

## Police Pass Textbook – Sample Chapter

### Subject: Entry, Search & Seizure

#### Human Rights Act Considerations When Utilising Powers Of Entry And Seizure – Code B Paragraphs 1.3 & 1.4

As the powers to:			
<b>Power 1</b>	<b>Power 2</b>	<b>Power 3</b>	
Enter	Search	Seize	
...compromise the human rights to both:			
<b>Right 1</b>		<b>Right 2</b>	
Privacy		Respect for personal property	
... officers should:			
<b>Limitation 1</b>	<b>Limitation 2</b>	<b>Limitation 3</b>	<b>Limitation 4</b>
Have a <b>lawful authority</b> to exercise their powers.	If they <b>do have a lawful authority - before</b> exercising the power – <b>consider</b> whether the <b>necessary objectives can be met by less intrusive means.</b>	If they decide that exercising the power <b>is lawful, necessary</b> and <b>justified</b> – they should exercise their powers <b>courteously</b> and with <b>respect</b> for both <b>persons</b> and <b>property.</b>	<b>Only use reasonable force</b> when they consider it both <b>necessary</b> and <b>proportionate</b> in the circumstances.

**Equality Considerations When Utilising Powers Of Entry And Seizure –  
Code B Paragraph 1.3A**

The powers to:				
<b>Power 1</b>		<b>Power 2</b>		<b>Power 3</b>
Enter		Search		Seize
...must be used:				
<b>Limit 1</b>	<b>Limit 2</b>	<b>Limit 3</b>	<b>Limit 4</b>	<b>Limit 5</b>
<b>Fairly and responsibly.</b>	With <b>respect</b> for persons who occupy premises being searched or are in charge of property being seized.	<b>Without unlawful discrimination, harassment or victimisation.</b>	To <b>advance equality of opportunity</b> between persons who do and do not share a relevant protected characteristic.	To take steps to <b>foster good relations.</b>

**Which Code Of Practice Regulates The Powers Of Search And Seizure? – Code B Paragraph 1.1 & 1.1A & 2.3**

<b>Code B</b> of PACE 1984 regulates police powers to both:			
<b>Power 1</b>		<b>Power 2</b>	
Search premises		Seize and retain property found on premises and persons	
...in order to find either:			
<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>	
Property and material relating to a crime	Wanted persons	Children who abscond from local authority accommodation where they have been either remanded or committed to court	
...either:			
<b>Power 1</b>	<b>Power 2</b>	<b>Power 3</b>	<b>Power 4</b>
With the occupier's consent – for the purpose of an investigation into an alleged offence.	Via a warrant issued to and executed by constables in accordance with sections 15 and 16 PACE 1984.	Without warrant via powers conferred by PACE 1984 sections: <ul style="list-style-type: none"> <li>▪ 17;</li> <li>▪ 18; or</li> <li>▪ 32.</li> </ul>	Under any other power given to the police to enter premises with or without a warrant for any purpose connected with an alleged or suspected offence.  e.g. Section 6E(1) RTA 1988 – power to enter premises to require a person to provide a specimen of breath or arrest following a positive breath test or a failure to provide a breath specimen.

**Power 1 - Powers Of Search & Seizure With Consent**

**When Will It Be Unnecessary To Seek Consent Prior To Searching? - Code B Paragraph 5.4**

It will be <b>unnecessary to seek consent</b> from the <b>person entitled to grant entry</b> to the premises – if both:	
<b>Step 1</b>	<b>Step 2</b>
Seeking consent would <b>cause them disproportionate inconvenience.</b>	The circumstances are such that an <b>innocent occupier</b> would be <b>expected</b> to give their <b>consent.</b>  (e.g. a search of gardens in a locality for a fleeing suspect).

**What Information Must Be Provided Before Seeking Consent To Search? - Code B Paragraph 5.1**

Before seeking consent from the <b>person entitled to grant entry</b> to the premises – the <b>officer in charge of the search</b> shall state both:			
<b>Obligation 1</b>		<b>Obligation 2</b>	
The <b>purpose</b>		The <b>extent</b>	
...of the <b>proposed search</b> – and shall also be clearly informed that:			
<b>Obligation 3</b>	<b>Obligation 4</b>	<b>Obligation 5</b>	<b>Obligation 6</b>
They are <b>not obliged to consent</b>	<b>Any consent given can be withdrawn</b> at any time (either before or during the search)	Anything <b>seized</b> may be produced in <b>evidence</b>	If at the time of requesting consent – the person is <b>not suspected of an offence</b> – they should be <b>informed so</b> by the officer when they are stating the purpose of the search
...and the <b>officer</b> must make <b>necessary enquiries</b> to be satisfied that the <b>person is in a position to give their consent.</b>			

**If Consent To Search Is Given – How Will It Be Recorded? - Code B Paragraph 5.1**

- The consent must if **practicable** – be given **in writing** on the **Notice of Powers and Rights** - **prior** to the **search** taking place.

**When Will It Not Be Possible To Proceed With A Search By Consent? – Code B Paragraph 5.3**

An officer <b>cannot</b> :		
<b>Action 1</b>	<b>Action 2</b>	<b>Action 3</b>
Enter	Commence a search	Continue a search
... if either:		
<b>Situation 1</b>	<b>Situation 2</b>	<b>Situation 3</b>
Consent is <b>refused</b> .	Consent is provided under <b>duress</b> .  (i.e. it is not true consent)	Consent is initially given – but is later <b>withdrawn</b> before the search is completed.

**Power 2 – Powers Of Search & Seizure Under A Warrant**

**What Legislation Governs The Application For And Execution Of Search Warrants?**

Both:	
<b>Section 15 PACE 1984</b> (Regulates <b>applications for warrants</b> )	<b>Section 16 PACE 1984</b> (Regulates <b>execution of warrants</b> )
...to <b>search premises</b> issued by both:	
<b>Justice Of The Peace</b>	<b>Circuit Judge</b>
To exercise search powers for: <ul style="list-style-type: none"> <li>▪ Stolen property – section 26 Theft Act 1968;</li> <li>▪ Controlled drugs – section 23 Misuse of Drugs Act 1971;</li> <li>▪ Evidence for indictable offences – section 8 PACE 1984; and</li> <li>▪ Compliance with TPIM obligations – schedule 5 TPIM Act 2011.</li> </ul>	To exercise search powers under: <ul style="list-style-type: none"> <li>▪ Schedule 1 PACE 1984; and</li> <li>▪ Schedule 5 Terrorism Act 2000.</li> </ul>

## Applying For A Warrant

### The Obligation To Gather And Check Information Before Lodging An Application For A Warrant - Code B Paragraph 3.1 – 3.3

<p>Before lodging the application - the officer must take <b>reasonable steps</b> to check that the <b>information</b> upon which the application will be based is:</p>		
<b>Factor 1</b>	<b>Factor 2</b>	<b>Factor 3</b>
Accurate	Recent	<b>Not</b> provided maliciously or irresponsibly
...and shall <b>ascertain</b> as <b>specifically as possible</b> - both:		
<b>Factor 4</b>		<b>Factor 5</b>
The nature of the <b>articles sought</b>		The <b>location</b> of such <b>articles</b>
...and shall make <b>reasonable enquiries</b> to:		
<b>Factor 6</b>		<b>Factor 7</b>
<p>Establish if <b>anything is known</b> about either:</p> <ul style="list-style-type: none"> <li>▪ The <b>likely occupier</b> of the premises; or</li> <li>▪ The nature of the <b>premises</b> themselves.</li> </ul>		Obtain any other relevant information.

### Can An Application Be Made On The Basis Of Information From An Anonymous Source If Corroboration Has Not Being Sought? - Code B Paragraph 3.1

- No.

### Definition Of Premises? – Section 23 PACE 1984

Premises include any:						
Place.	Vehicle.	Vessel.	Aircraft.	Hovercraft.	Offshore / renewable energy installation.	Tent / movable structure.

**Seeking Authority To Lodge The Application For A Warrant - Code B  
Paragraph 3.4**

For an <b>application</b> to either:	
<b>Application 1</b>	<b>Application 2</b>
A <b>Justice of the Peace</b> for a <b>search warrant</b>	A <b>Circuit Judge</b> for a <b>search warrant</b> or <b>production order</b> under Schedule 1 PACE 1984
... <b>prior</b> to lodging the <b>warrant application</b> – <b>authority</b> must be sought from either:	
<b>Non-Urgent Situations</b>	<b>Exception - Urgent Situations</b>
<b>Signed written authority</b> of an <b>Inspector or above</b> .	In cases of <b>urgency</b> where <b>no Inspector or above</b> is “ <b>readily available</b> ” - then the <b>next most senior officer on duty</b> may <b>give the written authority</b> .

An <b>application</b> to a <b>Circuit Judge</b> under <b>Schedule 5 of the Terrorism Act 2000</b> for either:		
<b>Application 1</b>	<b>Application 2</b>	<b>Application 3</b>
A <b>production order</b>	A <b>search warrant</b>	An <b>order requiring an explanation</b> of material seized or produced under such a <b>warrant or production order</b>
...must be supported by the <b>signed written authority</b> of a <b>Superintendent or above</b> .		



### How Will The Application Be Made After Obtaining The Requisite Authority? – Section 15(3)&(4) PACE 1984 & Code B Paragraph 3.4

- An **application** for a warrant shall be:
  - Made **ex parte**; and
  - Supported by an **information in writing**.
- The constable **shall answer on oath** any question that the JP or Judge hearing the application asks them.
- The details of the **extent of the proposed search** should be made clear in the application.

### Making The Search Warrant Application – Code B Paragraph 3.6

#### The Means By Which A Search Warrant Application Shall Be Made?

- A search warrant application must be **supported in writing**.

#### What Shall Be Specified In The Search Warrant Application?

##### Content A

- The **enactment** under which the application is made.

##### Content B

Whether the warrant is to authorise entry and search of either:	
<b>Permutation 1</b>	<b>Permutation 2</b>
One set of premises	If the application is under section 8 PACE 1984 or Schedule 1 Paragraph 12 PACE 1984 – <b>more than one set of premises</b> or <b>all premises occupied or controlled by a specified person</b>
...and the <b>premises to be searched</b> .	

**Content C**

- The **object** of the search.

**Content D**

- The **grounds** for the search – and if the purpose of the search is to find **evidence** of an **alleged offence** – including an indication of **how** the **evidence relates** to the investigation.

**Content DA**

If the application is under either:	
<b>Authority 1</b>	<b>Authority 2</b>
Section 8 PACE 1984	Schedule 1 Paragraph 12 PACE 1984
...for a <b>single warrant</b> to enter and search:	
<b>More Than One Set Of Specified Premises</b>	<b>All Premises Occupied Or Controlled By A Specified Person</b>
<p>The officer must <b>specify each set of premises</b> which it is desired to enter and search</p>	<p>The officer must specify:</p> <ul style="list-style-type: none"> <li>▪ As <b>many sets of premises</b> which it is desired to enter and search as it is <b>reasonably practicable to specify</b>;</li> <li>▪ The <b>person who is in occupation and control of those premises</b> and <b>any others</b> which it is desired to search;</li> <li>▪ <b>Why it is necessary to search more premises than those which can be specified</b>;</li> <li>▪ <b>Why it is not reasonably practicable to specify all the premises</b> which it is desired to enter and search.</li> </ul>

**Content DB**

<p>Whether an application under section 8 PACE 1984 is for a warrant authorising entry and search on more than one occasion – and <u>if so</u> – the officer must state:</p>	
<b>Fact 1</b>	<b>Fact 2</b>
The grounds for this...	<p>...and whether the <b>desired number of entries</b> to be authorised is either:</p> <ul style="list-style-type: none"> <li>▪ <b>Unlimited</b>; or</li> <li>▪ <b>A specified maximum.</b></li> </ul>

**Content E**

<p>That there are <b>no reasonable grounds to believe</b> the <b>material to be sought</b> – when making an application to a:</p>	
<b>Justice Of The Peace Or Circuit Judge</b>	<b>Justice Of The Peace</b>
Consists of or includes items subject to <b>legal privilege</b>	<p>Consists of or includes either:</p> <ul style="list-style-type: none"> <li>▪ <b>Excluded material</b>; or</li> <li>▪ <b>Special procedure material.</b></li> </ul>

**Content F**

- If applicable – a **request** for the warrant to **authorise a person or persons to accompany the officer who executes the warrant.**

**Information To Be Supplied In The Warrant Application? – Section 15(1)-(2A) PACE 1984**

Where a <b>constable</b> applies for any such warrant - it shall be their duty to <b>state</b> the following information:	
<b>Fact 1</b>	<b>Fact 2</b>
The <b>ground</b> on which they make the application.	The <b>enactment</b> under which the warrant would be issued.
<b>Fact 3</b>	<b>Fact 4</b>
To <b>identify</b> , so far as is practicable, the: <ul style="list-style-type: none"> <li>■ <b>Articles</b> sought; or</li> <li>■ <b>Persons</b> sought.</li> </ul>	If the application is for a warrant authorising <b>entry and search</b> on <b>more than one occasion</b> : <ul style="list-style-type: none"> <li>■ The <b>ground</b> on which they applied for such a warrant; and</li> <li>■ Whether they <b>seek a warrant authorising</b>: <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>An unlimited number of entries</b>; or</li> <li><input type="checkbox"/> If not - the <b>maximum number of entries desired</b>.</li> </ul> </li> </ul>
...and the matters set out below:	
If the application relates to <b>one or more sets of premises specified</b> in the application - <b>each set of premises which it is desired to enter and search</b> ; and	If the application relates to any <b>premises occupied or controlled</b> by a person specified in the application: <ul style="list-style-type: none"> <li>■ <b>As many sets of premises</b> which it is desired to enter and search as it is <b>reasonably practicable</b> to specify;</li> <li>■ The person who is in <b>occupation or control</b> of those premises and <b>any others which it is desired to enter and search</b>;</li> <li>■ <b>Why</b> it is <b>necessary</b> to search more premises than those specified; and</li> <li>■ <b>Why</b> it is <b>not reasonably practicable</b> to <b>specify all the premises which it is desired to enter and search</b>.</li> </ul>
...plus also that both:	
There are <b>no reasonable grounds to believe</b> that the <b>material sought</b> consists of or includes either: <ul style="list-style-type: none"> <li>■ <b>Items subject to legal privilege</b>;</li> <li>■ <b>Excludes material</b>; or</li> <li>■ <b>Special procedure material</b>.</li> </ul>	<b>If applicable</b> – a request for the warrant to authorise <b>person(s) to accompany the officer who executes the warrant</b> .  (e.g. persons with expertise in respect of the items sought)

### Can A Further Warrant Application Be Made In The Event Of An Initial Refusal?

- **Yes** – but only if the further warrant application is supported by **additional grounds** – (i.e. you are bringing something new to the table).

### The Terms Of A Warrant Granted By The Court? – Section 15(5)-(6) PACE 1984

A warrant issued by the court shall specify:			
Fact 1	Fact 2	Fact 3	Fact 4
The name of the applicant	The date of issue	The enactment (e.g. legislation) under which it is issued	Either: <ul style="list-style-type: none"> <li>▪ Each set of premises to be searched; or</li> <li>▪ For all premises warrants – the person who occupies or controls the premises to be searched – along with any such premises that can be specified which are to be searched</li> </ul>
...and shall identify - as far as is practicable - either the:			
<b>Objective 1</b>		<b>Objective 2</b>	
Articles sought		Persons sought	
...and shall also specify the number of entries authorised – which will be either:			
<b>General Rule</b>		<b>Exception</b>	
One entry...		...unless the warrant expressly authorises multiple entries	
...and if the warrant authorises multiple entries - it must also specify whether the number of entries authorised is either:			
<b>Scope 1</b>		<b>Scope 2</b>	
Unlimited.		Limited to a specified maximum.	

**How Many Copies Of The Warrant Shall Be Made? – Section 15(7)-(8) PACE 1984**

<b>Only One Set Of Premises &amp; Only Single Entry Authorised</b>	<b>Multiple Premises Or Multiple Entries Authorised</b>
2 certified copies.	As many certified copies as are reasonably required.

**Execution Of Warrants – Section 16 PACE 1984**

**Who Can Execute A Warrant? – Section 16(1)-(2B) PACE 1984**

A warrant to both:	
<b>Action 1</b>	<b>Action 2</b>
Enter	Search
...premises - may:	
<b>Person 1</b>	<b>Person 2</b>
Be executed by any constable...	...and may <b>authorise persons to accompany</b> any constable who is executing the warrant
...and any <b>accompanying person</b> will have the <b>same powers</b> as the <b>constable</b> (who accompanies them) to both:	
<b>Power 1</b>	<b>Power 2</b>
<b>Execute</b> the warrant	<b>Seize</b> anything to which the warrant relates
...provided the <b>accompanying person</b> is both:	
<b>Criteria 1</b>	<b>Criteria 2</b>
<b>In the company</b> of a constable.	<b>Under the supervision</b> of a constable.

**Time Limits For The Entry & Search? – Section 16(3) PACE 1984 & Code B Paragraph 6.1**

Searches under warrant must be conducted within either:	
<b>Time Limit 1</b>	<b>Time Limit 2</b>
3 calendar months of the date of issue of the warrant.	The period specified in an enactment under which the warrant was issued – if shorter.

**When Is It Necessary To Obtain Authority Prior To Executing A Warrant? – Section 16(3A)&(3B) PACE 1984**

Written authority from an officer of the rank of <b>Inspector or above</b> must be obtained prior to executing the warrant - where it is proposed to enter and search either:	
<b>Situation 1 – All Premises Warrants</b>	<b>Situation 2 – Multiple Entry Warrant</b>
Premises which are <u>not</u> specified in the all premises warrant.	Premises for a second or subsequent time under a multiple entry warrant.

**Timing Of The Entry & Search? - Section 16(4) PACE 1984**

<b>General Rule</b>	<b>Exception</b>
The entry and search under a warrant must be conducted at a <b>reasonable hour</b> ...	...unless it appears to the constable executing it that the <b>purpose of the search may be frustrated</b> on entry at a reasonable hour.

**Who Will Be In Charge Of The Search? – Code B Paragraph 2.10**

<p>The officer in charge of the search should <b>normally be the most senior officer present</b> – <b>unless</b> any of the following <b>exceptions</b> apply:</p>		
<b>Exception 1</b>	<b>Exception 2</b>	<b>Exception 3</b>
<p>A <b>supervising officer</b> may <b>appoint an officer of lower rank</b> - if that officer is <b>more conversant with the facts</b> and is a <b>more appropriate</b> officer to be in charge of the search.</p>	<p><b>All officers</b> in the premises search are of the <b>same rank</b>.</p> <p>If so - the supervising officer, if available, must appoint one officer in charge of the search, or alternatively the officers themselves must nominate one of their number to act.</p>	<p>If a <b>senior officer is assisting in a specialist role</b> - they need not be in charge of the search.</p>

**Must The Searching Officer Be In Uniform?**

- **No** - an officer of the rank of **Inspector or above** may **direct a designated investigating officer not to wear uniform** for the purposes of a specific operation.

**Action To Be Taken By The Constable When Executing A Warrant? - Section 16(5)-(7) PACE 1984**

<p>The action to be taken by a constable when executing the warrant will depend on whether:</p>		
<b>Situation 1</b>	<b>Situation 2</b>	<b>Situation 3</b>
<p>The <b>occupier <u>is</u> present</b> at the time of the search.</p> <p>If so - the <b>constable</b> shall:</p> <ul style="list-style-type: none"> <li>▪ <b>Identify</b> themselves to the <b>occupier</b>;</li> <li>▪ If <b>not in uniform</b> – produce <b>documentary evidence</b> that they are a constable;</li> <li>▪ <b>Produce</b> the warrant to them; and</li> <li>▪ <b>Supply</b> them with a <b>copy</b> (NB – not the original!)</li> </ul>	<p>The <b>occupier is <u>not</u> present</b> at the time of the search – but a <b>person in charge</b> of the premises <b><u>is</u> present</b>.</p> <p>If so - the <b>constable</b> shall:</p> <ul style="list-style-type: none"> <li>▪ <b>Identify</b> themselves to the <b>person in charge</b> of the premises;</li> <li>▪ If <b>not in uniform</b> – produce <b>documentary evidence</b> that they are a constable;</li> <li>▪ <b>Produce</b> the warrant to them; and</li> <li>▪ <b>Supply</b> them with a <b>copy</b> (NB – not the original!)</li> </ul>	<p><b>Neither</b> the <b>occupier</b> nor a <b>person in charge</b> of the premises is <b>present</b>.</p> <p>If so - the <b>constable</b> shall <b>leave a copy</b> of the <b>warrant</b> in a <b>prominent place on the premises</b>.</p>



### Exam Trip Up – Nosy Neighbours

- Watch for the exam trip up when the **nosy neighbour** comes and watches the search - the neighbour is **not in charge** and therefore should **not be supplied with a copy of the warrant**.

### Exam Trip Up – Never Leave The Original Warrant

The <b>original warrant</b> must <b>not</b> be <b>left</b> either:		
With the <b>occupier</b> .	With the <b>person in charge</b> .	<b>At the premises</b> .

### What Extent Of Search Is Permitted? – Section 16(8) PACE 1984

- A search can only be conducted to the **extent required** for the **purpose** for which the **warrant was issued**.

### Post Search Endorsement Obligations? – Section 16(9) PACE 1984

Having conducted the search – the <b>constable who executed the search warrant</b> shall <b>endorse</b> (i.e. make a <b>record</b> on) the <b>warrant</b> - of whether both:	
<b>Fact 1</b>	<b>Fact 2</b>
Any <b>articles</b> or <b>persons</b> sought were <b>found</b>	Any <b>articles</b> were <b>seized</b> (other than ones which were sought)
...and ( <b>unless</b> the warrant is a <b>single premises warrant</b> ) – they shall make a <b>separate endorsement</b> for <b>each set of premises entered and searched</b> .	

**The Obligation To Return & Retain The Warrant – Section 16(10)-(12) PACE 1984**

After either:	
<b>Situation 1</b>	<b>Situation 2</b>
A warrant has been <b>executed</b>	<p>Either</p> <ul style="list-style-type: none"> <li>▪ A specific premises warrant which has <b>not been executed</b>;</li> <li>▪ <b>All premises warrant</b>; or</li> <li>▪ <b>Multiple entry warrant</b></li> </ul> <p>...has become <b>void</b> due to <b>expiry of the time limit</b> – i.e. <b>3 months</b> or longer after its <b>date of issue</b></p>
...the warrant must be <b>returned</b> to the appropriate person – who will be either:	
<b>Person 1</b>	<b>Person 2</b>
The <b>designated officer</b> for the local justice area in which a <b>Justice of the Peace</b> issued the warrant	The <b>appropriate officer</b> of the court where it was <b>issued</b> by a <b>judge</b>
...and both:	
<b>Obligation 1</b>	<b>Obligation 2</b>
The warrant shall be <b>retained</b> for <b>12 months</b> from the date of its <b>return</b> ...	...and the <b>occupier of the premises searched</b> will be permitted during the <b>12 month retention period</b> to <b>inspect</b> the warrant upon request.

**Excluding Evidence**

- If the provisions are **not fully complied with** - any entry and search made under the terms of the warrant will be **unlawful** and evidence may be **excluded** as a consequence.

## Search Warrants for Indictable Offences – Section 8 PACE 1984

### Who May Apply For A Warrant? – Section 8(1) PACE 1984

- A **constable** may lodge an application for a warrant to a **Justice of the Peace**.
- The **power to apply for** and **execute warrants** under Section 8 of PACE 1984 can be conferred on a person designated as an **Investigating Officer** under the Police Reform Act 2002.

### What Forms Of Search Warrants Can Be Applied For? - Section 8(1)(A) PACE 1984

A constable can apply for <b>two different types</b> of warrant:	
<b>Specific Premises Warrant</b>	<b>All Premises Warrant</b>
Which authorise <b>one or more sets of premises</b> to be searched	Which authorise the searching of <b>all premises</b> under the <b>occupation or control</b> of a person - where it is <b>not practicable to specify all such premises</b> at the time of the application
...and a warrant may authorise <b>entry to and search</b> of premises <b>on more than one occasion</b> – if the <b>Justice of the Peace</b> is satisfied that <b>multiple entries</b> are <b>necessary</b> – and if so, the <b>number of entries authorised</b> may be either:	
<b>Scope 1</b>	<b>Scope 2</b>
<b>Limited to a maximum.</b>	<b>Unlimited.</b>

**Criteria For Granting A Warrant? – Section 8(1)-(3) PACE 1984**

The <b>Justice of the Peace</b> can issue a warrant - authorising a <b>constable</b> to both:			
<b>Power 1</b>		<b>Power 2</b>	
Enter		Search	
...the premises if they are satisfied that there are <b>reasonable grounds for believing <u>all</u></b> of the following:			
<b>Belief 1</b>	<b>Belief 2</b>	<b>Belief 3</b>	<b>Belief 4</b>
That an <b>indictable offence</b> has been committed	That there is <b>material on the premises</b> that is likely to be of <b>substantial value</b> (whether by itself or together with other material) to the <b>investigation</b> of the offence	That the material is likely to be <b>relevant evidence</b>  (i.e. <b>admissible</b> evidence at trial)	That the material does <b>not</b> consist of or include items subject to either: <ul style="list-style-type: none"> <li>▪ <b>Legally privileged;</b></li> <li>▪ <b>Excluded material;</b> or</li> <li>▪ <b>Special procedure material</b></li> </ul>
...and that <b>any</b> of the following conditions also apply in relation to each set of premises specified in the application:			
<b>Factor 1</b>	<b>Factor 2</b>	<b>Factor 3</b>	<b>Factor 4</b>
That <b>entry</b> to the premises will <b>not be granted - unless a warrant is produced.</b>	That the <b>purpose</b> of the <b>search</b> may be <b>frustrated or seriously prejudiced</b> – <b>unless</b> a constable arriving at the premises can <b>secure immediate entry.</b>	That it is <b>not practicable to communicate</b> with any <b>person entitled to grant entry</b> to the premises.	Both that: <ul style="list-style-type: none"> <li>▪ It <b>is practicable to communicate</b> with a <b>person entitled to grant entry</b> to the premises;</li> <li>▪ But - it is <b>not practicable to communicate</b> with any <b>person entitled to grant access</b> to the <b>evidence.</b></li> </ul>

### What Material Can Be Seized Following A Section 8 PACE 1984 Search?

- Only material that is of **substantial value to the investigation** of the indictable offence **can** be seized.
- Any material which is **solely for intelligence purposes cannot** be seized.

### Seizure Rules In Relation To Specific Categories Of Material

#### 1 - Legally Privileged Material

#### Definition Of Legally Privileged Material – Section 10(1) PACE 1984

Legally privileged material includes:		
Category 1	Category 2	Category 3
Communications between a professional legal adviser and their client or any person representing their client - made in connection with giving legal advice to the client	Communications between a professional legal adviser and their client or any person representing their client or between such advisor or their client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings	Items enclosed with or referred to in such communication and made either in connection with the giving of legal advice or in contemplation of legal proceedings and for the purpose of such proceedings
...when they are in the <b>possession</b> of a <b>person entitled to possession</b> of them.		

#### Will An Item Which Is Held By A Legal Adviser With The Intention Of Furthering A Criminal Purpose Be Covered By Legal Privilege? – Section 10(2) PACE 1984

- **No** – such items do **not** attract legal privilege.

**Can Legally Privileged Material Be Searched For And Seized?**

<b>General Rule – No</b>	<b>Exception – Yes</b>
<p><b>No</b> – if it is in the <b>possession</b> of a <b>person who is entitled</b> to possession of such material.</p>	<p>If items are <b>held with the intention of furthering a criminal purpose</b> they will not be subject to legal privilege.</p> <p>An application for a warrant to search and seize such material can be made under Schedule 1 PACE 1984.</p>

**2 - Excluded Material**

**Definition Of Excluded Material? – Section 11(1) PACE 1984**

<p><b>Excluded material</b> includes any of the following material <b>held in confidence</b>:</p>		
<p><b>Category 1 Personal Records In Business Documents</b></p>	<p><b>Category 2 Human Tissue / Tissue Fluid</b></p>	<p><b>Category 3 Journalistic Material</b></p>
<p><b>Personal records</b> which a person has <b>acquired</b> or <b>created</b> in the course of any <b>trade, business, profession, occupation</b> or for the purposes of any <b>paid or unpaid office</b> and which they <b>hold in confidence</b>.</p> <p>e.g. Records made by priests, medical records, etc.</p>	<p><b>Human tissue or tissue fluid</b> which has been taken for the purposes of <b>diagnosis or medical treatment</b> which a person <b>holds in confidence</b>.</p>	<p><b>Journalistic material</b> which a person <b>holds in confidence</b> and consists of <b>documents or records</b> other than documents.</p>

**Definition Of Journalistic Material? – Section 13 PACE 1984**

Journalistic material is material that is either:	
<b>Action 1</b>	<b>Action 2</b>
Acquired	Created
...for the purposes of journalism.	

**Definition Of A Personal Record? – Section 12 PACE 1984**

A personal record will include any:		
<b>Record 1</b>	<b>Record 2</b>	
Documentary record	Other record	
...concerning an <b>individual</b> (whether <b>living or dead</b> ) – who can be <b>identified from them</b> – and <b>relating to</b> either:		
<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>
Their <b>physical or mental health</b> .	<b>Spiritual counselling or assistance</b> either <b>given or to be given to them</b> .	<b>Counselling or assistance</b> either <b>given or to be given to them</b> – for the purpose of their <b>personal welfare</b> – by any: <ul style="list-style-type: none"> <li>▪ <b>Voluntary organisation</b>; or</li> <li>▪ <b>Individual</b></li> </ul> ...who either: <ul style="list-style-type: none"> <li>▪ By reason of their <b>office or occupation</b> – has <b>responsibilities</b> for their <b>personal welfare</b>; or</li> <li>▪ By reason of an <b>order of a court</b> – has <b>responsibilities</b> for their <b>supervision</b>.</li> </ul>

**Basis Of The Obligation To Hold Material In Confidence? – Section 11(2)&(3) PACE 1984**

<p><b>Categories 1 &amp; 2 Personal Records In Business Documents &amp; Human Tissue / Tissue Fluid</b></p>	<p>By virtue of either:</p> <ul style="list-style-type: none"> <li>▪ An <b>express or implied undertaking</b> to hold in confidence; or</li> <li>▪ A restriction on disclosure or obligation of secrecy contained in any enactment - ( i.e. imposed by <b>legislation</b>).</li> </ul>
<p><b>Category 3  Journalistic Material</b></p>	<ul style="list-style-type: none"> <li>▪ The journalistic material is held subject to such an <b>undertaking, restriction or obligation</b> that it be <b>held in confidence</b>; and</li> <li>▪ It has been <b>continuously held</b> by <b>one or more persons</b> subject to such an undertaking, restriction or obligation <b>since it was first acquired or created for the purposes of journalism</b>.</li> </ul>

**Can Excluded Material Be Searched For And Seized?**

- **Yes** – but only upon a **Production Order** being granted by a Judge under Schedule 1 PACE 1984.

**3 - Special Procedure Material**

**Definition Of Special Procedure Material?**

<b>Category 1</b>	<b>Category 2</b>
<p>Journalistic material - other than excluded material.</p>	<p>Material - other than items subject to legal privilege or excluded material - which is in the possession of a person who both:</p> <ul style="list-style-type: none"> <li>▪ Acquired or created it in the course of any trade, business, profession, occupation or for the purposes of any paid or unpaid office; and</li> <li>▪ Holds it subject to either: <ul style="list-style-type: none"> <li>○ An <b>express or implied undertaking</b> to hold in confidence; or</li> <li>○ A <b>restriction on disclosure or obligation of secrecy</b> contained in any <b>enactment</b> - (i.e. imposed by <b>legislation</b>).</li> </ul> </li> </ul>



### Can Special Procedure Material Be Searched For And Seized?

- **Yes** – but only upon a **production order** or **search warrant** being granted under Schedule 1 PACE 1984.

### Power 3 – Powers Of Entry, Search and Seizure Without A Warrant

#### The Range Of Powers To Enter And Search Premises Without A Warrant?

A constable has the power to both:		
<b>Power 1</b>	<b>Power 2</b>	
Enter	Search	
...premises <u>without</u> a warrant – to either:		
<b>Section 17 PACE 1984</b>	<b>Section 18 PACE 1984</b>	<b>Section 32 PACE 1984</b>
Either: <ul style="list-style-type: none"> <li>▪ <b>Arrest</b> a person;</li> <li>▪ <b>Recapture</b> a person unlawfully at large;</li> <li>▪ <b>Save life and limb</b>; or</li> <li>▪ <b>Protect property.</b></li> </ul>	Search <b>after arrest</b> for an <b>indictable offence.</b>	Search the <b>premises</b> either: <ul style="list-style-type: none"> <li>▪ <b>Where an arrest took place</b>; or</li> <li>▪ Where the <b>person was immediately before</b> their arrest.</li> </ul>

**Power of Entry And Search To Make An Arrest, Recapture, Save Life And Limb Or Protect Property - Section 17 PACE 1984**

A <b>constable</b> may both:	
<b>Enter</b> - (using <b>force</b> where <b>necessary</b> )	<b>Search</b>
...any <b>premises</b> - for the <b>purpose</b> of either:	
<b>Arrest Purpose 1</b>	<b>Arrest Purpose 2</b>
<p><b>Executing:</b></p> <ul style="list-style-type: none"> <li>■ A <b>warrant of arrest</b> (issued in connection with or arising out of criminal proceedings); or</li> <li>■ A <b>warrant of commitment</b> (issued under section 76 Magistrates' Courts Act 1980).</li> </ul>	<p><b>Arresting</b> a person for an offence under:</p> <ul style="list-style-type: none"> <li>■ Section 1 Public Order Act 1936 (Prohibition of uniforms);</li> <li>■ Section 6 to 8 or 10 of the Criminal Law Act 1977 (Land offences relating to entering or remaining on property);</li> <li>■ Section 4 Public Order Act 1986 (Fear or provocation of violence);</li> <li>■ Section 4 (Unfit to drive) or 163 (Failure to stop) of the Road Traffic Act 1988;</li> <li>■ Section 27 of the Transport and Works Act 1992;</li> <li>■ Section 76 of the Criminal Justice and Public Order Act 1994 (Failure to comply with interim possession order);</li> <li>■ Sections 4 – 8 Animal Welfare Act 2006 (Offences relating to the prevention of harm to animals); and</li> <li>■ Section 144 Legal Aid, Sentencing &amp; Punishment Of Offenders Act 2012 (Squatting in a residential building).</li> </ul>
<b>Arrest Purpose 3</b>	<b>Arrest Purpose 4</b>
<b>Arresting</b> a person for an <b>indictable offence</b> .	<b>Arresting</b> any <b>child</b> or <b>young person</b> who has been <b>remanded</b> or <b>committed to local authority accommodation</b> or <b>youth detention accommodation</b> .

<b>Arrest Purpose 5</b>	<b>Arrest Purpose 6</b>
<b>Arresting</b> a person for an offence to which section 61 Animal Health Act 1981 applies.	<b>Arresting</b> a person in <b>breach of bail</b> .
<b>Recapture Purpose</b>	<b>Protection Purpose</b>
<p><b>Recapture Purpose 1</b></p> <p><b>Recapturing</b> any person who is, or is deemed for any purpose to be <b>unlawfully at large</b> – whilst liable to be detained either:</p> <ul style="list-style-type: none"> <li>▪ In a <b>prison, remand centre, young offender institution, or secure training centre</b>; or</li> <li>▪ In pursuance of section 92 Powers Of Criminal Courts (Sentencing) Act 2000 (dealing with children or young persons guilty of grave crimes) – <b>in any other place</b>.</li> </ul> <p><b>Recapture Purpose 2</b></p> <p><b>Recapturing</b> a person whatever who is <b>unlawfully at large</b> and who they are <b>pursuing</b> – NB must be a “live” pursuit.</p>	<p>Either:</p> <ul style="list-style-type: none"> <li>▪ <b>Saving life and limb</b>; or</li> <li>▪ <b>Preventing serious damage to property</b>.</li> </ul>

**What Is The Mental Element Of The Constable In Relation To The Person That They Are Seeking At The Premises? – Section 17(2) PACE 1984**

The <b>power to enter and search</b> - <b>except</b> for searches conducted for the <b>purposes</b> of both:	
<b>Excepted Purpose 1</b>	<b>Excepted Purpose 2</b>
<b>Saving life and limb</b>	<b>Preventing serious damage to property</b>
...will <b>only be exercisable</b> if the constable has <b>reasonable grounds</b> for <b>believing</b> (NB – not suspecting) that the <b>person</b> that they are <b>seeking</b> is <b>on the premises</b> .	

**Limitations When Searching Premises Of Multiple Occupancy? - Section 17(2) PACE 1984**

When searching premises that consist of <b>2 or more separate dwellings</b> - the <b>power to enter and search - <u>except</u></b> for searches conducted for the <b>purposes</b> of both:	
<b>Excepted Power 1</b>	<b>Excepted Power 2</b>
Saving life and limb	Preventing serious damage to property
...is <b>limited</b> to <b>enter and search</b> :	
<b>Location 1</b>	<b>Location 2</b>
Any <b>common parts</b> of the premises which the <b>occupiers share</b> ...	...and any such <b>dwelling</b> which the constable has <b>reasonable grounds for believing</b> that the <b>person</b> they are <b>seeking</b> is <b>located</b> in.

**Having Entered The Premises - What Extent Of Search Is Permitted? Section 17(4) PACE 1984**

- The constable will have the power to search to the **extent** that is **reasonably required** for the **purpose** that the **power of entry is exercised** - (see above for the range of purposes).

**Does The Constable Exercising The Power Of Entry & Search Need To Be In Uniform? – Section 17(3) PACE 1984**

The constable must be <b>in uniform</b> in relation to entry and search powers exercised for the <b>purpose</b> of either:		
<b>Purpose 1</b>	<b>Purpose 2</b>	<b>Purpose 3</b>
<p><b>Arrest</b> under section 6 to 8 or 10 of the Criminal Law Act 1977</p> <p>(Land offences relating to entering or remaining on property).</p>	<p><b>Arrest</b> under section 76 of the Criminal Justice and Public Order Act 1994</p> <p>(Failure to comply with an interim possession order)</p>	<p><b>Arrest</b> under section 144 Legal Aid, Sentencing &amp; Punishment Of Offenders Act 2012</p> <p>(Squatting in a residential building)</p>
....and <b>need <u>not</u> be in uniform</b> in relation to entry and search powers exercised for the <b>other purposes</b> .		

**Power To Search A Person After Arrest Away From A Police Station – Section 32 PACE 1984**

**Grounds For Conducting The Search Of The Person? - Section 32(1)&(2)(a) PACE 1984**

A <b>constable</b> may <b>search</b> a <b>person arrested</b> at a <b><u>place other than a police station</u></b> - if they have <b>reasonable grounds</b> for <b>believing</b> that the arrested person either:		
<b>Situation 1</b>	<b>Situation 2</b>	<b>Situation 3</b>
<p>May present a <b>danger</b> to:</p> <ul style="list-style-type: none"> <li>▪ <b>Themselves</b>; or</li> <li>▪ <b>Others</b>.</li> </ul>	<p>Has <b>concealed on them</b> anything which they might use to <b>assist them to escape</b> from lawful custody.</p>	<p>Has <b>concealed on them</b> anything which <b>might be evidence</b> relating to <b><u>an</u></b> offence.</p>

**Focus On The Mental Element**

- Please note that the constable's mental element is **belief** – **not suspicion**.

**The Location Of The Search?**

- A section 32 search of a **person** may only take place **outside** a police station.

**Situation 3 – What Evidence Can Be Searched For Under The Person Search Power?**

- Under **situation 3 – evidence** relating to **an offence** can be searched for.
- This is **wider** than merely **evidence** relating to the **offence** for which they have been **arrested** - which the search of **premises power (below)** specifies.

**Permitted Extent Of The Search For Situations 2 & 3? - Section 32(3)&(5) PACE 1984**

The <b>constable</b> may only search to the extent that is <b>reasonably required</b> for the purpose of <b>discovering</b> any such <b>concealed</b> :	
<b>Concealed Item 1</b>	<b>Concealed Item 2</b>
<b>Thing</b> that they might use to <b>assist them to escape</b> from lawful custody	<b>Evidence</b> relating to <b>an</b> offence
...that the constable has reasonable grounds to <b>believe</b> they <b>have on them</b> .	

**What Can Be Removed Or Searched?**

The constable conducting the search may only either:	
<b>Extent 1</b>	<b>Extent 2</b>
Require the person to <b>remove</b> - in public, their: <ul style="list-style-type: none"> <li>▪ <b>Outer coat;</b></li> <li>▪ <b>Jacket;</b> or</li> <li>▪ <b>Gloves.</b></li> </ul>	Search the person's <b>mouth</b> .

**Power Of Seizure Following The Search Of A Person – Section 32(8)&(9)  
PACE 1984**

A constable may both:		
<b>Power 1</b>	<b>Power 2</b>	
<b>Seize</b>	<b>Retain</b>	
...anything they find – <u>other than</u> items subject to <b>legal privilege</b> – if they have <b>reasonable grounds for <u>believing</u></b> that either:		
<b>Situation 1</b>	<b>Situation 2</b>	<b>Situation 3</b>
<p>The person searched might use it to cause <b>physical injury</b> to either:</p> <ul style="list-style-type: none"> <li>▪ <b>Them; or</b></li> <li>▪ <b>Another person.</b></li> </ul>	<p>They might use it to <b>assist</b> them to <b>escape</b> from <b>lawful custody</b>.</p>	<p>That it is either:</p> <ul style="list-style-type: none"> <li>▪ <b>Evidence of <u>an</u> offence; or</b></li> <li>▪ It has been <b>obtained</b> in consequence of the <b>commission of <u>an</u> offence.</b></li> </ul>

**Search of Premises After Arrest For An Indictable Offence - Section 32(2)(b) PACE 1984**

A <b>constable</b> shall have the power to both:	
<b>Power 1</b>	<b>Power 2</b>
Enter	Search
... <b>any premises</b> which the person was in - either:	
<b>Juncture 1</b>	<b>Juncture 2</b>
<b>At the time</b> that they were <b>arrested</b> for an <b>indictable offence</b>	<b>Immediately before</b> being <b>arrested</b> for an <b>indictable offence</b>
...if the <b>constable</b> has <b>reasonable grounds</b> for <u>believing</u> that there is <b>evidence on the premises</b> relating to the <u>offence</u> for which they were <u>arrested</u> .	

**What Category Of Offence Does The Search Power Relate To?**

- This search power relates to **searches of premises** of persons **arrested** for an **indictable offence**.
- The search power does not apply to persons **arrested** for a **summary offence**.

**Focus On The Constable's Mental Element**

- Please note that the constable's mental element is **belief** – not **suspicion**.
- It must be a **genuine belief** based upon **reasonable grounds** – i.e. speculative searches are not permitted – *R v Beckford* [1992] 94 Cr App R 43.



### What Evidence Can Be Searched For Under The Premises Search Power? – Section 32(6) PACE 1984

- The constable may only enter and search the premises if they have reasonable grounds to **believing** that there is **evidence relating to the offence** for which they have been **arrested** on the **premises**.
- Therefore, the nature of evidence in respect of which the **premises search power** can be exercised is **narrower** than the corresponding **search of person power under section 32 PACE 1984** – which relates to searching for **evidence for an offence** (see above).
- The **section 32 PACE 1984 premises search power** also applies to a **narrower** category of **evidence** than the separate premises search power under **section 18 PACE 1984**.
- The **wider section 18 PACE 1984** power permits searching for evidence relating either:
  - To the **indictable offence** for which the person has been **arrested**; or
  - Some **other indictable offence** which is either **connected** or **similar to the offence** for which they have been **arrested** (see below).

### What Extent Of Search Is Permitted? – Section 32(3) PACE 1984

- The search can only be conducted to the **extent** that is **reasonably required to discover evidence relating to the offence** for which the person was **arrested**.
- So, for example – if you are searching for a stolen large screen television – you should not be searching for the television itself in the small drawer of bedside table. However, you could search in the drawer for documentation relating to the stolen television.

### The Test To Determine Whether The Person Was At The Premises Either At The Time Of Arrest Or Immediately Before Their Arrest?

- This is a **question of fact** to be determined in each case.
- A period of **2 hours** elapsing between leaving a property and the time of arrest has been deemed **not** to be “**immediately before**” – *Hewitson v Chief Constable of Dorset Police* [2003] EWHC 3296.

**Where Can Be Searched In Premises Consisting Of 2 Or More Separate Dwellings? – Section 32(7) PACE 1984**

Where a search relates to premises consisting of either:	
<b>2</b>	<b>More than 2</b>
...separate dwellings - the <b>constable</b> may only search:	
<b>Area 1</b>	<b>Area 2</b>
Any dwelling in which either: <ul style="list-style-type: none"> <li>▪ The <b>arrest took place</b>; or</li> <li>▪ The <b>person arrested was immediately before their arrest</b>.</li> </ul>	Any <b>parts of the premises</b> which the occupier of any such dwelling <b>uses in common with occupiers of any other dwellings comprised in the premises</b> .

**Learning Point**

- Note that the **section 32 premises search** provision does **not** include a **specific power of seizure**.
- Whereas in contrast – the **section 32 person search** provision **does** include a **specific power of seizure**.

**Power To Search After Arrest For Indictable Offences – Section 18 PACE 1984**

**The Grounds To Conduct A Search Of Premises? – Section 18(1)&(2) PACE 1984**

A <b>constable</b> who has obtained the authorisation of an <b>Inspector</b> or above - may:	
<b>Power 1</b>	<b>Power 2</b>
Enter	Search
...any <b>premises</b> - that are either:	
<b>Status 1</b>	<b>Status 2</b>
Occupied	Controlled
...by a person who is <b>under arrest</b> for an <b>indictable offence</b> - if they have <b>reasonable grounds</b> for <b>suspecting</b> that there is <b>on the premises evidence</b> , ( <b>other than</b> items subject to <b>legal privilege</b> ) - that <b>relates</b> to either:	
<b>That indictable offence</b>	Some <b>other indictable offence</b> which is either: <ul style="list-style-type: none"> <li>■ <b>Connected</b> with that offence; or</li> <li>■ <b>Similar</b> to that offence</li> </ul>
...and the <b>constable</b> may both:	
<b>Power 3</b>	<b>Power 4</b>
Seize	Retain
...any <b>such evidence</b> found.	

**What Category Of Offence Does The Search Power Relate To?**

- This power relates to **searches of premises** of persons **arrested** for **indictable offences**.
- The search power does **not** apply to **summary offences**.

### **The Constables Mental Element In Relation To Whether There Is Evidence On The Premises?**

- The constable's mental element that there is evidence at the premises is that of **suspicion – not belief**.

### **What Evidence Does The Suspicion Relate To?**

- The **wider section 18 PACE 1984** power permits searching for evidence relating either:
  - To the **indictable offence** for which the person has been **arrested**; or
  - Some **other indictable offence** which is either **connected** or **similar to the offence** for which they have been **arrested** (see below).
- Note that power **cannot be used for general intelligence gathering**.

### **The Constables Mental Element In Relation To Whether The Premises Are Occupied Or Controlled By The Person Arrested For The Indictable Offence?**

- The constable must **know** for a **fact** that the premises to be searched is either **occupied** or **controlled** by the person **arrested** for the **indictable offence** – a mere suspicion or belief is inadequate.

### **Will A Short Stay On Premises Be Sufficient To Amount To Occupation?**

- Yes.

### **What Extent Of Search Is Permitted? – Section 18(3) PACE 1984**

- The search can only be conducted to the **extent** that is **reasonably required** to **discover the evidence searched for**.

**Obtaining Authorisation From An Inspector Or Above Prior To Searching – Section 18 (4)-(5A) PACE 1984 & Code B Paragraph 4.3**

**General Rule – Authorisation Is Required**

- The search power cannot be exercised until **written authority** has been provided by an **Inspector or above**.

The authority should only be given when the <b>authorising officer</b> is satisfied that:	
<b>Pre-requisite 1</b>	<b>Pre-requisite 2</b>
The <b>premises are occupied or controlled</b> by the <b>arrested</b> person...	...and that the <b>necessary grounds exist</b>
...and if possible – the <b>authorising officer</b> should:	
<b>Action 1</b>	<b>Action 2</b>
<b>Record the authority</b> on the <b>Notice of Powers &amp; Rights</b> (see later)...	<p>...and <b>sign the notice</b>...</p> <p>...unless the <b>exceptions in paragraph 2.9 apply</b> – i.e. nothing requires the identity of officers, or anyone accompanying them during a search to be recorded or disclosed if either:</p> <ul style="list-style-type: none"> <li>▪ The enquiries are linked to a <b>terrorism investigation</b>; or</li> <li>▪ The officers reasonably <b>believe recording or disclosing their names</b> might put them in <b>danger</b>.</li> </ul> <p>If so – they should use their <b>warrant or other identification number</b> and the <b>name of their police station</b> instead.</p>

- Note that if the general rule applies – the **minimum rank** that can grant authority is that of an **Inspector**.
- Contrast this with a warrant application - where a more junior officer can authorise.

**Exception – Authorisation Is Not Required**

A section 18 PACE 1984 search can be conducted both:	
Step 1	Step 2
<p><b>Before the arrested person</b> has been either:</p> <ul style="list-style-type: none"> <li>▪ <b>Taken to a police station;</b> or</li> <li>▪ <b>Released on street bail</b></li> </ul>	<p><b>Without</b> obtaining <b>written authority</b> to proceed with the search from an <b>Inspector or above</b></p>
<p>... <b>provided</b> that the <b>arrested person's presence at a place</b> (other than a police station) is (in fact) <b>necessary</b> for the <b>effective investigation</b> of the offence.</p>	

**Establishing The Necessity Of The Person's Presence?**

- The presence of the person searched must **in fact** be **necessary**.
- A mere **suspicion** or **belief** that their presence will be necessary is **insufficient**.

**Action To Be Taken Following A Search If The Exception Applies? – Section 18(6) PACE 1984**

- If a search is conducted **prior** to obtaining the **authority of an Inspector or above** – the constable who conducted the search must **inform an Inspector or above ASAP** after the search has been concluded.

**The Obligation To Explain To The Occupier The Reason For The Search?**

- The officers conducting the section 18 search must, **so far as is possible** in the surrounding circumstances – **explain the reason for the search** to the **occupier**.
- A **failure** to do so will enable the **entry to be lawfully resisted** – *Lineham v DPP* [2000] Crim LR 861.

### Post Search Recording Obligations? – Section 18(7) PACE 1984

The Inspector or above who either:	
<b>Situation 1</b>	<b>Situation 2</b>
Authorised the search	Due to the operation of the exception (above) - was <b>informed of the search ASAP</b> after it was conducted without their authority
...must make a <b>written record</b> of both:	
<b>Step 1</b>	<b>Step 2</b>
The <b>grounds</b> of the search	The nature of the <b>evidence</b> that was <b>sought</b>
...and if <b>at the time that the record was made</b> - the person who was in occupation or control of the premises was, <b>at the time of the search, in police detention</b> – the record shall be made as part of their <b>custody record</b> .	

### Further Guidance On Recording The Grounds For The Search & The Nature Of The Evidence Sought – Code B Paragraph 4.3

The <b>written record</b> of both:	
The <b>grounds</b> of the search	The nature of the <b>evidence</b> that was <b>sought</b>
...should be made in:	
The <b>custody record</b> if there is one, otherwise...	...in the <b>officer's pocketbook</b> or the <b>search record</b> .

### Consequence If The Person Is Re-Arrested?

- If a person is **re-arrested whilst in custody for an indictable offence** - then the section 18 PACE 1984 search power is **re-created for each indictable offence**.

**Powers Of Entry And Search – Schedule 5 Terrorism Prevention And Investigation Measures Act 2011 (TPIM) & Code B Paragraph 10**

**Power Of Entry And Search For The Purpose Of Serving A TPIM - Schedule 5 Paragraph 5**

A constable can both:			
<b>Power 1</b>		<b>Power 2</b>	
Enter		Search	
...any premises they have reasonable grounds for <u>believing</u> a person to be - for the purpose of either:			
<b>Purpose 1</b>	<b>Purpose 2</b>	<b>Purpose 3</b>	<b>Purpose 4</b>
Serving a TPIM notice.	Extending a TPIM notice.	Varying a TPIM notice.	Reviving a TPIM notice.



**Power To Search The Premises At The Time Of Serving A TPIM - Schedule 5 Paragraph 6**

Where a <b>TPIM notice</b> either:	
<b>Action 1</b>	<b>Action 2</b>
Is being served	Has just been served
...on an individual - a <b>constable</b> may (without a warrant) both:	
<b>Power 1</b>	<b>Power 2</b>
Enter	Search
...any <b>premises</b> that is either:	
<b>Premises 1</b>	<b>Premises 2</b>
The individual's <b>place of residence</b>	<b>Other premises</b> to which the <b>individual</b> has power to grant access
...for the <b>purpose</b> of ascertaining whether there is <b>anything</b> either:	
<b>Location 1</b>	<b>Location 2</b>
On the <b>person</b>	<b>In the premises</b>
...that <b>contravenes measures</b> specified in the <b>TPIM notice</b> .	

**Constable's Power Of Seizure - Schedule 5 Paragraph 6**

A constable may <b>seize</b> anything for the <b>purpose</b> of either:	
<b>Purpose 1</b>	<b>Purpose 2</b>
Establishing whether <b>measures</b> specified in the TPIM notice <b>are being</b> or <b>are about to be contravened</b> by the individual...	Securing <b>compliance</b> by the <b>individual</b> with the <b>measures</b> specified in the <b>TPIM notice</b> ...
... if the <b>constable</b> has <b>reasonable grounds</b> for <u><b>suspecting</b></u> that <b>both</b> :	
<b>Suspect 1</b>	<b>Suspect 2</b>
The <b>thing is</b> or <b>contains evidence</b> in relation to an <b>offence</b> .	That it is necessary to <b>seize</b> it in order to <b>prevent</b> it being <b>concealed, lost, damaged, altered or destroyed</b> .

Police Pass Textbook Sample Chapter

**Power To Search Premises Where It Is Suspected That A Person Whom Is Subject Of A TPIM Notice Has Absconded – Schedule 5 Paragraph 7**

When a <b>constable reasonably suspects</b> that an individual, whom is the subject of the TPIM notice, has <b>absconded</b> – the <b>constable</b> may (without a warrant) both:		
<b>Power 1</b>	<b>Power 2</b>	
Enter	Search	
...any premises that is either:		
<b>Premises 1</b>	<b>Premises 2</b>	<b>Premises 3</b>
The individual's <b>place of residence</b>	<b>Other premises</b> to which the <b>individual has power to grant access</b>	Any premises to which the individual had <b>power to grant access</b> and with <b>which there is reason to believe</b> that the <b>person is or was recently connected</b>
...for the <b>purpose</b> of either:		
<b>Purpose 1</b>	<b>Purpose 2</b>	
<b>Determining</b> whether the individual has <b>absconded</b> .	<b>Where it appears that the person has absconded</b> - for <b>anything</b> that may <b>assist</b> in the <b>pursuit and arrest</b> of the individual.	

**Constable's Power Of Seizure Under Schedule 5 Paragraph 7**

A constable may <b>seize anything</b> if either:	
<b>Ground 1</b>	<b>Ground 2</b>
They have <b>reasonable grounds</b> for <b>believing</b> that the thing <b>will assist</b> in the <b>pursuit or arrest</b> of the individual.	They have <b>reasonable grounds</b> for <b>suspecting</b> that:  The <b>thing</b> is or contains <b>evidence</b> in relation to an <b>offence</b> ; and  It is necessary to <b>seize</b> it in order to <b>prevent</b> it being <b>concealed, lost, damaged, altered or destroyed</b> .

**Can A Constable Obtain A Warrant For The Purpose Of Determining Whether A Person Whom Is Subject Of A TPIM Notice Is Complying With Measures Specified In The Notice?**

- **Yes** – under schedule 5 paragraph 8 of the Terrorism Prevention and Investigation Measures 2011 Act.
- A **constable** may apply to a justice of the peace for the issue of a **warrant for the purpose of determining** whether a person in respect of whom the TPIM notice is in force is **complying** with the **measures specified within the notice**.
- **Code B and sections 15 and 16 of the Police and Criminal Evidence Act** must be adhered to during the **application and execution of a warrant**, issued under schedule 5 paragraph 8 of the Terrorism Prevention and Investigation Measures 2011.

## General Considerations When Conducting Searches Of Premises

### What Time Of Day Should A Search Be Conducted? – Code B Paragraph 6.2

- Searches must be conducted at a **reasonable hour** – unless this might frustrate the **purpose** of the search.

### Considerations Relating To The Use Of Seize & Sift Powers – Code B Paragraph 6.3

When either:	
<b>Characteristic 1</b>	<b>Characteristic 2</b>
The <b>extent</b>	The <b>complexity</b>
...of a <b>search</b> means that it is <b>likely to take a long time</b> – the <b>officer in charge of the search</b> may <b>consider</b> using the <b>seize and sift powers</b> (see later).	

### Obtaining Written Authority For Multiple Entry Warrants? – Code B Paragraph 6.3A

Where a <b>section 8 PACE 1984 warrant</b> authorises <b>multiple entries</b> on more than one occasion – <b>no premises</b> may be:	
<b>Entered</b>	<b>Searched</b>
...on any <b>subsequent occasions</b> - <b>without</b> the <b>prior written authority</b> of an officer of the rank of <b>Inspector</b> who is <b>not involved in the investigation</b> .	

**Obtaining Written Authority For All Premises Warrants? – Code B  
Paragraph 6.3A**

Where a <b>warrant</b> under either:	
<b>Section 8 PACE 1984</b>	<b>Schedule 1 Paragraph 12 PACE 1984</b>
...authorises both:	
<b>Entry to</b>	<b>Search</b>
...of <b><u>all</u></b> premises:	
<b>Occupied</b>	<b>Controlled</b>
...by a <b>specific person</b> – <b><u>no</u> premises</b> which are <b><u>not</u> specified in the warrant</b> - may be either:	
<b>Entered</b>	<b>Searched</b>
... <b><u>without</u></b> the <b>prior written authority</b> of an officer of the rank of <b>Inspector</b> who is <b>not involved in the investigation</b> .	

**Communication Prior To Searching – Code B Paragraph 6.4**

The officer in charge of the search shall - first try to communicate with either:		
<b>Person 1</b>	<b>Person 2</b>	
The occupier	Any other person entitled to grant access to the premises	
...to both:		
<b>Requirement 1</b>	<b>Requirement 2</b>	
Explain the authority for searching (e.g. warrant, section 32 PACE 1984 etc.)	Ask the occupier to allow entry	
...unless either:		
<b>Exception 1</b>	<b>Exception 2</b>	<b>Exception 3</b>
The premises to be searched are unoccupied.	The occupier and any other person entitled to grant access are absent.	There are reasonable grounds for <u>believing</u> that alerting occupier or any other person entitled to grant access – would either: <ul style="list-style-type: none"> <li>▪ Frustrate the object of the search; or</li> <li>▪ Endanger officers or other persons.</li> </ul>

**Introductions Prior To Searching When The Premises Are Occupied – Code B Paragraph 6.5**

If the <b>premises are occupied</b> – the <b>officer in charge of the search</b> shall:			
<b>Obligation 1</b>	<b>Obligation 2</b>	<b>Obligation 3</b>	<b>Obligation 4</b>
Identify themselves	If not in uniform – show their <b>warrant card</b>	State the <b>grounds</b> for the search	State the <b>purpose</b> of the search
...and shall also:			
<b>Obligation 5</b>		<b>Obligation 6</b>	
Identify and introduce persons accompanying them (who should produce <b>ID upon request</b> )		Describe the <b>role</b> of the <b>accompanying person(s)</b>	
...unless either:			
<b>Exception 1</b>	<b>Exception 2</b>	<b>Exception 3</b>	
<p>The 3<sup>rd</sup> exception in Paragraph 6.4 (above) applies.</p> <p>There are <b>reasonable grounds</b> for <b>believing</b> that <b>alerting</b> occupier or any other person entitled to grant access – would either:</p> <ul style="list-style-type: none"> <li>▪ <b>Frustrate the object of the search;</b> or</li> <li>▪ <b>Endanger officers or other persons.</b></li> </ul>	<p>The offence is <b>terrorism related</b>.</p> <p>If so – they should use their warrant or identification number and the name of their police station.</p>	<p>The searching officer <b>reasonably believes</b> that <b>recording or disclosing</b> their <b>names</b> would place them in <b>danger</b>.</p> <p>If so – they should use their warrant or identification number and the name of their police station.</p>	



### When Can Force Be Used To Carry Out The Search? – Code B Paragraph 6.6

<p>Reasonable and proportionate force may be used if <b>necessary</b> to enter premises - if the <b>officer in charge of the search</b> is satisfied that both:</p>	
Step 1	Step 2
<p>The <b>premises</b> are those either:</p> <ul style="list-style-type: none"> <li>▪ <b>Specified</b> in a <b>warrant</b>; or</li> <li>▪ Relate to <b>search authority</b> under either <b>sections 17, 18 or 32 PACE 1984</b>.</li> </ul>	<p>In relation to the <b>occupier</b> and any other <b>person entitled to grant access</b> - either:</p> <ul style="list-style-type: none"> <li>▪ The premises is <b>unoccupied</b>;</li> <li>▪ They are <b>absent</b>;</li> <li>▪ It is <b>impossible to communicate</b> with them;</li> <li>▪ They have <b>refused entry</b>; or</li> <li>▪ There are reasonable grounds for <b>believing</b> that <b>notifying them</b> would either <b>frustrate</b> the object of the search, or <b>endanger officers or other persons</b>.</li> </ul>

### The Obligation To Supply The Notice Of Powers And Rights – Code B Paragraph 6.7

<p>The <b>officer conducting the search</b> shall – <b>unless it is impracticable</b> to do so – <b>provide</b> the <b>occupier</b> with a <b>copy</b> of the <b>notice</b> outlining:</p>				
Fact 1	Fact 2	Fact 3	Fact 4	Fact 5
<p>The <b>grounds</b> for the search – i.e. either:</p> <ul style="list-style-type: none"> <li>▪ By consent;</li> <li>▪ Under warrant; or</li> <li>▪ Under either sections 17, 18, or 32 PACE 1984.</li> </ul>	<p>The <b>extent</b> of the <b>powers</b> of both:</p> <ul style="list-style-type: none"> <li>▪ Search; and</li> <li>▪ Seizure.</li> </ul>	<p>The <b>rights</b> of both:</p> <ul style="list-style-type: none"> <li>▪ The occupier; and</li> <li>▪ The owner of property seized.</li> </ul>	<p>Both:</p> <ul style="list-style-type: none"> <li>▪ The <b>compensation rights</b> for any damage caused; and</li> <li>▪ The <b>address</b> to send a <b>compensation claim</b> to.</li> </ul>	<p>The fact that <b>Code B</b> is <b>available</b> for inspection at a <b>police station</b>.</p>

**To Whom Will The Notice Of Powers And Rights Be Supplied? – Code B Paragraph 6.8**

The <b>action</b> to be taken will <b>depend</b> on whether the <b>occupier</b> is either:	
<b>Situation 1 – Occupier Present</b>	<b>Situation 2 – Occupier Absent</b>
<p><b>General Rule</b></p> <p>Copies of both:</p> <ul style="list-style-type: none"> <li>▪ The <b>notice</b>; and</li> <li>▪ The <b>warrant</b> – (if applicable)</li> </ul> <p>...shall if <b>practicable</b>, be given to the <b>occupier</b> before the search begins...</p> <p><b>Exception</b></p> <p>...<b>unless</b> the officer in charge of the search reasonably <b>believes</b> that this would either:</p> <ul style="list-style-type: none"> <li>▪ <b>Frustrate</b> the <b>object</b> of the search; or</li> <li>▪ <b>Endanger</b> officers or other persons</li> </ul>	<p>Copies of both:</p> <ul style="list-style-type: none"> <li>▪ The <b>notice</b>; and</li> <li>▪ The <b>warrant</b> – (if applicable)</li> </ul> <p>...shall be <b>left in a prominent place</b> on the premises or appropriate part of the premises – and shall be <b>endorsed</b> with:</p> <ul style="list-style-type: none"> <li>▪ The <b>name of the officer in charge of the search - (unless paragraph 2.9 applies – i.e. the searching officer reasonably believes that recording or disclosing their name would place them in danger or it is a terrorism investigation – if so they should use their warrant or identification number and name of their police station)</b>; and</li> <li>▪ The <b>date and time</b> of the search</li> </ul>
...and the <b>warrant</b> (if applicable) shall be <b>endorsed</b> to show that this has been done.	

**Conducting The Search**

**To What Extent Can Premises Be Searched? - Code B Paragraph 6.9**

Premises can only be searched to the <b>extent</b> that is <b>necessary</b> to achieve the <b>object of the search</b> (i.e. find what you are looking for) – having regard to both:	
<b>Factor 1</b>	<b>Factor 2</b>
The <b>size</b>	The <b>nature</b>
...of whatever is <b>sought</b> .	

### When Must The Search Be Concluded? - Code B Paragraph 6.9A&B

The search must be <b>concluded</b> once either:		
<b>Searches Under A Warrant</b>	<b>Searches Under Any Other Power</b>	<b>All Searches</b>
All of the things specified in the search warrant have been found.	The <b>object</b> of the search have been <b>achieved</b> .	Once the officer in charge of the search is satisfied that the <b>thing sought is not on the premises</b> .

### Can A Premises That Was Previously Searched Revealing Nothing Be Searched Again?

- **Yes** - if **new information** comes to light providing fresh grounds for a warrant or the exercise of other powers.

### The Need To Be Considerate When Searching – Code B Paragraph 6.10

Searches must be conducted with <b>due consideration</b> for both:	
<b>Duty 1</b>	<b>Duty 2</b>
The <b>property</b>	The <b>privacy</b>
... of the occupier - with no more <b>disturbance</b> than is <b>necessary</b> .	

**The Circumstances In Which Reasonable Force Can Be Used? – Code B Paragraph 6.10**

Reasonable force may be used <u>only</u> when both:	
<b>Limitation 1</b>	<b>Limitation 2</b>
Necessary	Proportionate
...because the <b>co-operation</b> of the <b>occupier</b> either:	
<b>Circumstance 1</b>	<b>Circumstance 2</b>
Cannot be obtained.	Is insufficient for the purpose.

**Can Nominated Persons Observe The Search Being Conducted? - Code B Paragraph 6.11**

Either a:		
<b>Person 1</b>	<b>Person 2</b>	<b>Person 3</b>
Friend	Neighbour	Other person
...requested by the <b>occupier</b> – must be allowed to <b>witness</b> the search – <b>unless</b> the <b>officer in charge of the search</b> has reasonable grounds for <b>believing</b> that their <b>presence</b> would either:		
<b>Risk 1</b>	<b>Risk 2</b>	
Seriously hinder the investigation	Endanger officers or other persons	
...but a search must <u>not</u> be <b>unreasonably be delayed</b> for this purpose.		

**Recording Obligations In Respect Of The Response To The Request By The Occupier For A Nominated Person To Observe The Search Being Conducted? - Code B Paragraph 6.11**

- A record of the action taken should be made on the **premises search record** – including any **grounds for refusing** the occupier's request.

**When Is It Necessary To Caution Prior To Asking Questions When Conducting The Search? – Code B Paragraph 6.12 & 6.12A**

<b>Unnecessary To Caution</b>	<b>Necessary To Caution</b>
<p>A person is <b>not</b> required to be <b>cautioned</b> <b>prior</b> to being asked <b>questions</b> that are <b>solely necessary for furthering the proper and effective conduct of a search</b> – see Code C Paragraph 10.1(c) in the Interviews module.</p>	<p>If <b>questioning goes beyond what is necessary</b> for the purpose of the exemption in Code C – the exchange is likely to constitute an <b>interview</b> under Code C Paragraph 11.1A – and a <b>caution</b> must be administered <b>prior</b> to posing the <b>question</b>.</p>

**Action To Be Taken If Force Was Used To Enter Premises? – Code B Paragraph 6.13**

<p><b>Before leaving</b> – the <b>officer in charge of the search</b> must make sure that the <b>premises are secure</b> - by either:</p>	
<b>Action 1</b>	<b>Action 2</b>
<p><b>Arranging</b> for the <b>occupier</b> or their <b>agent</b> to be <b>present</b>.</p>	<p><b>Any other appropriate means</b>.</p>

**Powers Of Seizure Under PACE 1984**

**Seizure & Retention Of Property**

**What Can Be Seized? – Code B Paragraph 7.1**

Subject to paragraph 7.2 (see below) – an <b>officer</b> who is <b>searching</b> any:		
<b>Source 1</b>	<b>Source 2</b>	
Person	Premises	
...either:		
<b>Authority 1</b>	<b>Authority 2</b>	
Under any <b>statutory power</b>	With the <b>consent</b> of the <b>occupier</b>	
...may <b>seize</b> anything either:		
<b>Ground 1</b>	<b>Ground 2</b>	<b>Ground 3</b>
<p><b>Covered by a warrant.</b></p>	<p>That the <b>officer</b> has <b>reasonable grounds</b> for <b>believing</b> is either:</p> <ul style="list-style-type: none"> <li>▪ <b>Evidence</b> of an <b>offence</b>; or</li> <li>▪ Has been <b>obtained</b> in <b>consequence</b> of the <b>commission</b> of an <b>offence</b></li> </ul> <p>...but only if <b>seizure is necessary</b> to <b>prevent</b> the <b>items</b> being either:</p> <ul style="list-style-type: none"> <li>▪ Concealed;</li> <li>▪ Lost;</li> <li>▪ Altered;</li> <li>▪ Disposed of;</li> <li>▪ Damaged;</li> <li>▪ Destroyed; or</li> <li>▪ Tampered with.</li> </ul>	<p>Covered by the <b>powers</b> in Part 2 Criminal Justice &amp; Police Act 2001 – allowing an officer to <b>seize property</b> from either:</p> <ul style="list-style-type: none"> <li>▪ <b>Persons</b>; or</li> <li>▪ <b>Premises</b></li> </ul> <p>...and <b>retain it</b> for either:</p> <ul style="list-style-type: none"> <li>▪ <b>Sifting</b>; or</li> <li>▪ <b>Examination</b></li> </ul> <p>...elsewhere.</p> <p>i.e. seize and sift powers.</p>

**What Cannot Be Seized? – Legally Privileged Material – Code B Paragraph 7.2**

General Rule	Exception
<p><b>No item</b> may be <b>seized</b> which an officer has <b>reasonable grounds</b> for <b>believing</b> to be subject to <b>legal privilege</b>...</p>	<p>...<b>other than</b> under Part 2 Criminal Justice &amp; Police Act 2001.</p> <p>(see <b>seize and sift powers</b> - below).</p>

**How Should Innocently Acquired Evidence Of An Offence Be Dealt With? – Code B Paragraph 7.4**

<p>Where an <b>officer believes</b> both:</p>		
Factor 1	Factor 2	
<p>That it is <b>not appropriate to seize property</b> because of an <b>explanation</b> from the <b>person holding it</b></p> <p>(i.e. they have innocently come by the property lawfully)...</p>	<p>...but the officer <b>nevertheless has reasonable grounds for believing</b> the item was obtained in consequence of an <b>offence by some person</b></p>	
<p>...the officer should:</p>		
Action 1	Action 2	Action 3
<p><b>Identify</b> the <b>property</b> to the holder.</p>	<p><b>Inform</b> the <b>holder</b> of their <b>suspensions</b>.</p>	<p><b>Explain</b> that the <b>holder</b> may be liable to <b>civil or criminal proceedings</b> if they <b>dispose</b> of, <b>alter</b> or <b>destroy</b> the property.</p>

**The Power To Copy etc Any Item That There Is The Power To Seize? - Code B Paragraph 7.5**

An officer may arrange to:		
<b>Action 1</b>	<b>Action 2</b>	<b>Action 3</b>
Photograph	Image	Copy
...any:		
<b>Item 1</b>	<b>Item 2</b>	
Document	Other article	
...that they have the <b>power to seize</b> – in accordance with paragraph 7.1 (see above) – and must have regard to the statutory obligation to <b>retain an original</b> :		
<b>Item 1</b>	<b>Item 2</b>	
Document	Other article	
... <u>only</u> when a <b>photograph</b> or <b>copy</b> is <u>not</u> sufficient.		

**Seizure Of Electronic Information? – Code B Paragraph 7.6**

If an officer considers:	
<b>Information</b> stored in any <b>electronic form</b> ...	...and <b>accessible</b> from the <b>premises</b>
...could be used in <b>evidence</b> - they may require the <b>information to be produced in a form</b> either:	
<b>Form 1</b>	<b>Form 2</b>
Which can be <b>taken away</b> and in which it is <b>visible and legible</b> .	From which can be readily <b>produced</b> in a <b>visible and legible form</b> .



## General Power of Seizure – Section 19 PACE 1984

### Who Can Exercise This Power Of Seizure? – Section 19(1) PACE 1984

- The power of seizure is only exercisable by a **constable** who is **lawfully** on premises.

### Lawfulness And Searches Exercised With Consent

If an officer is conducting a <b>search by consent</b> - and <b>does <u>not</u> have in place</b> either:		
A <b>search warrant</b>	A <b>statutory power</b> to search	
...if <b>during</b> the course of the <b>search</b> - both:		
<b>Action 1</b>	<b>Action 2</b>	
The <b>consent is withdrawn</b>	They are <b>told to leave</b>	
...then:		
<b>Consequence 1</b>	<b>Consequence 2</b>	<b>Consequence 3</b>
They are <b>no longer lawfully</b> on the premises.	They <b>must leave</b> within a <b>reasonable period</b> .	They <b>cannot seize</b> any items that they find.

### Practical Tip

- The **risk of withdrawal of consent** is a major drawback of **searching purely on the basis of consent alone** – as such a withdrawal will render the search and seizure **unlawful**.
- Therefore, it is better to exercise a search under the power of a **warrant or a statutory power** (e.g. section 18/32 PACE 1984) and conduct the search with compliance – because in such circumstances a **withdrawal of consent will not render the search unlawful**.

### Lawfulness Of Searches Conducted Under An Invalid Warrant?

- A search conducted under an **invalid warrant will be unlawful**.

**What Are The Grounds For Seizure? – Section 19(2)&(3) PACE 1984**

<p>A <b>constable</b> who is <b>lawfully on premises</b> may <b>seize anything</b> (except for <b>legally privileged material</b>) - which is <b>on premises</b> - if they have <b>reasonable grounds</b> for <b>believing</b> both:</p>	
<b>Belief 1</b>	<b>Belief 2</b>
<p>That either:</p> <ul style="list-style-type: none"> <li>■ It is <b>evidence</b> in relation to either:           <ul style="list-style-type: none"> <li>■ An <b>offence</b> which they are <b>investigating</b>; or</li> <li>■ <b>Any other offence</b>; or</li> </ul> </li> <li>■ It has been <b>obtained</b> in <b>consequence</b> of the <b>commission of an offence</b>.</li> </ul>	<p>That it is <b>necessary</b> to <b>seize</b> it in order to <b>prevent it</b> being either:</p> <ul style="list-style-type: none"> <li>■ <b>Concealed</b>      <b>C</b></li> <li>■ <b>Lost</b>            <b>L</b></li> <li>■ <b>Altered</b>        <b>A</b></li> <li>■ <b>Damaged</b>      <b>D</b></li> <li>■ <b>Destroyed</b>    <b>D</b></li> </ul>

**Focus On The Constable's Mental Element**

- Seizure can only take place if **both beliefs** are present.
- You **cannot seize items for intelligence purposes** – the seizure power deals strictly with **evidence** that it is **necessary** to **seize** for a **CLADD reason**.

**Can A Whole Premises Be Seized?**

<p><b>Yes – whole premises</b> such as:</p>		
<b>Premises 1</b>	<b>Premises 2</b>	<b>Premises 3</b>
Vehicles	Caravans	Tents
<p>...can be seized for the <b>purpose</b> of <b>preserving evidence</b> - if both:</p>		
<b>Factor 1</b>	<b>Factor 2</b>	
It is possible to seize it in its <b>total state</b> .	On a practical level it is <b>easier to seize the whole thing</b> .	

(*Cowan v Commissioner of Police of the Metropolis* [2000] 1 WLR 254).

**Power To Seize Information Stored In An Electronic Form – Section 19(4)  
PACE 1984**

A constable lawfully on the premises may require any information which is:		
<b>Element 1</b>	<b>Element 2</b>	
Stored in any electronic form...	...and is accessible from the premises	
...to be produced in a form in which both:		
<b>Requirement 1</b>	<b>Requirement 2</b>	
It can be taken away...	...and is either: <ul style="list-style-type: none"> <li>■ Visible and legible; or</li> <li>■ In a form which it can readily be produced in a visible and legible form</li> </ul>	
...if they have reasonable grounds for believing either:		
<b>Circumstance 1</b>	<b>Circumstance 2</b>	
That it is evidence in relation to: <ul style="list-style-type: none"> <li>■ An offence which they are investigating; or</li> <li>■ Any other offence</li> </ul>	It has been obtained in consequence of the commission of an offence	
...and that it is necessary to do so in order to prevent it being either:		
<b>Consequence 1</b>	<b>Consequence 2</b>	<b>Consequence 3</b>
Concealed.	Lost.	Destroyed.

**Can Legally Privileged Material Be Seized? – Section 19(6) PACE 1984**

- **No** – a constable has no power to seize an item which they have reasonable grounds for believing to be subject to legal privilege.

**Can The Section 19 Seizure Powers Be Conferred Upon A Designated Investigation Officer?**

- Yes.

**Extension Of Powers Of Seizure To Electronic Information – Section 20 PACE 1984**

Every <b>power of seizure</b> conferred by any of the following <b>enactments</b> :					
<b>Source 1</b>	<b>Source 2</b>	<b>Source 3</b>	<b>Source 4</b>	<b>Source 5</b>	<b>Source 6</b>
Pre – PACE statutes	A section 8 warrant	Section 18 PACE 1984	Schedule 1 PACE 1984  (excluded or special procedure material)	Section 19 PACE	Designated powers of an Investigating Officer under Schedule 4 Police Reform Act 2002
...on a <b>constable who has entered premises</b> – in the exercise of a <b>power conferred</b> by such <b>enactment</b> – shall be construed to <b>also include a power</b> to require:					
<b>Characteristic 1</b>			<b>Characteristic 2</b>		
Any <b>information stored</b> in an <b>electronic form</b> ...			...and <b>accessible from the premises</b>		
...to be <b>produced in a form</b> either:					
<b>Form 1</b>			<b>Form 2</b>		
In which it <b>can be taken away</b> and in which it is <b>visible and legible</b> .			From which it can be <b>readily produced</b> in a <b>visible and legible form</b> .		

**Supplying A Record Of, Access To, And Copies Of Seized Material –  
Section 21 PACE 1984**

**Dealing With Requests To Supply A Record Of Items Seized? - Section  
21(1)-(2) PACE 1984**

A constable who <b>seizes anything</b> in exercise of a <b>power conferred by an enactment</b> – shall, <b>if requested</b> , by either:	
<b>Requestee 1</b>	<b>Requestee 2</b>
The <b>occupier</b> of premises on which it was seized	The person who had <b>custody or control</b> of it before it was seized
... <b>provide</b> that person with a <b>record of what they seized</b> – within a <b>reasonable time</b> of the making of the request.	

**Dealing With Requests To Access Seized Items? - Section 21(3) PACE 1984**

If a request for permission is made to the <b>officer in charge of the investigation</b> – by either:	
<b>Requestee 1</b>	<b>Requestee 2</b>
A person who had <b>custody or control</b> of the <b>thing immediately before it was seized</b>	Someone <b>acting on behalf</b> of such a <b>person</b>
...to <b>grant access to anything</b> which both:	
<b>Status 1</b>	<b>Status 2</b>
Has been <b>seized</b> by a constable	Is <b>retained</b> by the police for the purpose of <b>investigating an offence</b>
...then:	
<b>General Rule</b>	<b>Exception</b>
The officer shall <b>allow</b> the <b>person who made the request to access it</b> – under the <b>supervision</b> of a <b>constable</b> ...	... <b>unless</b> the <b>exception</b> under section <b>21(8) PACE 1984</b> applies.  (see below for exceptions).

**Dealing With Requests For A Photograph Or Copy Of Seized Items? -  
Section 21(4)-(7) PACE 1984**

If a <b>request</b> for either:	
<b>Request 1</b>	<b>Request 2</b>
A photograph	A copy
...of an <b>item seized</b> - is made to the <b>officer in charge of the investigation</b> – by either:	
<b>Requestee 1</b>	<b>Requestee 2</b>
A person who had <b>custody or control</b> of the <b>thing immediately before it was seized</b>	Someone <b>acting on behalf</b> of such a <b>person</b>
...then:	
<b>General Rule</b>	<b>Exception</b>
<p>The officer shall:</p> <ul style="list-style-type: none"> <li>▪ <b>Allow the person who made the request to access it</b> – under the <b>supervision</b> of a <b>constable</b> – for the <b>purpose of photographing or copying it</b>; or</li> <li>▪ <b>Photograph or copy it</b> – or <b>cause it to be photographed or copied</b> and <b>supply</b> it to the <b>person</b> who made the <b>request</b></li> </ul> <p>...within a <b>reasonable time</b> of the making of the request.</p>	<p>...<b>unless</b> the <b>exception</b> under section <b>21(8) PACE 1984</b> applies.</p> <p>(see below for exceptions).</p>

**Can A Constable Photograph Or Copy Or Have Photographed Or Copied Anything That They Have The Power To Seized Without A Request Having Been Made?**

- Yes.

**The Operation Of The Exception Where There Is No Duty To Comply With A Request Made? - Section 21(8) PACE 1984**

There is <b>no duty</b> to either:		
<b>Request 1</b>	<b>Request 2</b>	
To grant access to	Supply a photograph or copy of	
...any <b>seized item</b> – if the <b>officer in charge of the investigation</b> – for the purposes of which it was seized – has <b>reasonable grounds for believing</b> – that to do so would <b>prejudice</b> either:		
<b>Prejudice 1</b>	<b>Prejudice 2</b>	<b>Prejudice 3</b>
That investigation.	The investigation of an <b>offence other than</b> the offence for the purposes of investigating which the thing was seized.	Any <b>criminal proceedings</b> which may be brought as a result of <ul style="list-style-type: none"> <li>▪ The investigation of which they are in charge; or</li> <li>▪ Such other investigations.</li> </ul>

**Retention Of Seized Material – Section 22 PACE 1984**

**General Principle - Section 22(1) PACE 1984**

Anything <b>seized</b> by a constable under either:	
<b>Section 19 PACE 1984</b>	<b>Section 20 PACE 1984</b>
General power of seizure	Power of seizure of electronic information
...may be <b>retained for as long as is necessary</b> in all the <b>circumstances</b> .	

**The Power To Retain Seized Material In Order To Find Its Lawful Owner? - Section 22(2) PACE 1984**

- Anything **seized** may be **retained** in order to **establish its lawful owner** – where there are **reasonable grounds for believing** it has been **obtained in consequence of the commission of an offence**.

**How Long May Anything Seized For The Purposes Of A Criminal Investigation Be Retained? - Section 22(2) & 22(4) PACE 1984**

Anything seized for the purposes of a criminal investigation may be retained either:	
<b>Purpose 1</b>	<b>Purpose 2</b>
For use as <b>evidence at trial</b> for an offence	For <b>forensic examination</b> or for <b>investigation in connection with an offence</b>
...unless either:	
<b>Alternative 1</b>	<b>Alternative 2</b>
A photograph	A copy
...of the seized item would be <b>sufficient for that purpose</b> .	

**The Obligation To Return Harm Items Seized Following Arrest Upon Release - Section 22(3) PACE 1984**

Items seized on the grounds that it may be used by an arrested person either:			
<b>Ground 1</b>	<b>Ground 2</b>	<b>Ground 3</b>	<b>Ground 4</b>
To cause physical injury to any person	To damage property	To interfere with evidence	To assist in escape from police detention or lawful custody
...cannot be retained for those purposes - <b>once the person has been released</b> .			

**Can Seized Material Be Retained Purely For Intelligence Purposes?**

- No.



## Seize & Sift Powers – Criminal Justice & Police Act 2001

### Purpose Of The Seize & Sift Power? – Code B Paragraph 7.7

Officers are provided with limited powers to seize property from either:	
<b>Source 1</b>	<b>Source 2</b>
Premises	Persons
...so that they can:	
<b>Action 1</b>	<b>Action 2</b>
Sift	Examine
...it elsewhere – (because it is <b>not reasonably practicable to sift through it at the scene</b> ).	

### Grounds To Utilise Seize & Sift Powers – Sections 50 & 51 Criminal Justice & Police Act 2001

The grounds to utilise <b>seize and sift powers</b> can be found in:	
<b>Section 50 Criminal Justice &amp; Police Act 2001</b>	<b>Section 51 Criminal Justice &amp; Police Act 2001</b>
Seize and sift of property seized during a <b>premises search</b> .	Seize and sift of property seized during a <b>search of a person</b> .

**Grounds To Exercise Seize & Sift Powers At Premises - Section 50  
Criminal Justice & Police Act 2001**

**Ground 1 – Determination - Section 50(1) Criminal Justice & Police Act  
2001**

Where:		
<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>
A person who is <b>lawfully on premises</b> – <b>finds</b> anything on those premises that they have <b>reasonable grounds for believing</b> may <b>be</b> or may <b>contain</b> something which they are <b>authorised to search</b> on those premises	Either: <ul style="list-style-type: none"> <li>▪ A <b>power of seizure</b> applies; or</li> <li>▪ The <b>power conferred by subsection 2</b>, would entitle them, if they found it, to seize whatever it is they have grounds for believing that thing to be or contain</li> </ul>	In all the circumstances it is <b>not reasonably practicable – for it to be determined, on those premises:</b> <ul style="list-style-type: none"> <li>▪ <b>Whether</b> what they have <b>found something that they are entitled to seize</b>; or</li> <li>▪ The <b>extent</b> to which what they have found contains <b>something that they are entitled to seize</b></li> </ul>
...they may <b>seize so much of what they have found</b> as it is <b>necessary</b> to <b>remove from the premises</b> to enable that to be determined.		

**Ground 2 – Separation - Section 50(2) Criminal Justice & Police Act 2001**

Where:		
<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>
A person who is <b>lawfully on premises</b> – <b>finds</b> anything on those premises (“ <b>the seizable property</b> ”) that they would be <b>entitled to seize</b> – but for it being <b>comprised in something</b> else that they have <b>no power to seize</b> (e.g. legally privileged material)	A <b>power of seizure</b> applies to the <b>seizable property</b>	In all the circumstances it is <b>not reasonably practicable – for the seizable property to be separated, on those premises, from that in which it is comprised –</b>  (i.e. the thing that they have no power to seize - e.g. legally privileged material)

...they may <b>seize the unseparated material</b> – i.e. both:.	
<b>Element 1</b>	<b>Element 2</b>
The <b>seizable property</b> ...	...that from which it is not reasonably practicable to separate it.

**Can Legally Privileged Material Be Seized Under The Seize & Sift Separation Ground? - Section 50(4) Criminal Justice & Police Act 2001**

- **Yes** – section 19(6) PACE 1984 – does not apply to the **seize and sift separation power** under section 50(2) Criminal Justice & Police Act 2001.

**What Factors Influence Whether Or Not It Is Reasonably Practicable To Sift Through The Material To Conduct The Determination Or Separation At The Premises? - Section 50(3) Criminal Justice & Police Act 2001**

Factors that influence <b>whether or not</b> , it will be reasonably <b>practicable</b> to, on the particular premises - either:				
<b>Action 1 – Determination</b>		<b>Action 2 – Separation</b>		
<b>Determine</b> whether they have <b>found something that they are entitled to seize</b>		For something to be <b>separated</b> from something else		
...include:				
<b>Factor 1</b>	<b>Factor 2</b>	<b>Factor 3</b>	<b>Factor 4</b>	<b>Factor 5</b>
<b>How long it would take</b> to carry out the determination or separation on the premises.	The <b>number of persons that would be required</b> to carry out the determination or separation on those premises within a <b>reasonable period</b> .	Whether the determination or separation would involve <b>damage to property</b> .	The <b>apparatus or equipment</b> that it would be <b>necessary or appropriate</b> to use to carry out the determination or separation.	Whether any separation at the premises would be likely to prejudice the use of some or all of the separated seizable property.

**Grounds To Exercise Seize & Sift Powers Following A Lawful Search Of A Person - Section 51 Criminal Justice & Police Act 2001**

There are very <b>similar grounds</b> to exercise seize and sift powers in respect of <b>material found on persons</b> who have been <b>lawfully searched</b> :	
<b>Ground 1</b>	<b>Ground 2</b>
<b>Determination</b> ground	<b>Separation</b> ground
<p>...as well as very <b>similar factors</b> that influence whether or not it is <b>reasonably practicable</b> to sift through the material to conduct the <b>determination or separation at the time and place of the search</b>.</p> <p>Simply substitute the words “lawful search of premises” to “lawful search of any person” “on the particular premises” to “at the time and place of the search of the person”</p>	

**Limits When Exercising The Seize & Sift Power – Code B Paragraph 7.7**

Officers:	
<b>Limitation 1</b>	<b>Limitation 2</b>
Must only exercise the power when it is <b>essential...</b>	...and in doing so <b>must not remove any more material than is necessary</b>
...and officers must also consider whether removing:	
<b>Alternative 1</b>	<b>Alternative 2</b>
<b>Copies</b>	<b>Images</b>
...or relevant material or data would be a <b>satisfactory alternative to removing originals</b> .	

**Action To Be Taken Where Originals Are Taken For The Exercise Of Seize & Sift Powers? – Code B Paragraph 7.7**

When <b>originals are taken</b> - officers must be prepared to facilitate the provision of replacement:	
<b>Replacement 1</b>	<b>Replacement 2</b>
Copies	Images
...for the owner when it is <b>reasonably practicable</b> .	

**Notice Requirements When An Officer Exercises The Power Of Seizure Under the Seize & Sift Powers? – Code B Paragraph 7.12 & Section 52(1)-(3) Criminal Justice & Police Act 2001**

When an officer exercises a power of seizure - the officer shall <b>supply</b> either:			
<b>Person 1</b>		<b>Person 2</b>	
The <b>occupier of the premises</b>		The <b>person from whom property was seized</b>	
...with a <b>written notice</b> specifying:			
<b>Fact 1</b>	<b>Fact 2</b>	<b>Fact 3</b>	<b>Fact 4</b>
What has been seized.	The <b>grounds</b> for seizure.	Both: <ul style="list-style-type: none"> <li>▪ The <b>grounds for a person</b> with a <b>relevant interest</b> in the <b>seized property</b> to <b>apply</b> for <b>judicial authority</b> for its <b>return</b>; and</li> <li>▪ The <b>duty</b> of officers to <b>secure property</b> in certain circumstances when an application is made.</li> </ul>	The <b>name</b> and <b>address</b> of the person to whom: <ul style="list-style-type: none"> <li>▪ <b>Notice of an application to a judicial authority</b> for the return of seized property must be given; or</li> <li>▪ An <b>application</b> may be made to allow <b>attendance</b> at the <b>initial examination</b> of the property.</li> </ul>

**What Do You Do With The Notice If The Occupier Is Not Present? – Code B Paragraph 7.13**

If the occupier is <u>not</u> present:	
<b>First Alternative</b>	<b>Second Alternative</b>
But there is <b>someone in charge of the premises present</b> – the notice shall be given to them...	<p>...but - if <b>no suitable person is available</b> – the notice should either:</p> <ul style="list-style-type: none"> <li>▪ Be <b>left in a prominent place on the premises</b>; or</li> <li>▪ <b>Attached to the exterior of the premises.</b></li> </ul>

There are similar notification obligations in respect of property seized from persons – section 52(4) Criminal Justice & Police Act 2001

**Dealing With Material Seized Under The Seize & Sift Power? – Code B Paragraph 7.8**

Property seized (under the seize and sift power) must be kept:	
<b>Requirement 1</b>	<b>Requirement 2</b>
<b>Securely</b>	<b>Separately</b>
...from <b>material seized under separate powers.</b>	

**Examination & Return Of Property Seized - Section 53 Criminal Justice & Police Act 2001**

**Duties Of The Person In Possession Of The Material Seized Under The Seize & Sift Powers - Section 53(1)-(2) Criminal Justice & Police Act 2001**

After <b>anything</b> has been <b>seized</b> via the powers conferred by either:			
<b>Section 50 Criminal Justice &amp; Police Act 2001</b>		<b>Section 51 Criminal Justice &amp; Police Act 2001</b>	
Seize and sift of property seized during a <b>premises search</b>		Seize and sift of property seized during a <b>search of a person</b>	
...it shall be the <b>duty</b> of the <b>person</b> for the time being <b>in possession of the seized property</b> – to <b>secure</b> that there are <b>arrangements in force</b> (subject to section 61) to ensure:			
<b>Duty 1</b>	<b>Duty 2</b>	<b>Duty 3</b>	<b>Duty 4</b>
That the <b>initial examination</b> of property is <b>carried out as soon as reasonably practicable</b> after seizure.	That the examination is confined to whatever is <b>necessary</b> for determining <b>how much of the property may be retained</b>  (as per the list of property that can be retained in subsection 3).	That anything that <b>cannot be retained</b> - because it <b>does not fall within the list in subsection 3</b> – is both: <ul style="list-style-type: none"> <li>▪ <b>Separated</b> from the rest of the seized property that can be retained; and</li> <li>▪ <b>Is returned</b> as soon <b>as reasonably practicable</b> after the <b>examination of all seized property</b> has been <b>completed</b>.</li> </ul>	That <b>until</b> both: <ul style="list-style-type: none"> <li>▪ The <b>initial examination</b> of all property has been <b>completed</b>; and</li> <li>▪ Anything that <b>cannot be retained</b> (because does not fall within the list in subsection 3) – <b>has been returned</b></li> </ul> ...the <b>seized property</b> is <b>kept separate</b> from anything <b>seized under any other power</b> .

**What Is The List Of Property That Can Be Retained Following Seizure Under The Seize & Sift Powers? - Section 53(3) Criminal Justice & Police Act 2001**

The property that can be retained following seizure and subsequent sifting include:		
<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>
<p>Property the <b>retention</b> of which is <b>authorised</b> by <b>section 56</b>.</p> <p>(see below)</p>	<p>Property for which the person seizing it had the <b>power to search</b> when they made the seizure...</p> <p>...but is <b>not</b> property the <b>return</b> of which is <b>required</b> by <b>section 54</b></p> <p>(items subject to legal privilege).</p>	<p>Something which, in all the circumstances – it will <b>not</b> be <b>reasonably practicable</b>, following the examination – to <b>separate</b> from property falling under <b>categories 1 and 2 (that can be retained)</b>.</p> <p>i.e. if property falling within category 1 or 2 (which is legitimate to retain) is combined with property that falls outside both categories – and <b>separating</b> the property would <b>prejudice the use of the rest of the property or part of it fell under category 1 or 2</b> – then <b>all of the combined property can be retained</b>.</p>



**Property The Retention Of Which Is Authorised Following The Sift Process? – Section 56 Criminal Justice & Police Act 2001**

Property seized can be <b>retained</b> following the sift process - provided:			
<b>Premises Searches</b>		<b>Person Searches</b>	
It was seized on premises by either: <ul style="list-style-type: none"> <li>▪ A <b>constable</b>; or</li> <li>▪ A <b>person authorised by statute</b> who was <b>accompanied</b> by a <b>constable</b>...</li> </ul> ...who was <b>lawfully</b> on the premises		It was seized by a <b>constable</b> carrying out a <b>lawful search</b> of any person	
...and there are <b>reasonable grounds for believing</b> that either:			
<b>Belief 1</b>		<b>Belief 2</b>	
It is <b>property obtained</b> in consequence of the <b>commission of an offence</b>		It is <b>evidence</b> in relation to <b>any offence</b>	
...and it is <b>necessary</b> for it to be <b>retained</b> - in order to <b>prevent</b> it being either:			
<b>Risk 1</b>	<b>Risk 2</b>	<b>Risk 3</b>	<b>Risk 4</b>
Concealed.	Lost.	Altered.	Destroyed.

**The Rules Governing The Return Of Legally Privileged Material – Section 54 Criminal Justice & Police Act 2001**

**The General Rule – The Obligation To Return Legally Privileged Material ASAP - Section 54(1) Criminal Justice & Police Act 2001**

<p>If at any time after a seizure of anything - it appears to a person for the time being having possession of the seized property – that the property both:</p>	
<b>Step 1</b>	<b>Step 2</b>
<p>Either:</p> <ul style="list-style-type: none"> <li>▪ Is an item subject to legal privilege; or</li> <li>▪ It has an item subject to legal privilege comprised in it</li> </ul>	<p>In the case where an item is comprised in something else which has been lawfully seized – it is <b>not</b> comprised in property falling into subsection 2</p>
<p>...it shall be the <b>duty</b> of that person to secure that the item is returned as soon as practicable after the seizure.</p>	

**The Exception – Circumstances In Which Legally Privileged Material Can Be Retained – Combined Property Where Separation Is Not Reasonably Practicable - Section 54(2)-(3) Criminal Justice & Police Act 2001**

<p>Legally privileged property - that is <u>combined</u> with other property can be retained if:</p>	
<b>Step 1</b>	<b>Step 2</b>
<p>The <b>whole or part of the rest of the property</b> is either:</p> <ul style="list-style-type: none"> <li>▪ Property the <b>retention</b> of which is authorised under section 56; or</li> <li>▪ Property for which the person seizing it had a <b>power to search</b> when they made the seizure – but it is <b>not</b> property that they are <b>required to return</b> under <b>this section</b> or <b>section 55</b> (excluded material and special procedure material)</li> </ul>	<p>In all the circumstances, it is <b>not reasonably practicable</b> for that item to be <u>separated</u> from the <b>rest of the property or part of it</b> – <b>without prejudicing the use of the rest of the property or part of it</b> for the purpose for which its retention would be lawful.</p>

**The Rules Governing The Return Of Excluded Material & Special Procedure Material – Section 55 Criminal Justice & Police Act 2001**

**The General Rule – The Obligation To Return Excluded Material & Special Procedure Material ASAP - Section 55(1) Criminal Justice & Police Act 2001**

<p>If at any time after a seizure of anything - it appears to a person for the time being having possession of the seized property – that the property both:</p>		
Step 1	Step 2	Step 3
<p>Either:</p> <ul style="list-style-type: none"> <li>▪ Is <b>excluded material</b> or <b>special procedure material</b>; or</li> <li>▪ It has any <b>excluded material</b> or <b>special procedure material</b> comprised in it</li> </ul>	<p>Its retention is <b>not</b> authorised by <b>section 56</b></p>	<p>In the case where an <b>item</b> is <b>comprised in something else</b> which has been <b>lawfully seized</b> – it is <b>not</b> comprised in property falling into subsections 2 or 3</p>
<p>...it shall be the <b>duty</b> of that person to secure that the item is <b>returned as soon as practicable</b> after the seizure.</p>		

**The Exception – Circumstances In Which Excluded Material & Special Procedure Material Can Be Retained – Combined Property Where Separation Is Not Reasonably Practicable - Section 55(2)-(3) Criminal Justice & Police Act 2001**

Either:	
<b>Category 1</b>	<b>Category 2</b>
Excluded material	Special procedure material
...that is <b><u>combined</u></b> with <b>other property</b> - can be <b>retained</b> if:	
<b>Step 1</b>	<b>Step 2</b>
<p>The <b>whole or part of the rest of the property</b> is either:</p> <ul style="list-style-type: none"> <li>▪ Property the <b>retention</b> of which is <b>authorised under section 56</b>; or</li> <li>▪ Property for which the person seizing it had a <b>power to search</b> when they made the seizure – but it is <b><u>not</u></b> property that they are <b>required to return</b> under <b>this section</b> or <b>section 54</b> (legally privileged material)</li> </ul>	<p>In all the circumstances, it is <b><u>not</u></b> <b>reasonably practicable</b> for that item to be <b><u>separated</u></b> from the <b>rest of the property</b> or <b>part of it</b> – <b>without prejudicing the use of the rest of the property or part of it</b> for the <b>purpose</b> for which its <b>retention</b> would be <b>lawful</b>.</p>

**When Should The Sift Process Be Conducted? - Code B Paragraph 7.8 & Section 53(4) Criminal Justice & Police Act 2001**

An <b>examination</b> (of the seized property) to <b>determine which elements may be retained</b> – must be carried out at the <b>earliest practicable time</b> – taking into account the <b>desirability</b> of allowing either:	
<b>Person 1</b>	<b>Person 2</b>
The <b>person</b> from whom the <b>property</b> was <b>seized</b>	The <b>person</b> with an <b>interest</b> in the <b>property</b>
...the <b>opportunity</b> to be either:	
<b>Opportunity 1</b>	<b>Opportunity 1</b>
<b>Present</b>	<b>Represented</b>
...at the <b>examination</b> .	

**Dealing With An Interested Person's Request To Be Present At The Examination Of The Seized Material? - Code B Paragraph 7.8A**

All <b>reasonable steps</b> should be taken to <b>accommodate</b> an interested person's <b>request</b> to be <b>present</b> :	
<b>Limitation 1</b>	<b>Limitation 2</b>
Provided the request is <b>reasonable</b> ...	...and subject to the need to <b>prevent either</b> : <ul style="list-style-type: none"> <li>▪ <b>Harm to;</b></li> <li>▪ <b>Interference with;</b> or</li> <li>▪ <b>Unreasonable delay</b></li> </ul> ...to the <b>investigatory process</b>
...and if the examination proceeds in their <b>absence following their request to attend</b> – they must be given a <b>written notice</b> explaining why the process was conducted in their absence.	

**The Obligation To Return Seized Material That There Is No Power To Retain Following The Examination – Code B Paragraph 7.9 & 7.9A**

Material that there is no power to retain - must be both:	
<b>Action 1</b>	<b>Action 2</b>
Separated from the rest of the seized property...	...and returned ASAP following examination of all seized property
...and delay is only permitted if there is a very clear and compelling reason – e.g. unavailability of the person to whom the items must be returned etc.	

**The Obligation To Return Legally Privileged, Excluded Or Special Procedure Material That Cannot Be Retained - Code B Paragraph 7.9B**

Either:		
<b>Prohibited Category 1</b>	<b>Prohibited Category 2</b>	<b>Prohibited Category 3</b>
Legally privileged	Excluded	Special procedure
...material – which cannot be retained – must be returned both:		
<b>Parameter 1</b>		<b>Parameter 2</b>
As soon as reasonably practicable (ASAP)...		...and without waiting for the whole examination.

**Who Will The Material That There Is No Power To Retain Be Returned To? - Code B - Paragraph 7.9C**

The material must be returned to:	
<b>General Rule</b>	<b>Exception</b>
The person from whom it was seized...	...except where it is clear that some other person has a better right to it.

## Application To The Appropriate Judicial Authority - Section 59 Criminal Justice & Police Act 2001

### Who Is The Appropriate Judicial Authority?

- At least a Crown Court judge.

### Who May Lodge An Application? - Section 59(2) Criminal Justice & Police Act 2001

Any person with a relevant interest in the seized property may apply to the appropriate judicial authority – on either:	
<b>Basis 1</b>	<b>Basis 2</b>
One	More than one
...of four grounds in subsection 3 – for the return of either:	
<b>Scope 1</b>	<b>Scope 2</b>
The whole	Part of
...the seized property.	

### Grounds For The Application? - Section 59(3) Criminal Justice & Police Act 2001

#### Ground 1

- There was no power to make the seizure.

**Ground 2**

That the <b>seized property</b> either:	
<b>Status 1</b>	<b>Status 2</b>
Is	Contains
...an <b>item</b> subject to <b>legal privilege</b> – that is <b>not comprised</b> in <b>property</b> falling within <b>section 54(2)</b> – i.e. it is <b>not combined material</b> where <b>separation is not reasonably practicable</b> (see above).	

**Ground 3**

That the <b>seized property</b> either:		
<b>Status 1</b>	<b>Status 2</b>	
Is	Contains	
...any:		
<b>Item 1</b>	<b>Item 2</b>	
Excluded material	Special procedure material	
...which:		
<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>
Has been <b>seized</b> under a <b>power</b> to which <b>section 55</b> applies (see above).	Is <b>not comprised</b> in property falling within <b>section 55(2)-(3)</b>  – i.e. it is <b>not combined material</b> where <b>separation is not reasonably practicable</b> (see above).	Is <b>not property</b> the <b>retention</b> of which is <b>authorised</b> by <b>section 56</b> (see above).



**Ground 4**

That the <b>seized property</b> either:	
<b>Status 1</b>	<b>Status 2</b>
Is	Contains
...something seized under either:	
<b>Section 50 Criminal Justice &amp; Police Act 2001</b>	<b>Section 51 Criminal Justice &amp; Police Act 2001</b>
Seize and sift of property seized during a <b>premises search</b>	Seize and sift of property seized during a <b>search of a person</b>
<p>...which does <b>not</b> fall within <b>section 53(3)</b> – i.e. does <b>not</b> fall within the <b>list of property</b> that <b>can</b> be retained following seizure under the seize and sift powers (see above).</p>	

**The Duty To Secure Following An Application? - Section 61 Criminal Justice & Police Act 2001**

The <b>person for the time being having possession of the seized property</b> – must ensure that the <b>seized property (without being returned)</b> – is <b>not</b> at any time after the giving of the notice of the application - either:	
<b>Prohibited Action 1</b>	<b>Prohibited Action 2</b>
Examined or copied	<b>Put to any use</b> to which its seizure would (apart from this subsection) allow it to be put
...except either:	
<b>Exception 1</b>	<b>Exception 2</b>
With the <b>consent</b> of the <b>applicant</b> .	In accordance with the <b>directions</b> of the <b>appropriate authority</b> .

**Action To Be Taken When An Application Is To Be Made To The Appropriate Judicial Authority? - Code B Paragraph 7.10**

When an <b>officer involved in an investigation</b> has <b>reasonable grounds to believe a person with a relevant interest in property seized intends to make an application for the return of any:</b>		
<b>Prohibited Category 1</b>	<b>Prohibited Category 2</b>	<b>Prohibited Category 3</b>
Legally privileged	Excluded	Special procedure
...material – then both:		
<b>Action 1</b>	<b>Action 2</b>	
The <b>officer in charge of the investigation</b> should be informed as soon as practicable...	...and the <b>material seized</b> should be <b>kept secure</b> .	

**Who Is Responsible For Ensuring That The Property Is Properly Secured? - Code B Paragraph 7.11**

- The officer in charge of the investigation.

**What Does Securing Entail? - Code B Paragraph 7.11**

Securing involves making sure that that property is <b>not</b> either:			
<b>Action 1</b>	<b>Action 2</b>	<b>Action 3</b>	<b>Action 4</b>
Examined	Copied	Imaged	Put to any other use
... <b>except</b> either:			
<b>Situation 1</b>		<b>Situation 2</b>	
At the <b>request</b> , or with the <b>consent</b> , of the <b>applicant</b>		In accordance with the <b>directions</b> of the <b>appropriate judicial authority</b>	
...and any request, consent or directions – must be both:			
<b>Action 1</b>		<b>Action 2</b>	
Recorded in writing.		<b>Signed</b> by both: <ul style="list-style-type: none"> <li>▪ The <b>initiator</b>; and</li> <li>▪ The <b>officer in charge of the investigation</b>.</li> </ul>	

**Options Available To The Appropriate Judicial Authority? - Section 59(5) Criminal Justice & Police Act 2001**

The <b>appropriate judicial authority</b> may give such <b>directions</b> it thinks fit for either:			
<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
Examination	Retention	Separation	Return
...of either:			
<b>Scope 1</b>		<b>Scope 2</b>	
The whole		Any part of	
...the <b>seized property</b> (or any <b>copies</b> etc. made).			

**Consequence Of A Failure To Comply With A Direction Or Order Made By The Appropriate Judicial Authority? - Section 59(9) Criminal Justice & Police Act 2001**

- Contempt of court.

**Power To Retain Seized Property**

**How Long Can Seized Property Be Retained? – Code B Paragraph 7.14**

<p>Seized property can be retained for as long as is necessary for the purposes of either:</p>			
Purpose 1	Purpose 2	Purpose 3	Purpose 4
<p>Use as evidence at trial</p>	<p>Use in any investigation or proceedings to which it is inextricably linked</p> <p>i.e. material that it is not practicable to separate from other linked (connected) material without prejudicing the use of the other material in any investigation or criminal proceedings</p>	<p>Forensic examination or investigation in connection with an offence</p>	<p>To establish lawful ownership - if there are reasonable grounds to believe it has been stolen or obtained via an offence</p>
<p>...unless the purpose can be achieved instead by creating either:</p>			
<p><b>Alternative 1</b></p>		<p><b>Alternative 2</b></p>	
<p>A copy.</p>		<p>An image.</p>	

**The Rights Of The Person Who Had Custody Or Control Of Any Property That Is To Be Retained? – Code B Paragraph 7.16 – 7.17**

Where property is <b>retained</b> – the person who had either:		
<b>Person 1</b>	<b>Person 2</b>	
Custody	Control	
...of the property <b>immediately before seizure</b> – must <b>on request</b> – be <b>provided</b> with either:		
<b>Option 1</b>	<b>Option 2</b>	
A list	A description	
...of the property within a <b>reasonable period of time</b> – and either:		
<b>Person 1</b>	<b>Person 2</b>	
They	Their representative	
...must be allowed <b>supervised access</b> - within a <b>reasonable period of time</b> – to at their <b>own expense</b> either:		
<b>Action 1</b>	<b>Action 2</b>	<b>Action 3</b>
Examine	Photograph	Copy
...their <b>property</b> – or be <b>provided</b> with either:		
<b>Item 1</b>	<b>Item 2</b>	
A photograph	A copy	
...unless the <b>officer in charge of the investigation</b> has reasonable grounds to <b>believe</b> that this would either:		
<b>Risk 1</b>	<b>Risk 2</b>	
Prejudice the investigation of any <b>offence or criminal proceedings</b>	Lead to the <b>commission of an offence</b> by providing access to unlawful material such as pornography	
...and if <b>access</b> is <b>refused</b> – the <b>grounds</b> must be <b>recorded</b> .		

**Post Search Recording Obligations**

**Who Shall Make Or Have Made A Record Of The Search? – Code B Paragraph 8.1**

- The **officer in charge of the search** – on arrival at the **police station**.

**Contents Of The Search Record?**

**Content 1**

- The **address** of the premises searched.

**Content 2**

- The **date, time and duration** of the search.

**Content 3**

The <b>authority</b> for the search – including:		
<b>Searches By Consent</b>	<b>Searches By Warrant</b>	<b>Searches By Statutory Powers</b>
Either: <ul style="list-style-type: none"> <li>• A <b>copy</b> of the <b>written consent</b> shall be <b>appended</b> to the record; or</li> <li>• The record shall show the <b>location</b> of a <b>copy</b> of the <b>written consent</b>.</li> </ul>	Either: <ul style="list-style-type: none"> <li>• A <b>copy</b> of the <b>warrant</b> and the written authority to apply for it shall be <b>appended</b> to the record; or</li> <li>• The record shall show the <b>location</b> of a <b>copy</b> of the <b>warrant</b>.</li> </ul>	<b>Record</b> which <b>powers</b> was relied upon.

**Content 4**

The names of:	
The officer(s) in charge of the search	All other officers and authorised persons present who conducted the search
...unless either:	
The offence is <b>terrorism related</b>	The searching officer <b>reasonably believes</b> that <b>recording or disclosing</b> their names would place them in <b>danger</b>
...and if so - use their <b>warrant or other identification numbers</b> and the <b>name of their police station</b> instead.	

**Content 5**

- The names of any persons on the premises – if known.

**Content 6**

- Any grounds for refusing the occupier's request to have a person present – if applicable.

**Content 7**

Either:	
A list of articles seized	The location of such a list
...and the grounds for seizure (if not covered by a warrant).	

**Content 8**

- Whether force was used – and if so – the reasons for using force.

**Content 9**

- Details of any **damage caused** – and if so the **circumstances**.

**Content 10**

- Any **reason** why it was **not practicable** to **give the occupier a copy** of the **Notice of Powers and Rights** – if applicable.

**Content 11**

If the <b>occupier was not present</b> – the <b>place</b> where both:	
The <b>Notice of Powers and Rights</b>	Any <b>search warrant</b> (if applicable)
...were <b>left on the premises</b> .	

**Additional Post Search Obligations When A Search Was Conducted Via A Warrant**

**Endorsing The Warrant – Code B Paragraph 8.2**

- On **each occasion** when **premises are searched** under a warrant – the warrant authoring the search on that occasion shall be **endorsed**.

**Contents Of The Endorsement On Each Occasion?**

**Content 1**

State both:	
<b>Fact 1</b>	<b>Fact 2</b>
If any <b>articles specified</b> in the <b>warrant</b> were <b>found</b> .	The <b>address</b> where they were <b>found</b> .



**Content 2**

- State if **any other articles** were seized.

**Content 3**

The <b>date</b>	The <b>time</b>
...the warrant was <b>executed</b> – and either:	
The <b>name</b> of the <b>occupier</b> – if <b>present</b> .	The <b>name of the person in charge of the premises</b> – if the <b>occupier</b> was <b>not present</b> .

**Content 4**

The names of:	
The <b>officer(s)</b> who <b>executed the warrant</b>	<b>Any authorised persons</b> present who accompanied them
... <b>unless</b> either:	
The offence is <b>terrorism related</b>	The searching officer <b>reasonably believes</b> that <b>recording or disclosing</b> their <b>names</b> would place them in <b>danger</b>
...and if so - use their <b>warrant or other identification numbers</b> and the <b>name of their police station</b> instead.	

**Content 5**

State if a <b>copy</b> of both:	
The <b>Notice of Powers and Rights</b>	The <b>search warrant</b>
...was either:	
<b>Occupier Present</b>	<b>Occupier Not Present</b>
<b>Handed</b> to the <b>occupier</b> – if <b>present</b> .	If the <b>occupier</b> was <b>not present</b> - <b>endorsed</b> by the officer in charge of the search and <b>left at the premises</b> – specifying the <b>location</b> .

**Obligation To Return The Warrant – Code B Paragraph 8.3**

Any warrant shall be <b>returned</b> to either:	
<b>Warrants Issued By A Justice Of The Peace</b>	<b>Warrants Issued By A Judge</b>
The <b>designated officer</b> for the local justice area	To the <b>appropriate officer</b> of the court
...within either:	
<b>Parameter 1</b>	<b>Parameter 2</b>
<b>3 calendar months</b> of the <b>issue</b> of the warrant.	<b>Sooner on completion</b> of the <b>search(es)</b> authorised by the warrant.