



**Home Office**

BUILDING A SAFE, JUST  
AND TOLERANT SOCIETY

# CODE OF PRACTICE FOR CONSTABLES AND CUSTOMS OFFICERS UNDER THE PROCEEDS OF CRIME ACT 2002

Consultation Paper  
August 2002

## CONSULTATION EXERCISE

# PUBLIC CONSULTATION ON CODE OF PRACTICE ISSUED UNDER SECTION 292 OF THE PROCEEDS OF CRIME ACT 2002

The Proceeds of Crime Act 2002 (“the Act”) received Royal Assent on Wednesday 24th July 2002. The Act contains a comprehensive package of measures focussing on the recovery of criminals’ proceeds and wealth. Included in the provisions is a scheme for the recovery of cash in summary proceedings; see Part 5 Chapter 3 of the Act. This letter invites views on the Code of Practice for the search power relating to such proceedings.

Provisions relating to the recovery of cash are not new. Part III of the Criminal Justice (International Co-operation) Act 1990 introduced a power for police and customs officers to seize cash discovered on import or export which is reasonably suspected of being derived from or intended for use in drug trafficking. An application could be subsequently made in a magistrates’ court for the forfeiture of the cash. No conviction is required for the forfeiture of the cash to be ordered; cash forfeiture proceedings are civil proceedings and the civil standard of proof applies. These provisions were later consolidated into Part II of the Drug Trafficking Act 1994, which applies on a United Kingdom-wide basis.

The Act expands and replaces the existing drugs scheme. The new scheme extends to cash related to all unlawful conduct and also provides for the seizure of such cash inland.

### Search power

Unlike the previous legislation, the Act contains a specific power of search to support the powers to seize cash. This is necessary as a result of the power to seize cash being extended from the borders, inland. Under previous legislation, customs officers could rely upon their general powers of search which they have at the borders under the Customs and Excise Management Act 1979.

The new search powers will only be exercisable on private premises where the constable or customs officer has lawful authority to be present. In respect of a constable, this would be where he is exercising his powers of entry under the Police and Criminal Evidence Act 1984 and in respect of a customs officer where he is exercising such powers under the Customs and Excise Management Act 1979 or other enactment. An officer could also be lawfully present on private premises, if he is there at the invitation of the owner. The new power does not confer any right on constables or customs officers to force entry.

The search powers also include the powers to search a person. However, this power does not extend to requiring a person to undergo an intimate or strip search.

The search powers may only be exercised where prior judicial authority has been obtained or, if that is not practicable, with the approval of a senior officer. The Act also recognises that there may be circumstances where it may not even be possible for a constable or a customs officer to obtain the approval of a senior officer. If judicial approval is not obtained prior to a search, and cash is either not seized or is released before the matter comes before a court, the constable or customs officer concerned must prepare a written report and submit it to an independent person appointed by the Secretary of State in relation to England and Wales and Northern Ireland (the ‘Appointed Person’). This report will detail why the constable or customs officer considered that he had the power to carry out the search and why it was not practicable to obtain judicial approval of the search.

A further safeguard, in recognition of the sensitivity of search powers, is a statutory Code of Practice setting out how the search powers are to be exercised by a constable or customs officer. The draft Code of

Practice follows this introductory note. This draft Code is drawn heavily from the existing amended Codes of Practice which relate to the Police and Criminal Evidence Act 1984; in particular Code A: Stop and Search and Code B: Searching of premises and seizure of property.

Before the Code of Practice can be brought into force, the Secretary of State has to make an order which has to be laid in draft before Parliament and approved by a resolution of each House. The Code of Practice has to be in force before the cash scheme can be commenced.

## **Consultation Process**

Section 292(2) of the Act provides that when the Secretary of State proposes to issue a Code of Practice he must prepare and publish a draft; consider any representations made to him; modify the draft as appropriate; and lay it before Parliament for approval. For the purposes of this process, this consultation exercise has been arranged to allow interested parties to be aware of this new power and to make any representation regarding the content of the Code of Practice. The Code of Practice is intended to be self-explanatory and so we would welcome views on any passages that are confusing, ambiguous or lack clarity.

In addition to inviting comments on the proposed Code, the Home Office would welcome proposals and suggestions from practitioners on how the new power may be used by practitioners and received by the community.

Readers should note that paragraph 15 of the draft Code is liable to change. Considerations of the rules of court for a Justice to authorise a search are not yet finalised.

Copies of the draft Code have been published on the Home Office website at <http://www.homeoffice.gov.uk/> A copy of the Act is available at <http://www.legislation.hmso.gov.uk/acts/acts2002/20020029.htm> Comments on the draft Code should be sent to the address below by week ending Friday 15th November 2002. If you are a representative group, please could you include in your representations a summary of the people and organisations that you represent. At the conclusion of the consultation exercise the Home Office may wish to publish the results, including the responses received in the course of the consultation. If you do not wish your comments to be published, please make this clear in your response.

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We look forward to receiving views on its contents.

# CODE OF PRACTICE FOR CONSTABLES AND CUSTOMS OFFICERS UNDER THE PROCEEDS OF CRIME ACT 2002

## Introduction

1. This code of practice is made in connection with the exercise by a customs officer and (in relation to England and Wales and Northern Ireland only) a constable of the search powers conferred by section 289 of the Proceeds of Crime Act 2002 (“the Act”). The code is made under section 292 of the Act. There is a separate code of practice for constables exercising their powers in relation to Scotland, made under section 293 of the Act by Scottish Ministers.

2. The code does not apply to searches carried out under any other legislation, including searches at the borders by customs officers undertaken under existing powers, or searches under Part 8 of this Act. If searches conducted under other legislation result in cash being seized under section 294, the provisions of this code do not apply.

3. The code should be available at all police stations for consultation by the police and members of the public. It should also be available at police offices at ports where the powers are, or are likely, to be used. The code should also form part of the published instructions or guidance for customs officers.

4. In this code:

reference to a person’s rank includes a person acting temporarily in that rank.

“officer” includes a customs officer or constable unless otherwise specified.

cash means notes and coins in any currency, postal orders, cheques of any kind (including travellers’ cheques), bankers’ drafts and bearer bonds and bearer shares found at any place in the United Kingdom. The definition of ‘cash’ can be amended by an order made by the Secretary of State under section 289(7) – officers should be made aware of any such order made.

## General

5. The right to respect for private life and home - and the right to peaceful enjoyment of possessions - are both safeguarded by the Human Rights Act 1998. Powers of search may involve significant interference with the privacy of those whose premises and persons are searched and therefore need to be fully and clearly justified before they are used. In particular, officers should consider at every stage whether the necessary objectives can be achieved by less intrusive means. In all cases officers should exercise their powers courteously and with respect for the persons and property of those concerned. The possibility of using reasonable force to give effect to the power of detention and search should only be considered where this is necessary and proportionate in all the circumstances.

6. Powers to stop and search a person must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. The Race Relations 1976 as amended makes it unlawful for police officers to discriminate on the grounds of race, colour, or ethnic origin when using their powers.

## Scope of the search powers

7. The Act provides power for officers to search for cash where:

- (a) the officer is lawfully on any premises and has reasonable grounds for suspecting that there is on the premises cash which satisfies the conditions below; or
- (b) the officer has reasonable grounds for suspecting that a person (the suspect) is carrying cash which satisfies the conditions below.

8. The conditions are that:

- the cash is recoverable property (i.e. it is obtained through unlawful conduct or

represents property obtained through unlawful conduct) or the cash is intended for use in unlawful conduct; and

- the cash does not amount to less than the minimum amount specified under the Act (currently £10,000 – this amount can be amended by an order made by the Secretary of State under section 303 – officers should be made aware of any such order made)

9. Where the power to search a person is exercised the Act requires that the officer or constable may require the suspect - so far as he thinks necessary or expedient - to permit:

- (a) a search of any article he has with him;  
or
- (b) a search of his person.

10. The powers conferred are civil in nature and exercisable only so far as reasonably required for the purposes of finding cash. The powers do not include the power to enter premises. They are exercisable by a customs officer only if he has reasonable grounds for suspecting that the unlawful conduct that makes the cash recoverable property or intended for use in unlawful conduct relates to an assigned matter within the meaning of the Customs and Excise Management Act 1979. Assigned matters are matters in relation to which the Commissioners for Customs and Excise are required, in pursuance of any enactment, to perform any duties. Unlawful conduct that can be prosecuted by customs officers currently includes drug trafficking, money laundering and excise evasion.

### Reasonable grounds for suspicion

11. In order to exercise the search power an officer must have reasonable grounds for suspecting that cash meeting the conditions set out in paragraph 8 will be found.

12. Whether there are reasonable grounds for suspicion will depend on the circumstances in each case. There must be some objective basis for that suspicion based on facts, information and/or intelligence. The officer should take into account such factors as how the individual or premises were identified, previous intelligence on persons or premises, previous involvement with the persons or premises, and suspected links with criminal activities, whether here or overseas.

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

### Authority to search for cash

14. Any decision to search for cash under the Act must, if practicable, be approved by a justice of the peace, or a sheriff in Scotland. Judicial approval is only likely to be impractical because of the immediacy of the circumstances of the case. This is more likely to be the case in relation to the search of a person than the search of premises. But officers must assess each case on its merits. There can be no assumption that judicial approval is impracticable for all searches of a person – officers must carefully consider any decision not to obtain such approval.

15. In order to obtain approval from a justice of the peace or sheriff an officer will need to make telephone contact with the clerk of the designated magistrates' court or sheriff's court, to arrange a hearing which can be held without notice and in private. Annexed are a model application and draft order. The officer will need to:

- identify himself to the magistrate or sheriff (giving name, rank, any warrant or other identifying number, and home station or place of work);
- lodge his written application;
- explain to the justice or sheriff the reasonable grounds he or she has for undertaking the search;
- answer any questions that the justice or sheriff may have.

16. If judicial approval for a search is impracticable, a senior officer should provide approval as follows:

- where a search is undertaken by a constable, by a police officer of the rank of Inspector or above;
- where a search is undertaken by a customs officer, by a Customs Officer Pay Band 7 or above.

**17.** If an application for an authority is refused (either by the judicial or senior officer process) the officer must not make a fresh application for a search of the same person or premises unless he has new information.

**18.** Authorisation to search should be obtained prior to the actual search itself where practicable. The officer should explain to the senior officer the reasonable grounds he or she has for undertaking the search. The authority should only be given where the senior officer is satisfied that the necessary grounds exist. The senior officer should take a written record of such reasons. Oral authorisation should be supported by written authorisation as soon as that is reasonably practicable.

**19.** If approval by a senior officer for a search is impracticable, a search may be conducted without approval. It is unlikely that senior officer approval will be impracticable unless there is some problem making contact with an appropriate officer. However if a search is conducted without any prior approval, the officer must give an explanation of the reasons for the search to a senior officer as soon as that is reasonably practicable. The senior officer should take a written record of these reasons.

### Reports to the “appointed person”

**20.** If a search is conducted without prior judicial approval - whether with or without senior officer approval the officer is legally required to prepare a report in the following circumstances:

- if the search does not result in the seizure of cash, or
- if cash is released before the matter proceeds to a detention hearing, or
- if the court at a detention hearing does not authorise the detention of the seized cash for more than 48 hours after it was initially seized.

**21.** This report must set out why it was not practicable to obtain judicial prior approval and

why circumstances led him to believe that the search powers were exercisable. These factors could include why the officer was on the premises where the search took place, what aroused his/her suspicion and why there was a need for an immediate search. If the prior approval of a senior officer was obtained, the report should state this, with the senior officer’s reasons for approval, if practicable.

**22.** The report must be submitted to the independent person appointed by the Secretary of State. The post holder’s address is [...]. Reports in respect of searches undertaken by customs officers in Scotland, must be submitted to the independent person appointed by Scottish Ministers. In these circumstances, the customs officer’s report should state that they were operating in accordance with this Code of Practice and not the code issued by Scottish Ministers. The Scottish post holder’s address is [...].

**23.** The report should normally be submitted within 7 days of the exercise of the search powers.

### Steps prior to search of a person

**24.** If the officer suspects that the person has cash concealed on his or her person, the officer must take the following steps:

- inform the person that he has reasonable grounds for suspecting that he or she has cash on their person which is more than the minimum amount and is recoverable property or is intended by any person in unlawful conduct;
- inform the person that he has the power to search them under section 289 of the Proceeds of Crime Act 2002 for the purposes of finding such cash;
- produce any document authorising the search (if applicable);
- ask the person to confirm or deny whether they have cash on their person; and
- allow the person the opportunity to produce and hand over the cash.

**25.** Before any search for cash takes place the officer must take reasonable steps to give the person to be searched the following information:

- the officer's name (unless the officer reasonably believes that giving his or her name might put him or her in danger, in which case a warrant or other identification should be given);
- the fact that the search is being carried out under section 289 of the Proceeds of Crime Act 2002; and
- a clear explanation of:
  - (i) the purpose of the search; and
  - (ii) the grounds for the reasonable suspicion

**26.** Officers not in uniform should show their warrant cards or other suitable form of identification.

**27.** Before the search takes place the officer must inform the person (or occupier) of his entitlement to a copy of the record of the search.

**28.** If the person to be searched does not appear to understand what is being said or the officer has doubts as to the person's ability to speak and/or understand English he or she should take reasonable steps to ensure that the person understands. Where necessary and practicable someone who can act as an interpreter should be identified.

## Search of a person

**29.** The minimum amount of cash that may be seized is currently £10,000. This is set out in a statutory instrument [name and reference]. The statutory instrument should be available with the code. This amount can be amended by a statutory instrument made by the Secretary of State under section 303 – officers should be made aware of any such order made and it should be made available with the code. There is no maximum amount of cash that may be seized.

**30.** All searches should be carried out with courtesy, consideration and respect for the person concerned. 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 forcible search may be made only if it has been established that the person is unwilling to co-operate. Officers might want to consider the possibility of using reasonable force as a last resort if this

appears to be the only way in which to give effect to their power of detention and search.

**31.** The length of time for which a person may be detained must be reasonable and kept to a minimum. The thoroughness and extent of a search must depend on what is suspected of being carried and by whom.

**32.** This search power does not extend to requiring a person to undergo an intimate or strip search. An intimate search is one involving a physical - and not just visual – examination of a person's body orifices. A strip search is any search that 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.

**33.** A person must not be asked to remove any clothing in public other than an outer coat, jacket or gloves. A search in public of a person's clothing that has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonable or necessary in the circumstances.

**34.** If on reasonable grounds it is considered necessary to conduct a more thorough search this must be done out of public view. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, may only be made by an officer of the same sex as the person searched. It may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it.

**35.** If the officer discovers cash during a search he or she should give the person who has possession of it an opportunity to provide an explanation of its ownership, origins, purpose and destination.

## Search of premises

### General

**36.** No right of entry is conferred by section 289 of the Proceeds of Crime Act 2002. In order to search for cash on premises an officer must be lawfully on premises. This would include a search of premises undertaken with the consent of the person entitled to grant entry to the premises. It would also include a search carried out when an officer has exercised a power of entry conferred by a search warrant granted in some other connection or power of entry conferred under some other legislation such as the Police and Criminal Evidence Act 1984 or Customs and Excise Management Act 1979 and circumstances subsequently lead him to believe that there is cash on the premises. A search must be made at a reasonable hour unless this might frustrate the purpose of the search.

**37.** If it is proposed to search premises with the consent of a person entitled to grant entry to the premises the consent must, if practicable, be given in writing before the search takes place. The officer must make any necessary enquiries in order to be satisfied that the person is in a position to give such consent.

**38.** Before seeking consent the officer in charge of the search shall state the purpose of the proposed search and its extent. This information must be as specific as possible. The person concerned must be clearly informed that they are not obliged to consent.

**39.** An officer cannot enter and search premises or continue to search premises if the consent has been given under duress or is withdrawn before the search is completed.

### Conduct of searches

**40.** Premises may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the object of the search has been found - and no search may continue once the officer in charge of the search is satisfied that whatever is sought is not on the premises. (This does not prevent a further search if new information comes to light justifying such a search.)

**41.** Searches must be conducted with due consideration for the property and privacy of the occupier of the premises searched and with no more disturbance than necessary.

**42.** The occupier shall be asked whether they wish a friend neighbour or other person to witness the search. That person must be allowed to do so unless the officer in charge of the search has reasonable grounds for believing that the presence of the person asked for would seriously hinder the investigation or endanger the officers concerned or other people. A search need not be unreasonably delayed for this purpose. A record of the action taken under this paragraph, including the grounds for refusing a request from the occupier, shall be made on the premises search record. Where a search is being conducted with the consent of the occupier, the occupier is entitled to refuse consent until a friend or neighbour arrives.

## Recording requirements – searches of a person

**43.** An officer who has carried out a search in the exercise of any power to which this Code applies must make a written record of it at the time, unless there are exceptional circumstances that would make this wholly impracticable – such as when the officer's presence is urgently required elsewhere. If a record is not made at the time the officer must do so as soon as practicable afterwards. There may be situations in which it is not practicable to obtain the information necessary to complete a record, but the officer must make every reasonable effort to do so.

**44.** A copy of a record made at the time must be given immediately to the person who has been searched. If a record is not made at the time the person must be told how they can apply for a copy of the record once made. The officer must ask for the name, address and date of birth of the person searched, but there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.

**45.** The following information must always be included in the record of a search even if the person does not wish to provide any personal details:

- the name of the person searched, or (if it is withheld) a description;
- a note of the person's self defined ethnic background (if provided);
- the date, time and place that the person was first detained;

- the date, time and place the person was searched (if different);
- the grounds for making it (and of any necessary authorisation if given). If a search is conducted without judicial prior approval, the reason for not obtaining such;
- its outcome (e.g. seizure of cash, no further action);
- a note of any injury or damage to property resulting from it;
- the identity of the officer making the search (subject to paragraph 25).

**46.** A record is required for each person searched, if more than one person is searched at the same time. The record of the grounds for making a search must, briefly but informatively, explain the reasons for suspecting the person concerned, by reference to the person's behaviour and/or other circumstances. If a person is detained with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of questioning the person, a record must still be made.

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

**47.** Where premises have been searched in circumstances to which this Code applies the officer in charge of the search shall make or have made a record of the search on returning to his normal place of work. The record shall include:

- the address of the premises searched;
- the date, time and duration of the search;
- the authority under which the search was made, including whether prior judicial or senior officer approval was obtained;
- the name of the officer in charge of the search and the names of all other officers who conducted the search;
- the names of any people on the premises if they are known;
- any grounds for refusing the occupier's request to have someone present during the search;
- details of any damage caused during the search and the circumstances in which it was caused;
- whether any cash was seized.

**48.** In the case of searches undertaken by police officers the record of the search made in accordance with paragraphs 45 and 47 shall be made, copied or referred to in the search register. In the case of searches undertaken by customs officers the record of the search shall be maintained in a suitable form.

**IN THE MAGISTRATES COURT AT**  
*[insert name of the court]*  
**PROCEEDS OF CRIME ACT 2002**  
**AUTHORITY FOR A SEARCH UNDER SECTION 289**

1. This is an authority for a search made by *[name of the JP]* on the application of *[ ]* of the *[ ]*. The Justice heard the applicant and was satisfied there are reasonable grounds to suspect that there is on *[name of premises and/or person]* cash which is recoverable property or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount.
2. The Justice has authorised *[name of officer]* to search *[name and address of the premises/name of persons]* and to seize and retain any cash found there which is reasonably suspected to be recoverable property or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount.

**EXCEPTIONS TO THE AUTHORITY**

3. This authority does not provide the authority to enter private premises. It does not require a person to submit to an intimate search or strip search.

	Signature of justice
<i>[court stamp]</i>	Name of justice
	Date

**PROCEEDS OF CRIME ACT 2002  
INFORMATION IN SUPPORT OF AN APPLICATION  
FOR AN AUTHORITY FOR A SEARCH**

The information of *[Officer]*  
of the *[Name and address of unit/agency]*

Who upon oath/affirmation states:

- 1.** I apply for an authority to search for the purposes of seizing cash which is recoverable property or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount in respect of persons *[named]* and/or premises at *[address]*.
  
- 2.** I make this application because I have reasonable grounds for suspecting that on the identified premises and/or persons there is cash which is recoverable property or is intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount. These grounds are *[insert reasons, attaching any relevant documentation]*.

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

