

# Search powers, and obtaining and executing search warrants

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## Introduction

The use of search powers are intrusive. Particular care should be taken if the owner or occupier of premises may be vulnerable. If a search intrudes into an individual's personal or work life this may amount to a breach of [Article 8 of the European convention on Human Rights](#).

When planning a search, with or without a warrant, it is important to consider:

- proportionality
- lawfulness
- accountability
- necessity

Consider whether the evidence can be obtained through less intrusive methods, such as voluntary disclosure or consent.

See also [College of Policing \(2019\) APP Search](#) (Official sensitive).

## Is a search warrant necessary?

A number of Police and Criminal Evidence Act 1984 (PACE) powers do not require a warrant to be issued.

PACE Power	Search parameter
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<u>Section 17 of PACE</u>	<p>To enter and search any premises to:</p> <ul style="list-style-type: none"><li>• execute an arrest warrant, arrest or recapture a person on any premises</li><li>• save life and limb or prevent serious damage to property</li></ul>
<u>Section 32 of PACE</u>	<p>To search an arrested person where the person has been arrested at a place other than a police station. The Constable must reasonably believe that the arrested person may present a danger to themselves or others.</p> <p>If the offence is indictable, to enter and search any premises that the suspect was in at the time of their arrest, or immediately before arrest, for evidence.</p> <p>The officer must reasonably believe that the premises may contain evidence, and must only search to the extent that is reasonably required to discover any such item or evidence.</p>

<p><b><u>Section 18 of PACE</u></b></p>	<p>To enter and search the premises occupied or controlled by a suspect who has been arrested for an indictable offence. There must be reasonable grounds for suspecting that there is evidence relating to that offence, or to another connected or similar indictable offence, on the premises.</p> <p>To seize and retain anything for which the officer may search.</p> <p>This search must be authorised in writing by an officer of inspector rank or above.</p> <p>Where the presence of the suspect is necessary at the premises for the effective investigation of the offence, authorisation is not required. However, an officer of inspector rank or above must be informed as soon as practicable after the search has been carried out.</p>
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Additional search powers without a warrant are available under other legislation, for example:

- **the Proceeds of Crime Act 2002, section 289**
- **the UK Borders Act 2007, section 44**

**PACE Code B 2013** governs the search of premises and the seizure of material found on persons or premises.

See also: **Seizure**.

## Search warrants

A search warrant should only be used to search for specific items where there is sufficient evidence and intelligence to support an application.

Where a warrant is granted, it must be executed in accordance with the terms set out in the warrant and supporting legislation. See [PACE Code B 2013](#).

Failure to do so may result in:

- the search being declared unlawful
- evidence potentially being declared inadmissible in court
- legal liability for a force

## Powers

The most common powers used to obtain a search warrant are:

- [PACE 1984, section 8 for evidence of indictable offences](#)
- [the Theft Act 1968, section 26 for stolen property](#)
- [the Misuse of Drugs Act 1971, section 23 for controlled drugs](#)
- [the Terrorism Act 2000, schedule 5, paragraph 1 and 11 for evidence relating to terrorism](#)

Additional powers to obtain a search warrant are available. See [PACE Code B 2013](#), Notes for guidance; 2B for a comprehensive list of powers.

A warrant may also be granted under PACE, schedule 1 to access [excluded material](#) or [special procedure material](#) for the purposes of a criminal investigation. See also: [Accessing special procedure or excluded material](#).

The application for a search warrant must be made by a police officer or by an individual who has relevant designated powers, for example, a police staff investigator who has been designated powers under the Police Reform Act 2002.

Applications should be made following consultation with a supervisor, and should be authorised by a supervisor or above prior to submission.

## Application

The applicant should ensure they are familiar with the legal requirements of the search power they are relying on, the case and the material they are looking for. The applicant should also be able to provide answers to any questions that the judge may ask.

**Relevant application forms are available on GOV.UK.** They include guidance notes to help with completion.

## Information required

Section 15 of PACE places an obligation on the person applying for a search warrant to set out in the application:

- the grounds for making the application
- the power under which the warrant will be issued
- whether the application is for a warrant authorising entry and search on more than one occasion, in which case the applicant should also set out:
  - the grounds on which the applicant applies for such a warrant
  - whether they are seeking an unlimited number of entries, or, (if not), the maximum number of entries required
- the articles or persons to be sought, so far as is practicable

The application should also provide information about the following:

- The offence committed and the investigation.
- The suspect(s) and their previous offending history, including where they have no previous criminal convictions or cautions. If suspects are known, they should be named in the application. See *R (Van der Pijl) v Kingston Crown Court* [2012].
- The person who controls the premises and any other occupants, including any children or vulnerable adults.
- Information that both supports and undermines the application, for example this could include background information about the suspect that may support a non-criminal explanation for the material sought. See *R (on the application of Golfrate Property Management Ltd) v Southwark Crown Court* [2014] EWHC 840 (Admin).
- The premises to be searched. If the warrant applies to multiple premises, this includes the person who is in control or occupation of the premises, as well as any premises that can be specified. Set

out why it is necessary to search all the premises controlled or occupied, and why it is not practicable to specify all or any of the individual premises. Failure to correctly identify the premises may result in an unwarranted invasion of privacy (*Williams v Summerfield* [1972] 2 QB 512). The address must be verified, even if the information is from someone purporting to be the occupier of premises. In *Keegan v UK* [2007] 44 EHRR 33 although the suspect provided the address, it was incorrect.

- Why it is believed that the material sought will be found on those premises.
- The item(s) being sought. Avoid catch-all phrases such as, computers, shoes, clothing or any other documentation. As detailed in section 3a of the warrant application 'Articles or person(s) sought. Identify what, or who, you are looking for, in as much detail as practicable. Explain how those things, or people, meet the criteria for the issue of a search warrant prescribed by the main search power'.
- What parties to the search, for example, the searchers and the occupier(s) or controller(s) of the premises will need to know, and any action they may need to take.

See also [Legally privileged material](#).

## Relevant evidence and Intelligence

The application must set out all relevant evidence and intelligence that supports the warrant application.

- Avoid jargon, acronyms and wording such as 'it is believed' or 'it is suspected'.
- Officers should try to anticipate questions that a magistrate may ask and address these in the application.

If the application is based on sensitive intelligence, sufficient detail must be provided for the magistrate to assess its credibility. This may include:

- the amount of intelligence
- its age and currency
- its intelligence [grading](#) with a supporting explanation

Reasonable steps should be taken to check that the information is accurate, recent and not provided maliciously. The identity of an informant need not be disclosed, but the officer should be prepared to answer questions about the accuracy of previous information or intelligence they have

provided, as well as any related matters.

## Disclosure of warrant application

Following execution of a warrant, information contained within a warrant application can be disclosed. See *Commissioner of Police for the Metropolis v Bangs* [2014] EWHC 546 (Admin).

Officers should ensure that sensitive information is placed on a separate sensitive schedule. Magistrates will read the sensitive information but they cannot make a record of the information or retain it. The Magistrate may sign and date documents to confirm they have seen it. These should be retained by a force intelligence department.

## Oversight

A supervisor with experience of warrant applications and hearings should review and authorise all applications. They should make sure that the application form is completed correctly and includes all relevant material that both supports and undermines the application. It is important to make sure that the applicant has included this information. Supervisors should also consider any potential questions that the magistrate may raise and whether these have been addressed.

## The Hearing

Ideally, two officers or staff members will attend the application hearing. The applicant will present the application and information, and will answer questions from the issuing authority. The other officer or staff member should make comprehensive contemporaneous notes of any discussion as well as any questions and answers. This will provide an audit trail.

Courts may want to consider operational details about the execution of the warrant ? for example, time of entry to the premises and the number of officers involved ? to compare with the information provided in the application and to aid their decision making. The applicant should, where possible, have this information available for the hearing.

## The Warrant

The searchers and the occupier will only see the warrant, not the application. The warrant should therefore set out:

- the premises to be searched
- details of material sought
- the offences being investigated
- names of the suspects, where known
- the type of warrant (for example, PACE section 8)
- who is entitled to be on the premises during the search (for example, officers and crime scene investigators)

Although the identity of those executing the warrant will not always be known at the time of the application, officers due to enter the premises will be defined as ‘those authorised to execute the warrant (with powers) and those authorised to accompany (without powers)’. The officer in charge of executing the warrant does not need to be named.

When entering the premises, a copy of the Warrant and a Notice to Occupier should be handed to the occupant. Where practicable, these documents should be explained to the occupant before starting the search.

The notice to the occupier provides information about the powers under which the search is being executed.

## Execution

A search warrant must be executed within three calendar months from the date of issue.

Officers carrying out the search should be familiar with executing search warrants and should be familiar with the relevant legal requirements. In particular, they should know and understand [PACE section 16](#) and PACE Code B, paragraphs 6, 7 and 8, which provides general considerations and rights of seizure and retention of material.

Search teams should be briefed prior to executing the warrant. Every member of the search team should:

- understand the background to the search, and why a warrant is necessary
- be assigned a role and/or search area, and understand their role
- know what items are covered by the warrant
- know which locations to focus on



A briefing document covering these points will help team members remember what is required. For clarity it may be helpful to reflect the exact wording of section 3a of the warrant application in relation to items sought.

See also: [College of Policing \(2019\) APP Search](#) (Official sensitive)

## Record keeping

A record of the search should be made with an inventory of all material seized completed. See PACE Code B, paragraph 8.

## Seizure

Under section 19 of PACE if an officer is lawfully on premises, they may seize anything that is on the premises if:

- they have reasonable grounds for believing that it was obtained as a result of the commission of an offence;
- it is necessary to seize it to prevent it from being concealed, lost, damaged, altered or destroyed

[Legally privileged material](#) cannot be seized under PACE, section 19.

## Additional powers of seizure

Under [the Criminal Justice and Police Act 2001 \(CJPA\) sections 50 and 51](#), police can remove items from premises or people for the purpose of sifting or examination elsewhere (for example, a large bulk of mixed material, or where a laptop may hold bulk material). This is also known as 'seize and sift'. See [PACE Code B](#), paragraph 7.7.

Sections 50 and 51 apply to a range of search powers, which are set out in CJPA Part 1 and Part 2 of Schedule 1.

Where material is removed under section 50 or 51, a written notice should be provided to the occupier or person from whom the material has been seized, setting out:

- what has been seized
- grounds for seizure

- how a person with relevant interest can apply under CJPA sections 59 to 61 for the material to be secured or returned

Due regard should be given to allowing the person with an interest in the property to be present or represented at the examination (section 53(4) of CJPA). See PACE Code B, paragraph 7.12.

Officers must only exercise these powers when it is essential to do so. Officers must not remove more material than is necessary. Where practicable, copies should be taken, rather than originals removed.

Under **CJPA section 53** an initial examination of the material should be carried out as soon as reasonably practicable after the seizure.

The examination should be limited to whatever is necessary to determine how much of the material can lawfully be seized.

Anything that falls outside the terms of the warrant must be returned as soon as the examination has been completed.

Until the material seized under section 50 or 51 has been examined and separated, it must be kept separate from any other material seized under any other power.

If legally privileged material is mixed with other material, and if it is not possible to separate the material on the premises, officers are lawfully entitled to seize it under CJPA section 50. This may be where privileged and non-privileged material are mixed together on a computer hard drive. In this case, the examination and separation of the material should be undertaken by independent legal counsel.

## Action following execution

The applicant should ensure that after any search warrant has been executed, or has not been executed within the given timescales, either the executed warrant or the unexecuted warrant must be returned to the issuing court.

## Legally privileged, special procedure or excluded material

## Legally privileged material

A court cannot issue a warrant to search for material subject to legal privilege.

Section 10 of PACE defines legally privileged material when in the possession of a person who is entitled to its possession, as:

- communications between:
  - a legal adviser and his client or a person representing his client made in connection with giving legal advice to the client
  - a legal adviser and his client or a person representing his client, made in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings
  - a legal adviser or his client or any such representative and any other person and made in connection with, or in contemplation of legal proceedings and for the purposes of such proceedings
- items enclosed with, or referred to in such communications and made:
  - in connection with giving legal advice
  - in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings

Section 10(2) of PACE states that Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

If it is anticipated that legally privileged material may be on the premises to be searched, this must be clearly stated on the application and sufficient safeguards should be put in place to avoid its seizure. This approach should be explained in the warrant application. This may include appointing independent legal counsel to be present during the search as an adviser.

## Excluded material

Under section 11(1) of PACE excluded material means:

- personal records that a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office, and which that person holds in confidence

- human tissue or tissue fluid that has been taken for the purposes of diagnosis or medical treatment, and which a person holds in confidence
- journalistic material that consists of documents, or records other than documents, which a person holds in confidence

Section 11(2) also includes material other than journalistic material that is held in confidence, or where it is held subject to:

- an express or implied undertaking to hold it in confidence
- a restriction on disclosure or an obligation of secrecy in an enactment contained in an Act

## Special procedure material

Under section 14 of PACE, special procedure material means:

- journalistic material, other than excluded material
- material, other than items subject to legal privilege and excluded material, in possession of a person who:
  - acquired or created it in the course of any trade, business, profession or other occupation, or for the purpose of any paid or unpaid office

and

- holds it subject to an express or implied undertaking to hold it in confidence, or holds it subject to a restriction on disclosure or an obligation of secrecy in any enactment contained in an Act

This includes material where it is:

- obtained by an employee from their employer and in the course of their employment, or by a company from an associated company. It is only special procedure material if it was special procedure material immediately before the acquisition.
- created by an employee in the course of their employment. It is only special procedure material if it would have been special procedure material had his employer created it.
- created by a company on behalf of an associated company. It is only special procedure material if it would have been special procedure material had the associated company created it.

For further advice on special procedure material consult the Crown Prosecution Service.

## Accessing special procedure or excluded material

Under section 9 and schedule 1 of PACE a constable can apply to a judge for access to special procedure material or excluded material.

Before making an application, all other methods of obtaining the material should have been tried. This includes requesting voluntary disclosure.

There are two options available: a production order or a search warrant.

### Production order

Under Schedule 1, paragraph 4, a production order requires the person in possession of the material to produce it to a constable to take away, or give access to it, within seven days (or another specified period) from the date when the order was issued. Failure to comply with a production order will amount to contempt of court.

A judge may make an order if they are satisfied that either set of access conditions are fulfilled.

### Search warrant

Under Schedule 1, paragraph 12, a judge may issue a search warrant if they are satisfied that:

- that either set of access conditions is fulfilled and any of the conditions under paragraph 14 are also fulfilled,

or

- the second set of access conditions are fulfilled and a previous production order under paragraph 4 has not been complied with

Paragraph 14 sets out the further condition that:

- it is not practicable to communicate with someone who is entitled to grant entry to the premises
- even though it is practicable to communicate with someone who can grant entry, it is not practicable to communicate with someone who is entitled to grant access to the material

- the material contains information that:
  - is subject to a restriction or obligation, such as is mentioned in section 11(2)(b), a restriction on disclosure or an obligation of contained in an Act
  - is likely to be disclosed in breach of that obligation if a warrant is not issued
- service of notice of an order on an applicant may seriously prejudice the investigation

All applications under PACE Schedule 1, section 9 must be authorised in writing by a senior officer of at least inspector rank.

### **First set of access conditions**

If other methods have been tried without success, or have not been tried because they were assessed and were expected to fail.

There are also reasonable grounds for believing:

- an indictable offence has been committed
- there is material, on the premises, that consists of, or includes, special procedure material, but does not include excluded material
- the material is likely to be of substantial value to the investigation (whether by itself or together with other material)
- it is likely to be relevant evidence

and

- it is in the public interest that the material should be produced or access to it be given, because of the likely benefit to the investigation if the material is obtained and to the circumstances under which the material is held.

### **Second set of access conditions**

That there are reasonable grounds for believing that:

- there is material that consists of, or includes, excluded material or special procedure material on the premises

- for section 9(2) of PACE, a search warrant for the material could have been authorised under an enactment other than PACE schedule 1
- the issue of a warrant would have been appropriate

Section 9(2) of PACE states that any:

Act, passed before PACE, where a search warrant for the purposes of a criminal investigation could have been issued to a constable, will cease to have effect so far as it relates to a search for one of the following:

- legally privileged material
- excluded material
- special procedure material consisting of documents or records other than documents

## Tags

Investigation