is that the search should not proceed. Constables will then need to consider what further action might be necessary to safeguard the person, where it is believed that they are being used to carry seizable cash or a seizable listed asset.

B.10 Speaking to constables may be a distressing experience for some vulnerable people. The mere presence of the police may cause them anxiety and impact on their ability to communicate. Constables should therefore have regard to the following factors in order to mitigate these effects:

- Some vulnerable people may not understand personal space and may invade others' personal space, or they may need more personal space themselves;
- Use of the person's name at the start of each sentence will help the person know that they are being addressed;
- Clear, slow and direct instructions will allow the person time to process information – the use of technical or legal language should be avoided; extra time may be required for the person to fully process and respond to information/instructions and, so, the person may need more breaks during the search;
- Rewording and repetition of questions in a different way may be helpful;
- Language should be kept clear, concise and simple and short sentences should be used;
- A vulnerable person should have it explained clearly what is happening and, if appropriate, where the person is being taken and why;
- Visual supports, if available, should be used to explain what is happening; or, if the person can read, they should be shown information in writing;
- Some autistic people with sensory issues will not like to be touched;
- Any physical contact required should be kept to a minimum, and a full explanation should be given in advance; and
- Facial expressions and hand gestures should be kept to a minimum to avoid distracting the person.

B.11 When conducting a search, constables should attempt to minimise any distress or embarrassment that the person might feel. Where practicable, constables should seek and take account of any views expressed by the person about the process, such as providing them with a choice of where the search can take place or how it might be conducted. The search should always be done discreetly and away from any peer group or other persons whom the person had been with when detained for the search.

Vulnerable persons as witnesses to searches

B.12 Vulnerable persons may also be witnesses to searches and, so, constables must be aware of the effect that such a search of another may have on them. Constables may therefore have to explain the process to persons other than the individual being searched in some circumstances.

Annex C

Establishing a person's gender for the purpose of searching the person

Introduction

- C.1 Certain provisions of this Code explicitly state that a personal search may only be carried out by, or in the presence of, persons of the same sex as the person who is to be searched.
- C.2 All searches must be carried out with courtesy, consideration and respect for the person concerned. Constables should show particular sensitivity when dealing with transgender people (see Guidance Note 7).

Consideration

- C.3 In law, the gender (and accordingly the sex) of a person is:
- the person's gender as registered at birth; or
 - if the person has been issued with a full Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), the person's acquired gender.
- C.4 If a person's acquired gender is the male gender, the person must be treated as a male. Likewise, if a person's acquired gender is the female gender, the person must be treated as a female.
- C.5 If a person holds a full GRC, they are under no obligation to produce this document to verify their identity. Instead, the way in which the person self-defines should be respected.
- C.6 In practice, many transgender people do not obtain a full GRC or are in the process of transitioning to their acquired gender. Transgender people, whether or not they have a full GRC, should be treated as the gender they identify with.

Searching of transgender persons

- C.7 As transgender people may have biological characteristics which differ from the gender that they live in, there is potential for distress and embarrassment during a personal search. Application of the following guidance should minimise the potential impact when searching a transgender person.
- C.8 If a constable begins searching a person without any knowledge that the person is transgender and this only comes to light during the search, the original searching constable should continue with the search unless the transgender person asks for a different gender of constable to take over the search.
- C.9 If a person is thought or known to be transgender prior to a search being carried out, a constable should ask the person:
- "Is there anything I need to know before I search you?"*
- C.10 A trans man who still has female physical characteristics may identify strongly as a man, but may request to be searched by a female constable. In such a case, the

trans man should still be referred to using male pronouns, and be treated as a man in all other ways except in terms of the gender of the constable who searches him.

- C.11 A trans woman who still has male physical characteristics may identify strongly as a woman, but may request to be searched by a male constable. In such a case, the trans woman should still be referred to using female pronouns, and be treated as a woman in all other ways except in terms of the gender of the constable who searches her.
- C.12 If a person is unwilling to state their gender identity, a constable should try and determine the gender that the person lives in. This is likely to be indicated by the name, title or gender on the person's main forms of identification (e.g. driver's licence, bank card etc.). If the person appears to live as a woman, for instance, the person should be treated as such.
- C.13 Once the gender of the constable conducting the search has been established, the search should begin. The transition status of the person being searched and their appearance should not be commented upon. If, during the search, the constable encounters any physical variation due to gender reassignment, the constable should maintain a professional and respectful manner.

Documentation

- C.14 The person's gender, as established above, must be recorded in the written record of search.
- C.15 If a person expressly identifies with a particular gender, but is not treated in accordance with that gender, this (and the reasons for it) must also be recorded in the written record of the search.

Disclosure of information

- C.16 It may be necessary to share information about the person's gender identity with other constables. Such disclosure should only be made in relation to the transgender person when to do so would be relevant, legal, proportionate and fair.
- C.17 Section 22 of the GRA makes it an offence for a constable to disclose "protected information" to any other person – i.e. information acquired in an official capacity about (a) a person's application for a GRC, or (b) the gender history of a successful applicant. However, this is subject to a number of exceptions. For instance, it is not an offence to disclose protected information if:
- the information does not enable the person to be identified;
 - the person concerned has agreed to the disclosure;
 - in the case of a successful applicant's gender history, the constable does not know or believe that a full GRC has been issued;
 - the disclosure is in accordance with a court order;
 - the disclosure is for the purpose of instituting, or otherwise for the purposes of, court proceedings;
 - the disclosure is for the purpose of preventing or investigating crime;
 - the disclosure is in accordance with, or made by virtue of, another statutory provision.

C.18 Nothing in this Annex is to be read as authorising or permitting any constable who has acquired protected information in an official capacity to disclose that information to any other person in contravention of the GRA. Disclosure includes making a record of protected information which is read by others.

Guidance Notes

1. Where a person is lawfully detained for the purpose of a search, but no search takes place, the detention will not thereby be rendered unlawful.
2. A person may be detained and searched under section 289 or 303C of POCA at a place other than where the person was first detained, but only if that place (e.g. a police station) is nearby. Such a place should be located within a reasonable travelling distance using whatever mode of travel (on foot or by car) is appropriate.
3. A search in the street itself should be regarded as being in public for the purposes of this Code, even though it may be empty at the time a search begins.
4. Many people customarily cover their heads or faces for religious reasons - e.g. Muslim women, Sikh men, Sikh or Hindu women, or Rastafarian men or women. Where there may be religious sensitivities about requiring the removal of such an item, the constable should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of a constable of the same sex as the person concerned and out of sight of anyone of the opposite sex. Similar considerations may arise where headgear or other form of head covering is worn as part of the individual's gender expression (e.g. headscarves or wigs). Likewise, where practicable, the constable should permit the item to be removed out of public view. Similarly, the touching of hair may be regarded as being disrespectful by individuals with particular beliefs and, accordingly, should be conducted out of public view so far as practicable.
5. Where a search is conducted by more than one constable, the identity of all the constables involved in carrying out the search (including any constable supporting another constable who is physically carrying out the search) must be recorded in the written record of the search. Nothing prevents a constable who is present, but not directly involved in the searching, from completing the record.
6. Constables should record the self-defined ethnicity and national origin of every person detained and searched under section 289 or 303C of POCA. The person should be asked to select one of the five main categories representing broad ethnic groups, and then a more specific cultural background from within this group, using the groups listed in the census questionnaire. An additional 'Not stated' box is available, but should not be explicitly offered to the person. A constable should explain to the person, especially where concerns are raised, that this information is required to obtain a true picture of search activity and to help improve ethnic monitoring, tackle discriminatory practice, and promote effective use of the search powers. If the person gives what appears to a constable to be an 'incorrect' answer (e.g. a person who appears to be white states that they are black), the constable should record the response that has been given and then record the constable's own perception of the person's ethnic background. If the 'Not stated' category is used, the reason for this must be recorded.
7. While there is no agreed definition of transgender (or trans), it is generally used as an umbrella term to describe any persons whose gender identity (including their gender expression) does not fully correspond with the sex they were assigned at birth. This is inclusive of:
 - trans women (people who were assigned male at birth, but who identify as women);

- trans men (people who were assigned female at birth, but who identify as men);
 - non-binary people (people who do not identify solely as men or women; instead their gender identity is between or beyond the man/woman binary or they have no gender);
 - cross-dressing people (people whose gender expression includes dressing in clothing which does not fully correspond with the sex they were assigned at birth, but who otherwise identify with their assigned sex).
8. Innocent possession means that the person does not know that they are carrying seizable cash or a seizable listed asset. Children may be used by older children and adults to carry seizable cash or a seizable listed asset for the criminal benefit of others, either:
- in the hope that the police may not suspect such children of being used to carry seizable cash or a seizable listed asset; or
 - knowing that if they are suspected of being couriers, and are detained and searched, they cannot be prosecuted for any related criminal offence(s).



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2017

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-379-1 (web only)

Published by The Scottish Government, November 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS319806 (11/17)

W W W . G O V . S C O T