



Isle of Man Government

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Code of Practice Issued Under Section 45 of the Proceeds of Crime Act 2008

(Recovery of Cash – Search Powers)

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Introduction

1. This code of practice is made in connection with the exercise by an officer of Customs and Excise, and a constable of the search powers conferred by section 43 of the Proceeds of Crime Act 2008 ("the Act"). The code is made under section 45 of the Act. It applies to all searches made under these powers made on and after **????** (even if the search or other exercise of powers began before that date).
2. The code does not apply to searches carried out under any other legislation or provisions in the Act. If searches conducted under other legislation result in cash being seized under section 46 of the Act, the provisions of this code do not apply to that search.
3. The code should be available at Custom House and all police stations for consultation by the police and members of the public. It should also be available at police or customs 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 an officer of Customs and Excise.
4. Failure to comply with the provisions of this Code may be taken into account by a court in determining the legality of any search in which cash has been seized.
5. In this code:

reference to a person's rank or grade includes a person acting temporarily in that rank or grade.

"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 Island (section 43(6) of the Act). The definition of 'cash' can be amended by an order made by the Department of Home Affairs under section 43(7) – officers should be made aware of any such order made. The power of search does not extend to any other property (e.g. jewellery, pieces of art etc).

"lawfully on the premises" means that the officer involved is –

- (a) in a public place;
- (b) on private premises by invitation of the owner or occupier;
- (c) exercising an existing power of entry under other legislation (such as where police or customs officers have a statutory right of entry to the premises for inspection purposes); or

- (d) exercising an existing power of entry which compels the owner or occupier to allow right of entry (such as search warrants under the Police Powers and Procedures Act 1998 or the Customs and Excise Management Act 1986).

“officer” includes an officer of Customs and Excise or a constable unless otherwise specified.

General

6. 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 2001. 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 person and property of those concerned. The possibility of using reasonable force to give effect to the power of detention of a person and search of a person or premises should only be considered where this is necessary and proportionate in all the circumstances.
7. Powers to detain and search a person must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. The Race Relations Act 2004 makes it unlawful for a public authority to discriminate on the grounds of colour, race nationality or ethnic or national origins when carrying out any of its functions. An officer carrying out a search under section 43 of the Act will be a public authority for these purposes.
8. Special care and having particular regard to a person’s vulnerabilities and possible difficulties should be exercised when conducting a search. This is particularly relevant in the case of a search of a person where the person is a juvenile or persons with mental or physical disability.

Scope of the search powers

9. The Act provides power for officers to search for cash (subject to the limitations below) 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 is carrying cash which satisfies the conditions below.
10. 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; (conduct occurring in the Island is 'unlawful conduct' if it is unlawful under the criminal law. Conduct which occurs in a country or territory outside the Island and is unlawful under the criminal law applying in that country or territory, and if it occurred in the Island, would be unlawful under the criminal law of that part is also 'unlawful conduct') and

- the cash does not amount to less than the minimum amount specified in an Order made by the Department of Home Affairs (currently £1,000¹). There is no maximum amount of cash that can be seized.

Note: Where two or more individuals together hold more than the minimum amount the amounts may be aggregated if there are grounds to suspect the funds have a common source of destination (Commissioners of Customs & Excise v. Duffy, 2002).

11. Where the power to search a person is exercised the Act requires that the officer may require the person – so far as he or she thinks necessary or expedient – to permit:
 - (a) a search of any article he or she has with them; or
 - (b) a search of his or her person.
12. The officer may detain the person for so long as is necessary to carry out the search, but the intrusion on the liberty of the person searched should be brief.
13. The powers conferred are civil in nature and exercisable only so far as reasonably required for the purposes of finding relevant cash (as set out in paragraph 10). The powers do not include the power to enter premises.
14. The powers of search for relevant cash are exercisable by an officer of Customs and Excise only if he or she has reasonable grounds for suspecting that the unlawful conduct that makes the cash recoverable property or for which it is intended for use relates to an assigned matter within the meaning of the Customs and Excise Management Act 1986. Assigned matters are matters in relation to which Customs and Excise is required, in pursuance of any enactment, to perform any duties and currently include –
 - drug trafficking;
 - money laundering;
 - evasion of VAT, excise and other indirect taxes and duties; and
 - evasion of a wide range of import and export prohibitions and restrictions.

¹ This is set out in a statutory document made under section 55 of the Act (The Proceeds of Crime Act 2008 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2008 – S.D. No. 2). This amount can be amended by a further Order made by the Department – officers should be made aware of any such Order made and it should be made available with the code.

This list is not exhaustive.

Reasonable grounds for suspicion

15. In order to exercise the search power an officer must have reasonable grounds for suspecting that relevant cash is on the relevant premises or being carried by the person.
16. 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.
17. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, religion or age, cannot be used alone or in combination with each other as the reason for 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.
18. Reasonable suspicion should normally be linked to accurate and current intelligence or information. It can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person.

Authority to search for cash

19. Any decision to search for cash under the Act must, if practicable, be approved in advance. This approval must be given by the High Bailiff or a justice of the peace, or, if that is not practicable in any case, by a senior officer (see below). 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 approval is impracticable for all searches of a person – officers must carefully consider any decision not to obtain such approval.
20. In order to obtain approval from the High Bailiff or a justice of the peace an officer will need to make contact with the clerk of a magistrates' court to arrange a hearing which can be held without notice and in private. The usual reason to hold an application without notice and in private would be so as not to alert persons connected to the relevant cash that such action is contemplated. Being so alerted may have the effect of the person moving the cash and thereby frustrating the operation of the scheme. However, if there is no concern that the cash would be removed, the respondent should normally be notified of the intention of making an application for prior

approval to search for relevant cash. Annexed is a model application and draft order for use in the court. The officer will need to:

- identify himself or herself to the High Bailiff or magistrate (giving name, seniority, any warrant or other identifying number, and home station or place of work);
 - lodge his or her written application;
 - explain to the High Bailiff or justice the reasonable grounds for suspicion he or she has for undertaking the search;
 - identify the person or property to be searched;
 - answer any relevant questions that the High Bailiff or justice may have.
21. If judicial approval for a search is impracticable, approval may be given by a senior officer, defined as follows:
- where a search is undertaken by a constable, a police officer of the rank of Inspector or above;
 - where a search is undertaken by an officer of Customs and Excise, a Higher Executive Officer or above.
22. The officer should explain to the senior officer the reasonable grounds for suspicion he or she has for undertaking the search. The senior officer must only give approval where he or she is satisfied that the necessary grounds exist. The senior officer must make a written record of such grounds. Oral approval must be supported by written approval as soon as that is reasonably practicable.
23. Searches must be made within one calendar month of the date of the prior approval for that search.
24. If an application for prior approval 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 or she has new reasonable grounds for suspicion.
25. If prior 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 in making contact. 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 must make a written record of these reasons.

Reports to the “appointed person”

26. If a search under section 43 of the Proceeds of Crime Act is conducted without prior judicial approval – even if senior officer approval has been obtained – the officer is legally required to prepare a report in the following circumstances:

- if no cash is seized by virtue of section 46; or
- any cash seized is not detained for more than 48 hours.

Cash may not be detained for more than 48 hours except by order of the High Bailiff, the application for an order is commonly known as a ‘detention hearing’. Note that the 48 hours does not include weekends, Christmas day, Good Friday and bank holidays.

27. This report must set out why it was not practicable to obtain judicial prior approval and the circumstances which led the officer 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.

28. For cases where the power was exercised by a police constable, the report must be submitted to the Chief Constable. For cases where the power was exercised by an officer of Customs and Excise, the report must be submitted to the Collector of Customs and Excise.

29. The report should normally be submitted as soon as practicable and in no event any later than 14 days of the exercise of the search power. Following the submission of his or her report, the reporting officer must also submit, to the Chief Constable or, as the case may be, the Collector, any supplementary information which that person reasonably requires him or her to submit.

Search of a person

Steps prior to search of a person

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

- inform the person that he or she has reasonable grounds for suspecting that he or she has cash on their person which is not less than the minimum amount and is recoverable property or is intended by any person for use in unlawful conduct;
- inform the person that he or she has the power to search then under section 43 of the Proceeds of Crime Act 2008 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.
31. These steps do not necessarily have to be followed in the order presented. The officer will have flexibility depending on the circumstances of an individual case, but all the steps must be undertaken.
32. 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 card number or other identification should be given which proves their status but not their name as a constable, officer of Customs and Excise);
 - the name and location of the office or station to which the officer is attached; and
 - a clear explanation of the grounds for the reasonable suspicion.
33. Officers not in uniform should show their warrant cards or other suitable form of identification.
34. Before the search takes place the officer must inform the person of his or her entitlement to a copy of the record of the search.
35. If the person to be searched does not appear to understand what is being said or the officer has doubts as to the person's ability to speak and/or understand English or that the person is deaf or has difficulty with hearing or speaking, the officer should take reasonable steps to ensure that the person understands. Where desirable and practicable someone who can act as an interpreter should be identified, but if no such person can be identified, the search should still proceed.

Conduct of searches

36. All searches should be carried out with courtesy, consideration and respect for the person concerned. Wherever practicable, an officer of the same sex as the person to be searched should conduct the search. 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.
37. An officer who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out a search the officer may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory

explanation, be eliminated. Reasonable grounds for suspicion however cannot be provided retrospectively by such questioning during a person's detention or by refusal to answer any questions put.

38. If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, there cease to be reasonable grounds for suspecting that relevant cash, is recoverable property or intended for use in unlawful conduct, no search may take place. In the absence of any other lawful power to detain, the person in such circumstances is free to leave at will and must be so informed.
39. There is no power to detain a person in order to find grounds for a search. If reasonable grounds for suspicion emerge during an encounter with an individual, the officer may search the person, even though no grounds existed when the encounter began. If an officer is detaining someone for the purpose of a search, he or she should inform the person as soon as detention begins.
40. 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 type and amount of relevant cash is suspected of being carried.
41. 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.

If a search reveals an item suspected of containing relevant cash which is next to the skin (e.g. a money belt) an officer can only request the person to remove it.

42. 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 or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonable in the circumstances. Particular sensitivity should be exercised where the person being searched is wearing items of clothing which he or she says are of religious significance.
43. 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 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.

44. 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. If in a particular case questioning which covers whether the person has committed an offence, is likely to constitute questions that require a caution – this would be under the Police Powers and Procedures Act 1998, Code C: detention, treatment and questioning of persons by police officers.

Recording requirements – searches of a person

45. 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 then 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.
46. 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.
47. Unless it jeopardizes a wider ongoing operation or investigation, 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 not given) 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 the search (and of any prior approval 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 32).
48. A record is required for each person searched, including 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 is carrying relevant cash, by reference to the person's behaviour and/or other circumstances. If a person is detained with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of questioning the person, a record must still be made.

49. When an officer makes a record of the stop electronically and is unable to produce a copy of the form at the time, the officer must explain how the person can obtain a full copy of the record of the stop or search and give the person a receipt which contains:
- a unique reference number and guidance on how to obtain a full copy of the report;
 - the name of the officer who carried out the stop or search (subject to paragraph 32); and
 - the power used to detain and search them.
50. In the case of searches undertaken by constables the record of the search shall be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search shall be maintained in a suitable form.
51. In order to promote public confidence in the use of the powers, bodies using these powers should make available arrangements for the records to be scrutinised by Members of Tynwald. If applicable, records of searches of premises may also be made available.

Search of premises

General

52. No right of entry is conferred by section 43 of the Proceeds of Crime Act 2008. In order to search for cash on premises an officer must already be lawfully on premises, and circumstances subsequently lead him or her to believe that there is relevant cash on the premises. 'Premises' includes any place and, in particular, include any vehicle. A search must be made at a reasonable hour – i.e. in the case of domestic premises outside normal sleeping hours and in the case of business premises during normal business hours – unless this might frustrate the purpose of the search.
53. 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.
54. 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.

55. Before undertaking a search the officer shall make reasonable enquiries to:
- (i) establish if:
 - anything is known about the likely occupier of the premises and the nature of the premises themselves;
 - the premises have been searched previously and how recently;
 - (ii) obtain any other relevant information.
56. An officer cannot enter and search premises or continue to search premises if he or she has entered with consent (only and not under any other power) and the consent has been given under duress or is withdrawn before the search is completed.

Conduct of searches

57. 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).
58. 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.
59. 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 significantly hinder the investigation or endanger the officers concerned or other people. 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 (rather than under any power), the occupier is entitled to refuse consent until a friend or neighbour arrives.

Recording requirements – search of premises

60. Where premises have been searched in circumstances to which this Code applies the officer shall make or have made a record of the search on returning to his or her normal place of work. The record shall include:
- the address of the premises searched (and if relevant and possible the part of those premises searched. Where a vehicle is searched, the location of the vehicle and its registration number (if any));
 - the date, time and duration of the search;

- the grounds for making it (and of any prior approval given). If a search is conducted without judicial prior approval, the reason for not obtaining it;
 - the name of the officer(s);
 - the names of any people on the premises if they are known;
 - if appropriate, the written consent to undertake the search;
 - the name and details of any witness;
 - 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;
 - the outcome (e.g. whether any cash was seized);
61. In the case of searches undertaken by constables the record of the search shall be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search shall be maintained in a suitable form.
62. Unless it is impracticable to do so, the occupier of the property should be provided with a copy of this report.

IN THE *[insert name of court]* COURT AT**PROCEEDS OF CRIME ACT 2008****AUTHORITY FOR A SEARCH UNDER SECTION 43**

1. This is an authority for a search made by *[name of the High Bailiff or Magistrate]* on the application of *[name of officer]* of the *[Isle of Man Constabulary/Customs and Excise]* on *[insert date]*.

[]. The [High Bailiff or Justice] has heard the applicant and is satisfied that 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 *[High Bailiff or Justice]* has authorised *[name of officer]* to search *[name and address of the premises/name of persons]* for cash which is reasonably suspected to be recoverable property or intended by any person for use in unlawful conduct, and the amount of which is not less than the minimum amount.
3. This authority continues in force until the end of the period of one calendar month starting with the day on which it was issued.
4. This authority is valid for one search.

EXCEPTIONS TO THE AUTHORITY

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

Signature of *[High Bailiff or Justice]* _____

Name of *[High Bailiff or Justice]* _____

Date _____

[Court stamp]

PROCEEDS OF CRIME ACT 2008
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 finding cash which is recoverable property or is intended by an 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 _____