

Police Pass - Revision Crammer Textbook

Sample Chapter: Entry, Search & Seizure

Human Rights Act Considerations When Utilising Powers Of Entry And Seizure – Code B Paragraph 1.3

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

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

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

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

Code B of PACE 1984 regulates police powers to both:			
Power 1		Power 2	
Search premises		Seize and retain property found on premises and persons	
...in order to find either:			
Category 1	Category 2	Category 3	
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:			
Power 1	Power 2	Power 3	Power 4
With the occupiers 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: ▪ 17; ▪ 18; or ▪ 32.	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.

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 unnecessary to seek consent from the person entitled to grant entry to the premises – if both:	
Step 1	Step 2
Seeking consent would cause them disproportionate inconvenience .	The circumstances are such that an innocent occupier would be expected to give their consent .

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

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

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

Power 2 – Powers Of Search & Seizure Under Warrant

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

Both:	
Section 15 PACE 1984 (Regulates applications for warrants)	Section 16 PACE 1984 (Regulates execution of warrants)
...to search premises issued by both:	
Justice Of The Peace	Circuit Judge
To exercise search powers for: - Stolen property – section 26 Theft Act 1966; - Controlled drugs – section 23 Misuse of drugs Act 1971; - Evidence for indictable offences – section 8 PACE 1984; and - Compliance with TPIM obligations – schedule 5 TPIM Act 2011.	To exercise search powers under: - Schedule 1 PACE 1984; and - Schedule 5 Terrorism Act 2000.

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

Before lodging the application - the officer must take reasonable steps to check that the information upon which the application will be based is:		
Factor 1	Factor 2	Factor 3
Accurate	Recent	<u>Not</u> provided maliciously or irresponsibly
...and shall ascertain as specifically as possible both:		
Factor 4	Factor 5	
The nature of the articles sought	The location of such articles	
...and shall make reasonable enquiries to establish:		
Factor 6	Factor 7	
If anything is known about either: ▪ The likely occupier of the premises; or ▪ The premises themselves.	Any other relevant information.	

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

Prior to lodging the warrant application – authority must be sought from either:	
Non Urgent Situations	Exception - Urgent Situations
Written authority of an Inspector .	In cases of urgency where no Inspector is “ readily available ” - then the next most senior officer on duty may authorise the application.

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.

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

Where a constable applies for any such warrant - it shall be their duty to state the following information:	
Fact 1	Fact 2
The ground on which they make the application.	The enactment under which the warrant would be issued.
Fact 3	Fact 4
To identify, so far as is practicable, the: ■ Articles sought; or ■ Persons sought.	If the application is for a warrant authorising entry and search on more than one occasion: ■ The ground on which they applied for such a warrant; and ■ Whether they seek a warrant authorising: ☐ An unlimited number of entries; or ☐ If not - the maximum number of entries desired.
...and the matters set out below:	
If the application relates to one or more sets of premises specified in the application - each set of premises which it is desired to enter and search; and	If the application relates to any premises occupied or controlled by a person specified in the application: ■ As many sets of premises which it is desired to enter and search as it is reasonably practicable to specify; ■ The person who is in occupation or control of those premises and any others which it is desired to enter and search; ■ Why it is necessary to search more premises than those specified; and ■ Why it is not reasonably practicable to specify all the premises which it is desired to enter and search.
...plus also that both:	
There are no reasonable grounds to believe that the material sought consists of or includes either: ■ Items subject to legal privilege; ■ Excludes material; or ■ Special procedure material.	If applicable – a request for the warrant to authorise person(s) to accompany the officer who executes the warrant. (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: ▪ Each set of premises to be searched; or ▪ 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
...and shall identify - as far as is practicable - either the:			
Objective 1		Objective 2	
Articles sought		Persons sought	
...and shall also specify the number of entries authorised – which will be either:			
General Rule		Exception	
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:			
Scope 1		Scope 2	
Unlimited.		Limited to a specified maximum.	

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

Only One Set Of Premises & Only Single Entry Authorised	Multiple Premises Or Multiple Entries Authorised
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:	
Action 1	Action 2
Enter	Search
...premises - may:	
Person 1	Person 2
Be executed by any constable...	...and may authorise persons to accompany any constable who is executing the warrant
...and any accompanying person will have the same powers as the constable (who accompanies them) to both:	
Power 1	Power 2
Execute the warrant	Seize anything to which the warrant relates
...provided the accompanying person is both:	
Criteria 1	Criteria 2
In the company of a constable.	Under the supervision 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:	
Time Limit 1	Time Limit 2
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 Inspector or above must be obtained prior to executing the warrant - where it is proposed to enter and search either:	
Situation 1 – All Premises Warrants	Situation 2 – Multiple Entry Warrant
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

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

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

The officer in charge of the search should normally be the most senior officer present – unless any of the following exceptions apply:		
Exception 1	Exception 2	Exception 3
A supervising officer may appoint an officer of lower rank - if that officer is more conversant with the facts and is a more appropriate officer to be in charge of the search.	All officers in the premises search are of the same rank . 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.	If a senior officer is assisting in a specialist role - they need not be in charge of the search.

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

The action to be taken by a constable when executing the warrant will depend on whether:		
Situation 1	Situation 2	Situation 3
The occupier <u>is</u> present at the time of the search. If so - the constable shall: ▪ Identify themselves to the occupier; ▪ If not in uniform – produce documentary evidence that they are a constable; ▪ Produce the warrant to them; and ▪ Supply them with a copy (NB – not the original!)	The occupier is <u>not</u> present at the time of the search – but a person in charge of the premises <u>is</u> present. If so - the constable shall: ▪ Identify themselves to the person in charge of the premises; ▪ If not in uniform – produce documentary evidence that they are a constable; ▪ Produce the warrant to them; and ▪ Supply them with a copy (NB – not the original!)	<u>Neither</u> the occupier nor a person in charge of the premises is present. If so - the constable shall leave a copy of the warrant in a prominent place on the premises.

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**.

Exam Trip Up – Never Leave The Original Warrant

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

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

The Obligation To Return The Warrant – Section 16(1) & (10A) PACE 1984

After either:	
Situation 1	Situation 2
A warrant has been executed	Either ▪ A specific premises warrant which has not been executed; ▪ All premises warrant; or ▪ Multiple entry warrant ...has become void due to expiry of the time limit – i.e. 3 months or longer after its date of issue
...the warrant must be returned to either:	
Person 1	Person 2
The designated officer for the local justice area in which a Justice of the Peace issued the warrant	The appropriate officer of the court where it was issued by a judge
...and both:	
Obligation 1	Obligation 2
The warrant shall be retained for 12 months from the date of its return ...	...and the occupier of the premises searched will be permitted during the 12 month retention period to inspect 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 two different types of warrant:	
Specific Premises Warrant	All Premises Warrant
Which authorise one or more sets of premises to be searched	Which authorise the searching of all premises under the occupation or control of a person - where it is not practicable to specify all such premises at the time of the application
...and a warrant may authorise entry to and search of premises on more than one occasion – if the Justice of the Peace is satisfied that multiple entries are necessary – and if so the number of entries authorised may be either:	
Scope 1	Scope 2
Limited to a maximum .	Unlimited .

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

The Justice of the Peace can issue a warrant - authorising a constable to both:			
Power 1		Power 2	
Enter		Search	
...if they are satisfied that there are reasonable grounds for believing <u>all</u> of the following:			
Belief 1	Belief 2	Belief 3	Belief 4
That an indictable offence has been committed	That there is material on the premises that is likely to be of substantial value to the investigation of the offence	That the material is likely to be relevant evidence (i.e. admissible evidence at trial)	That the material is <u>not</u> either: ▪ Legally privileged; ▪ Excluded material; or ▪ Special procedure material
...and that <u>any</u> of the following conditions also apply in relation to each set of premises specified in the application:			
Factor 1	Factor 2	Factor 3	Factor 4
That entry to the premises will <u>not</u> be granted - <u>unless</u> a warrant is produced.	That the purpose of the search may be frustrated or seriously prejudiced – <u>unless</u> a constable arriving at the premises can secure immediate access .	That it is <u>not</u> possible to communicate with any person entitled to grant entry to the premises.	Both that: ▪ It <u>is</u> possible to communicate with a person entitled to grant entry to the premises; ▪ But - it is <u>not</u> possible to communicate with any person entitled to grant access to the evidence.

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 PACE 1984

Category 1	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.
Category 2	Communications between a professional legal adviser and their client or any person representing their client or between such advisor or his 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.
Category 3	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.

Will An Item Which Is Held By A Legal Adviser With The Intention Of Furthering A Criminal Purpose Covered By Legal Privilege?

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

Can Legally Privileged Material Be Searched For And Seized?

General Rule – No	Exception – Yes
No – if it is in the possession of a person who is entitled to possession of such material.	If items are held with the intention of furthering a criminal purpose they will not be subject to legal privilege and can be searched for and seized.

2 - Excluded Material

Definition Of Excluded Material – Section 11 PACE 1984

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

Basis Of The Obligation To Hold Material In Confidence

Categories 1 & 2 Business Documents & Human Tissue	By virtue of either: ▪ An express or implied undertaking to hold in confidence; or ▪ By virtue of an obligation imposed by legislation.
Category 3 Journalistic Material	▪ The journalistic material is held subject to such an undertaking or obligation that it be held in confidence; and ▪ It has been continuously held by one or more persons subject to such an undertaking or obligation since it was first acquired or created for the purposes of journalism.

Can Excluded Material Be Searched For And Seized?

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

3 - Special Procedure Material

Definition Of Special Procedure Material

Category 1	Category 2
Journalistic material other than excluded material.	Material other than items subject to legal privilege or excluded material which is in the possession of a person who both: - Acquired or created it in the course of any trade, business, profession, occupation or for the purposes of any paid or unpaid office; and - Holds it subject to either an express or implied undertaking of confidence or a legislative restriction.

Can Special Procedure Material Be Searched For And Seized?

- **Yes** – but only upon a **production order** or **search warrant** being granted by a Judge 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:		
Power 1	Power 2	
Enter	Search	
...premises <u>without</u> a warrant – to either:		
Section 17 PACE 1984	Section 18 PACE 1984	Section 32 PACE 1984
Either: ▪ Arrest a person; ▪ Recapture a person unlawfully at large; ▪ Save life and limb; or ▪ Protect property.	Search after arrest for an indictable offence .	Search the premises either: ▪ Where an arrest took place; or ▪ Where the person was immediately before arrest.

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

A constable may both:	
Enter (using force where necessary)	Search
...any premises - for the purpose of either:	
Arrest Purpose 1	Arrest Purpose 2
Executing: ■ An arrest warrant; or ■ A commitment warrant.	Arresting a person for an offence under: ■ Section 1 Public Order Act 1936 (Prohibition of Uniforms); ■ Section 6 to 8 or 10 of the Criminal Law Act 1977 (Land offences); ■ Section 4 Public Order Act 1986 (Fear or provocation of violence); ■ Section 4 (Unfit to Drive) or 163 (Fail to Stop) of the Road Traffic Act 1988; ■ Section 27 of the Transport and Works Act 1992; ■ Section 76 of the Criminal Justice and Public Order Act 1994 (failure to comply with interim possession order).
Arrest Purpose 3	Arrest Purpose 4
Arresting a person for an indictable offence .	Arresting any child or young person who has been remanded or committed to local authority accommodation or youth detention accommodation .
Arrest Purpose 5	Arrest Purpose 6
Arresting a person for an offence to which section 61 Animal Health Act 1981 applies.	Arresting a person in breach of bail .
Recapture Purpose	Protection Purpose
Recapturing a person who is unlawfully at large from detention or who they are pursuing – NB must be a “ live ” pursuit.	Either: ■ Saving life and limb; or ■ Preventing serious damage to property.

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

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

When searching premises that consist of 2 or more separate dwellings - the power to enter and search - except for searches conducted for the purposes of both:	
Excepted Power 1	Excepted Power 2
Saving life and limb	Preventing serious damage to property
...is limited to enter and search :	
Location 1	Location 2
Any common parts of the premises which the occupiers share ...	...and any such dwelling which the constable has reasonable grounds for believing that the person they are seeking is located 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 in uniform in relation to entry and search powers exercised for the purpose of both:	
Purpose 1	Purpose 2
Arrest under section 6 to 8 or 10 of the Criminal Law Act 1977 (Land offences)	Arrest under section 76 of the Criminal Justice and Public Order Act 1994 (Failure to comply with interim possession order)
....and need <u>not</u> be in uniform in relation to entry and search powers exercised for the other purposes .	

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 constable may search a person arrested at a <u>place other than a police station</u> - if they have reasonable grounds for believing that the arrested person either:		
Situation 1	Situation 2	Situation 3
May present a danger to: ☐ Themselves; or ☐ Others.	Has concealed on them anything which they might use to assist them to escape from lawful custody.	Has concealed on them anything which might be evidence relating to <u>an</u> offence.

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

What Can Be Removed Or Searched? - Section 32(3)&(5) PACE 1984

The constable conducting the search may only either:	
Extent 1	Extent 2
Remove the persons: ■ Outer clothing; ■ Jacket; or ■ Gloves.	Search the person's mouth .

Exam Trip Up

- This is **one outer layer** – the provision is worded assuming that most people wear only one layer.
- If someone had **multiple layers of clothes**, the power **does not extend to further items** - although, there is nothing to prevent an officer from asking a person **voluntarily to remove more than an outer coat, jacket or gloves**.

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

A constable may both:		
Power 1	Power 2	
Seize	Retain	
... anything they find – <u>other than</u> items subject to legal privilege – if they have reasonable grounds for <u>believing</u> that either:		
Situation 1	Situation 2	Situation 3
The person searched might use it to cause physical injury to either: ▪ Them; or ▪ Another person.	They might use it to assist them to escape from lawful custody .	That it is either: ▪ Evidence of <u>an</u> offence; or ▪ It has been obtained in consequence of the commission of <u>an</u> offence.

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

A constable shall have the power to both:	
Power 1	Power 2
Enter	Search
... any premises in which the person was in either:	
Juncture 1	Juncture 2
At the time that they were arrested for an indictable offence	Immediately before being arrested for an indictable offence
...if the constable has reasonable grounds for <u>believing</u> that there is evidence at the premises 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 **indictable offences**.
- The search power does **not** apply for **summary offences**.

Focus On The Constables 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.

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** for 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:	
2	More than 2
...separate dwellings - the constable may only search :	
Area 1	Area 2
Any dwelling in which either: ▪ The arrest took place; or ▪ The person arrested was immediately before their arrest.	Any parts of the premises which the occupier of any such dwelling uses in common with occupiers of any other dwellings comprised in the premises .

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

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

A constable who has obtained the authorisation of an Inspector or above - may:	
Power 1	Power 2
Enter	Search
...any premises - that are either:	
Status 1	Status 2
Occupied	Controlled
...by a person who is under arrest for an indictable offence - if they have reasonable grounds for <u>suspecting</u> that there is on the premises evidence , (other than items subject to legal privilege) - that relates to either:	
That indictable offence	Some other indictable offence which is either: ■ Connected with that offence; or ■ Similar to that offence
...and the constable may both:	
Power 3	Power 4
Seize	Retain
...any such evidence found.	

What Category Of Offence Does The Search Power Relate To?

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

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

General Rule – Authorisation Is Required

- The search power cannot be exercised until **written authority** has been provided by an **Inspector or above**.
- **If possible** – the authorizing officer should **record** the **authority** on the **Notice of Powers & Rights** (see later) and **sign**.
- Note that if the general rule applies – the **minimum rank** that can grant authority is 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
Before the arrested person has been either: ▪ Taken to a police station; or ▪ Released on street bail	Without obtaining written authority to proceed with the search from an Inspector or above
... <u>provided</u> that the arrested person's presence at a place (other than a police station) is (in fact) necessary for the effective investigation of the offence.	

Establishing The Necessity Of The Person Searched 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.

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

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

Consequences If The Person Who Has Been Searched Under Section 18 PACE 1984 Is Re-Arrested?

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

General Considerations When Conducting Searches Of Premises

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

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

Communication Prior To Searching – Code B Paragraph 6.4

The officer in charge of the search shall - first try to communicate with either:		
Person 1		Person 2
The occupier		Any other person entitled to grant access to the premises
...to both:		
Requirement 1		Requirement 2
Explain the authority for searching (e.g. warrant, section 32 PACE 1984 etc)		Ask the occupier to allow entry
...unless either:		
Exception 1	Exception 2	Exception 3
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: ▪ Frustrate the object of the search ; or ▪ Endanger officers or other persons .

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

If the premises are occupied – the officer in charge of the search shall:			
Obligation 1	Obligation 2	Obligation 3	Obligation 4
Identify themselves	If not in uniform – show their warrant card	State the grounds for the search	State the purpose of the search
...and shall also:			
Obligation 5		Obligation 6	
Identify and introduce persons accompanying them (who should produce ID upon request)		Describe the role of the accompanying person(s)	
...unless either:			
Exception 1	Exception 2	Exception 3	
Any of the 3 exceptions in Paragraph 6.4 (above) apply	The offence is terrorism related .	The searching officer reasonably believes that recording or disclosing their names would place them in danger .	

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

Reasonable and proportionate force can be used if necessary to enter premises - if the officer in charge of the search is satisfied that both:	
Step 1	Step 2
The premises are those either: ▪ Specified in a warrant; or ▪ Relate to search authority under either sections 17, 18 or 32 PACE 1984.	In relation to the occupier and any other person entitled to grant access either: ▪ The premises is unoccupied; ▪ They are absent; ▪ It is impossible to communicate with them; ▪ They have refused entry; or ▪ There are reasonable grounds for believing that notifying them would either frustrate the object of the search, or endanger officers or other persons.

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

The officer conducting the search shall – unless it is impracticable – provide the occupier with a copy of the notice outlining:				
Fact 1	Fact 2	Fact 3	Fact 4	Fact 5
The grounds for the search – i.e. either: ▪ By consent; ▪ Under warrant; or ▪ Under either sections 17, 18, or 32 PACE 1984.	The extent of the powers of both: ▪ Search; and ▪ Seizure.	The rights of both: ▪ The occupier; and ▪ The owner of property seized.	Both: ▪ The compensation rights for any damage caused; and ▪ The address to send a compensation claim to.	The fact that Code B is available for inspection at a police station.

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

The action to be taken will depend on whether the occupier is either:	
Situation 1 – Occupier Present	Situation 2 – Occupier Absent
General Rule Copies of both: ▪ The notice; and ▪ The warrant – (if applicable) ...shall if practicable, be given to the occupier before the search begins... Exception ...unless the officer in charge of the search reasonably believes that this would either: ▪ Frustrate the object of the search; or ▪ Endanger officers or other persons.	Copies of both: ▪ The notice; and ▪ The warrant – (if applicable) ...shall be left in a prominent place on the premises or appropriate part of the premises – and shall be endorsed with: ▪ The name of the officer in charge of the search - (unless the searching officer reasonably believes that recording or disclosing their name would place them in danger); and ▪ The date and time of the search.

Conducting The Search

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

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

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

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

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 both:	
Duty 1	Duty 2
Due consideration for property	Privacy of the occupier
...with no more disturbance than is necessary .	

What Option Is Available If The Search Is Likely To Be Lengthy? – Code B Paragraph 6.3

Seize and sift powers can be utilised if the search is likely to take a long time due to either its:	
Extent.	Complexity.

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

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

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

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

C – Powers Of Seizure Under PACE 1984

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

A constable who is lawfully on premises may seize anything (except for legally privileged material) - which is on premises - if they have reasonable grounds for believing both:	
Belief 1	Belief 2
That either: ■ It is evidence in relation to either: ■ An offence which they are investigating; or ■ Any other offence; or ■ It has been obtained in consequence of the commission of an offence.	That it is necessary to seize it in order to prevent it being either: ■ Concealed C ■ Lost L ■ Altered A ■ Damaged D ■ Destroyed D

Focus On The Constables 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?

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

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

Can Legally Privileged Material Be Seized? – Code B Paragraph 7.2

- **No** – legally privileged material **cannot** be seized.

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

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

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:		
Element 1		Element 2
Stored in any electronic form...		...and is accessible from the premises
...to be produced in a form in which both:		
Requirement 1		Requirement 2
It can be taken away...		...and is either: ■ Visible and legible; or ■ In a form which it can readily be produced in a visible and legible form
...if they have reasonable grounds for believing either:		
Circumstance 1		Circumstance 2
That it is evidence in relation to: ■ An offence which they are investigating; or ■ Any other offence		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:		
Consequence 1	Consequence 2	Consequence 3
Concealed.	Lost.	Destroyed.

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

Purpose Of The Provision – Code B Paragraph 7.7

- Officers are provided with powers to seize property from either premises or persons so that they can **sift or examine it elsewhere** - because it is **not reasonably practicable to sift through it at the scene**.
- Factors that influence whether it will **not** be **practicable** include:
 - ☐ The length of time and personnel required;
 - ☐ Whether damage would be caused to the premises;
 - ☐ Whether specialist equipment would be required; and
 - ☐ Whether separation at the premises would prejudice the use of sizable material.

Proportionality Is Key To Minimise the Impact – Code B Paragraph 7.7

- Officers should only exercise the power when it is **essential** and in doing so **must not remove any more material than is necessary**.
- Officers should also consider whether removing **copies** or **images** of relevant material would be a satisfactory **alternative to removing originals**.
- When **originals are taken** - officers should be prepared to facilitate the provision of **replacement copies or images** for the owner when it is **reasonably practicable**.

Notice Requirements – Code B Paragraph 7.12

Following seizure - the officer must supply the occupier of the premises or the person from whom property was seized – a written notice specifying:			
Fact 1	Fact 2	Fact 3	Fact 4
What has been seized.	The grounds for seizure.	The grounds to apply for judicial authority for its return and the duty to secure property when an application is made.	The name and address of the person to whom notice of an application to a judicial authority for either return of seized property or permission to attend the initial examination must be given.

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

- If there is **someone in charge of the premises present** – the notice shall be given to them.
- If **no suitable person is available** – the notice should either be **left in a prominent place on the premises** or **attached to the exterior of the premises**.

Dealing With Seized Material – Code B Paragraph 7.8

- Material must be kept **securely and separately** from material seized under separate powers.

When Should The Sift Process Be Conducted? - Code B Paragraph 7.8 & 7.11

- At the **earliest practicable time** – taking into account the desirability of allowing the person from whom the property was seized the **opportunity to be present or represented** when the items are examined.
- The **Officer In Charge Of The Investigation (OIC)** is **responsible for security** of the material – the property shall not be examined, copied etc. except with consent or with direction from the appropriate judicial authority.
- Any person with a relevant interest in seized property will be permitted to **lodge an application to the appropriate judicial authority** for the **return of all or part of the seized property**.
- Following an application the property must be **secured** (not tampered with or examined) **pending the decision of the judge** in relation to the application.
- The judge can make a **variety of orders** in relation to the seized material – **failure to comply** with the terms of an order will be held in **contempt of court**.

Can The Person Whose Property Is Seized Be Present During The Sift Process? - Code B Paragraph 7.8A

- **Yes – reasonable steps** should be taken to **accommodate a request** to be present subject to the need to **prevent harm to, or interference with, or unreasonable delay** to the investigatory process.
- If the process is conducted in their **absence following their request to attend** – they must be given a **written notice** explaining why the process was conducted in their absence.

Retention Of Property Following The Sift Process

Property seized can be retained following the sift process provided:			
Premises Searches		Person Searches	
It was seized on premises by either: ▪ A constable; or ▪ A person authorised by statute who was accompanied by a constable... ...who was lawfully on the premises		It was seized by a constable carrying out a lawful search of any person	
...and there are reasonable grounds for believing that either:			
Belief 1		Belief 2	
It is property obtained in consequence of the commission of an offence		It is evidence in relation to any offence	
...and it is necessary for it to be retained - in order to prevent it being either:			
Risk 1	Risk 2	Risk 3	Risk 4
Concealed.	Lost.	Altered.	Destroyed.

Should Property That There Is No Power To Seize Be Returned? - Code B Paragraph 7.9

- **Yes** – it must be **separated** from the rest of the seized property and **returned ASAP** following examination to the person from who the items were seized or any other person who the investigating officer considers has a better claim to the property.
- **Delay is only permitted if there is a clear and compelling reason** – e.g. unavailability of the person to whom the items must be returned etc.

Power To Retain Seized Property

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

Seized property can be retained for as long as is necessary for the purposes of either:			
Purpose 1	Purpose 2	Purpose 3	Purpose 4
Use as evidence at trial	Use in any investigation or proceedings to which it is linked	Forensic examination or investigation in connection with an offence	To establish lawful ownership - if there are reasonable grounds to believe it has been stolen or obtained via an offence
...unless the purpose can be achieved instead by creating either:			
Alternative 1		Alternative 2	
A copy.		An image.	

When Should Seized Property Be Returned?

Any material seized which is either:			
Category 1	Category 2	Category 3	Category 4
Not necessary to retain	Legal privileged material	Excluded material	Special procedure material
...must be returned to either:			
Person 1		Person 2	
The person from whom it was seized.		Any other person whom the investigating officer considers has a better claim.	

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

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

Post Search Recording Obligations

Who Shall Make A Record Of The Search? – Code B Paragraph 8.1

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

Content 1

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

Content 2

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

Content 3

The authority for the search – including:		
Searches By Consent	Searches By Warrant	Searches By Statutory Powers
Either: • A copy of the written consent shall be appended to the record; or • Record the location of a copy of the written consent.	Either: • A copy of the warrant shall be appended to the record; or • Record the location of a copy of the warrant.	Record which powers was relied upon.

Content 4

The names of:	
The officer(s) in charge of the search	All other officers and authorised persons present
...unless either:	
The offence is terrorism related .	The searching officer reasonably believes that recording or disclosing their names would place them in danger .

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

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

Content 11

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

Content 12

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

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** – the warrant authoring the search on that occasion shall be **endorsed**.

Contents Of The Endorsement On Each Occasion

Content 1

State both:	
If any articles specified in the warrant were found.	The address where they were found.

Content 2

- State if any other articles were seized.

Content 3

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

Content 4

The names of:	
The officer(s) who executed the warrant	Any authorised persons present who accompanied them
...unless either:	
The offence is terrorism related .	The searching officer reasonably believes that recording or disclosing their names would place them in danger .

Content 5

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

Obligation To Return The Warrant – Code B Paragraph 8.3

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