



Home Office

Code of Practice

Powers of Entry

December 2014

Code of Practice

Powers of Entry

Presented to Parliament pursuant to Section 48 (1)(a)
of the Protection of Freedoms Act 2012

December 2014



© Crown copyright 2014

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at:
PofEGateway@homeoffice.gsi.gov.uk

Print ISBN 9781474112710

Web ISBN 9781474112727

ID 25111402 12/14

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the Williams Lea Group on behalf of
the Controller of Her Majesty's Stationery Office

Contents

| | | |
|----|---|----|
| 1 | Purpose and Scope | 3 |
| 2 | Exceptions | 4 |
| 3 | Avoiding Discrimination | 4 |
| 4 | Definitions used in this Code | 5 |
| 5 | Availability/monitoring and changes to the Code | 6 |
| 6 | Authorisation and approval | 7 |
| 7 | Providing notice of rights to occupiers | 7 |
| 8 | Entering premises | 8 |
| 9 | Number of persons present | 9 |
| 10 | Private dwellings | 9 |
| 11 | Entry without consent or a warrant | 9 |
| 12 | Entry under warrant | 9 |
| 13 | Timing of exercise of powers | 10 |
| 14 | Seizure of property | 10 |
| 15 | Retention of property | 10 |
| 16 | Other persons | 11 |
| 17 | Conduct | 11 |
| 18 | Assistance from occupiers | 12 |
| 19 | Leaving premises | 13 |
| 20 | Action after exercise of powers | 13 |
| 21 | Register of exercise of powers | 14 |
| 22 | Conflict of interests | 14 |
| 23 | Complaints | 14 |
| 24 | Staff training | 14 |
| 25 | Further information | 14 |

1 Purpose and Scope

- 1.1 This Code of Practice is issued by the Secretary of State under Section 48 of the Protection of Freedoms Act 2012 (the Act). Under Section 51 of the Act a 'relevant person' must have regard to this Code when exercising any functions to which the Code relates. A failure on the part of any person to act in accordance with any provision of this Code does not of itself make that person liable to criminal or civil proceedings. However, the Code is admissible as evidence in any such proceedings and any failure by a relevant person to have regard to the Code may be taken into account.
- 1.2 Powers of entry and associated powers are important tools that facilitate the protection of the public from harm, enable the effective investigation of offences and allow for the necessary enforcement of regulations. The Code provides guidance and sets out considerations that apply before, during and after powers of entry and associated powers are exercised including those circumstances where entry is exercised with the consent of an occupier. The purpose of the Code is to ensure greater consistency in the exercise of powers of entry and greater clarity for those affected by them while upholding effective enforcement.
- 1.3 Powers of entry and associated powers (such as search and seizure) are intrusive in nature and may engage rights enshrined in the European Convention on Human Rights.
- Article 8 states that any interference by a public authority with the right to respect for private and family life must be in accordance with the law and necessary for one of the stated purposes, e.g. for the prevention of disorder and crime.
 - Article 1 of the First Additional Protocol states that no one shall be deprived of their possessions except in the public interest and subject to the conditions provided by law.
- 1.4 Relevant persons should consider whether the necessary objectives can be met by less intrusive means.
- 1.5 This Code applies to powers of entry and associated powers as specified under any Act or Statutory Instrument other than devolved powers of entry and devolved associated powers. Devolved powers of entry and devolved associated powers are powers:
- (i) in relation to which the Welsh Ministers may issue a code under Schedule 3 of the Act,
 - (ii) which, if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament, or
 - (iii) which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of that Assembly and would deal with a transferred matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998).

2 Exceptions

- 2.1 **The Code does not override specific statutory powers to conduct routine inspections or to enter premises for enforcement purposes nor does it apply where the power of entry is granted through an order of a court where that order is made under court powers defined in legislation. (This is distinct from an existing power of entry being exercised following authorisation by a warrant of a court).**
- 2.2 **This Code does not apply to the entry to premises for purposes and in circumstances which are subject to a separate statutory Code of Practice.**
- 2.3 For example, PACE Code B, issued under section 66 of the Police and Criminal Evidence Act 1984 (PACE) relates to the search of premises and seizure of property by police officers. Section 67(9) of PACE 1984 requires persons other than police officers who are charged with the duty of investigating offences or charging offenders to have regard to that Code. Paragraph 2.5 of that Code states that it does not apply if the exercise of a power is not dependent on the existence of grounds for suspecting that an offence may have been committed and the person exercising the power has no reasonable grounds for such suspicion. Therefore in circumstances where that Code does not apply, and if no other relevant Code does apply, then relevant persons should have regard to this Code.
- 2.4 It may be the case that the circumstances requiring entry to premises change during the course of a visit. For example, a routine inspection carried out under this Code of Practice may reveal suspicion of an offence having been committed. The purpose of the visit may then become a search for evidence of the offence. This may require that this Code ceases to apply and the exercise of powers be continued under PACE Code B.
- 2.5 **The guidance and considerations at sections 6-7, 10-12 and 14-25 of this Code need not apply where a relevant person is acting as a private individual. A private individual should act reasonably and with respect for persons and property when exercising a statutory power of entry.¹**

3 Avoiding Discrimination

- 3.1 The Equality Act 2010 makes it unlawful to discriminate against, harass or victimise any person on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage or civil partnership, pregnancy or maternity in the discharge of an authorised persons powers. This applies to the exercise of powers of entry.

¹ The considerations described in these sections need not apply in these circumstances as they depend on the relevant person being part of a public authority or other organisation.

4 Definitions used in this Code

- 4.1 **‘Relevant person’** means any person exercising a power of entry or associated power, other than a devolved power of entry or devolved associated power, unless such exercise is subject to a separate Code of Practice (however described) issued under any enactment (whenever passed or made.)
- 4.2 **‘Power of entry’** means a power (however expressed) in any enactment to enter land or other premises; and includes any safeguard which forms part of the power.²
- 4.3 **‘Associated powers’** means any power which:
- a) is contained in an enactment
 - b) is connected with a power of entry, and
 - c) is a power:
 - i. to do anything on, or in relation to, the land or other premises entered in pursuance of the power of entry,
 - ii. to do anything in relation to any person, or anything found on the land or other premises entered in pursuance of the power of entry, or
 - iii. otherwise to do anything in connection with the power of entry,
 and includes any safeguard which forms part of the associated power.
- 4.4 **‘Premises’** is defined under section 46 of the Act and includes any place and, in particular, includes:
- a) any vehicle, vessel, aircraft or hovercraft,
 - b) any off-shore installation,
 - c) any renewable energy installation,
 - d) any tent or movable structure
- 4.5 ***The following are definitions for the purpose of this Code:***
- 4.6 **‘Authorised persons’** means a person authorised to exercise statutory non-devolved powers of entry (titles other than ‘authorised persons’ used in legislation where the Code applies are to be treated as meaning the same).
- 4.7 **‘Dwelling’** means any premises ***wholly or mainly*** used as place of residence or abode (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling);³
- 4.8 **‘Occupier’** refers to a person who is or appears to be in charge of the premises;
- 4.9 **‘Owner/landowner’** refers to the person owning the premises;

² This does not include terms in tenancy agreements that are implied by statute, for example, it would not apply to section 11(6) Landlord and Tenant Act 1985.

³ Adapted from s53 of the Health and Safety at Work Act 1974.

- 4.10 **'Authorised person in charge'** means the authorised person assigned to lead the search, inspection, sampling etc. One authorised person must act as the authorised person in charge whenever powers of entry are exercised.

5 Availability/monitoring and changes to the Code

- 5.1 Section 49 of the Act requires the Secretary of State to keep this Code under review and enables the Secretary of State to alter or replace the Code. This Code and any subsequent replacement Code will be published on the GOV.UK website and relevant persons must have regard to it.

The remaining sections of this Code set out the considerations that should apply to the exercise of powers of entry and associated powers (not subject to other codes) before, during and after their use. It applies to entry to premises during routine inspections, in addition to powers of entry exercised for enforcement purposes. Authorised persons should continue to adhere to requirements in relevant statute while having regard to the Code. This Code also applies where legislation is silent on particular matters or where relevant legislation provides fewer safeguards than those provided here.

6 Authorisation and approval

- 6.1 The exercise of powers of entry should be provided for by the relevant legislation.
- 6.2 There should also be a proper process of approval for the exercise of powers of entry, whether for specific visits or for programmes of visits. If an approval process is laid out in legislation, this should be followed, otherwise organisations should ensure that an approval process is in place for the exercise of powers of entry. Where routine inspections or visits for large scale operations are involved, processes should be agreed and approval granted by a senior official or manager (this should be someone sufficiently senior in the chain of command who is authorised to approve the exercise of powers). It is not necessary for every individual visit to be separately approved.
- 6.3 Authorised persons and processes for the approval of the exercise of a power of entry should be periodically reviewed to ensure that persons and management processes are appropriate.

7 Providing notice of rights to occupiers

- 7.1 Where it is judged necessary to exercise a power of entry authorised persons should generally provide a Notice of Powers and Rights in a standard format to the occupier. This should include:
- whether the entry will be conducted with or without a warrant;
 - the powers of entry and associated powers used;
 - the occupier's rights;
 - any compensation or complaints procedures that exist; and
 - where a copy of this Code of Practice may be obtained.
- 7.2 In appropriate cases, compensation may be payable for damage caused by entering and searching premises. In such cases authorised persons should explain any compensation procedures.
- 7.3 Examples of where it may not be necessary to provide a Notice of Powers and Rights to occupants are:
- Routine checks on vehicles at ports where a check or search is brief, the person concerned consents to the search and no issues of concern arise, or routine checks on ships or aircraft where no occupant with responsibility for the ship or aircraft is present.
 - Where powers are exercised routinely with the consent of the occupier or where the premises are readily accessible by the public (e.g. trading estate) or where the entry is solely to gain access to other premises.
- 7.4 Relevant powers should however be explained where this is requested.

8 Entering premises

Advance notice

- 8.1 Where it is appropriate and practicable to do so, reasonable notice (usually not less than 48 hours or as specified in relevant legislation) should be provided to the occupier or landowner of the intention before exercising a power of entry. Where legislation specifically provides that no notice need be given, authorised persons should nevertheless still consider whether notice could be provided, and where appropriate provide this, where it will not frustrate the purposes of exercising the power of entry.
- 8.2 Where notice is provided this should set out the purpose of the proposed entry and date and time when it is proposed that the power should be exercised.
- 8.3 If pre-notification of a visit would defeat the purposes of exercising powers, officers, provided they have the statutory power to do so, can still visit unannounced. There will also be occasions on which notice is clearly not practicable, for example in respect of routine vehicle searches in ports or where routine frequent visits are made to the same premises.
- 8.4 In the context of powers of entry for the purposes of inspecting an institution / service provider, it may be necessary to conduct an unannounced inspection in order to gain a genuine picture of ordinary day to day processes relating to that institution / service provider rather than a manufactured or pre-prepared impression. Unannounced visits may also be necessary for the purpose of safeguarding children and other vulnerable groups.
- 8.5 Reasonable notice need not be given where the purpose of the entry is the initial safety investigation in the aftermath of an accident, incident or other emergency where there is an urgent need to investigate the circumstances/causes of the accident, incident, or other emergency or to maintain public safety.

Consent

- 8.6 Reasonable effort should also be made to obtain the consent of the landowner or occupier,⁴ unless obtaining consent would frustrate the purpose of the exercise, for example by causing undue delay. It is important that consent is informed and that the occupier is notified about the purpose of the visit and, for exercising the powers of entry and associated powers, what these powers are and how they will be used. Where consent is sought but not obtained (the occupier refuses or obstructs entry, contact could not be established with the occupier or the premises were unoccupied at the time) authorised persons should record their attempts to obtain consent as a matter of good practice.
- 8.7 If consent is withdrawn by the occupier at any time, the right to enter the premises should be clearly explained to him or her and also the consequences or penalty for obstructing authorised persons when exercising their legal powers. Where consent

⁴ Whether consent is sought from landowner or occupier will depend on the nature of the power of entry and the nature of the premises in question.

is not given it may still be possible to exercise lawful authority to enter, where this is based either on specific statutory powers or judicial authority such as a warrant.

9 Number of persons present

- 9.1 Relevant persons should consider the number of persons needed for the exercise of powers of entry and associated powers to be carried out effectively. The number of persons present should reflect what is reasonable and proportionate in the circumstances.

10 Private dwellings

- 10.1 Where the relevant legislation requires, an authorised person must obtain the occupier's consent or obtain a warrant, court order or other judicial authorisation in order to enter premises used as a private dwelling.
- 10.2 Where the relevant legislation provides the authorised person with a specific power to enter dwellings with no requirement for a warrant/court order etc, the power should only be used where necessary and proportionate and on the approval of the appropriate person in authority, unless entry is required urgently to protect life or property from harm.

11 Entry without consent or a warrant

- 11.1 Where it is proposed to exercise a power of entry without seeking consent, and without a warrant, authorised persons must follow the conditions set out in statute granting them entry and, before deciding to exercise powers, should consider whether the object of entry might be achieved by less intrusive alternative means.
- 11.2 On arrival at the premises, the authorised person exercising the power of entry should make reasonable attempts to make contact with the occupier of the premises, or the person appearing to be in charge of them, unless doing so would frustrate the purposes of entry. He or she should show them suitable identification and explain in straightforward language the purpose of the visit and their powers.
- 11.3 If that is not possible, for example because the premises are unoccupied or no person is present, wherever possible, written notice setting out the purpose of entry should be left in a prominent place on the premises.

12 Entry under warrant

- 12.1 Where it is proposed to exercise a power of entry under warrant, the procedures set out in the legislation providing the power must be followed. Authorised persons need to consider all available intelligence before applying for a warrant, such as taking reasonable steps (as practicable) to verify that the information is accurate, recent and not provided maliciously. An application to the court for a warrant should

generally be supported by a signed written authority from a senior official or manager (this should be someone sufficiently senior in the chain of command who is authorised to approve the exercise of powers) within the relevant authority.

13 Timing of exercise of powers

13.1 The exercise of powers of entry by a relevant person should only be undertaken at reasonable hours (reasonable hours should be determined by reference to the normal working practices of the particular business concerned e.g. entry at night might be considered reasonable for a business that has overnight deliveries). Where appropriate, for premises used as a dwelling, any entry should be at a time agreed in advance with the occupier. However, this need not apply where the power of entry is being exercised in accordance with a judicial warrant.

14 Seizure of property

14.1 In many cases powers to seize property will be subject to PACE Code B however where powers to seize property are subject to this Code the following considerations should apply. An authorised person may only seize property where such powers granting the right to seize objects or items are clearly set out in relevant legislation. The power of seizure will be determined by the relevant legislation and this should be carried out to create minimal burden and distress to the occupier of the premises subject to the requirements of enforcing the legislation.

14.2 Unless the legislation states otherwise, an authorised person should provide the occupier of the premises with details of the items seized, procedures relating to the retention of property, appeal rights, should disclose how long items may be held before they are returned (although counterfeit, illegal or hazardous items may be destroyed) and should explain any compensation procedures.

15 Retention of property

15.1 Unless the process for retention and/or destruction of seized property is provided for under a relevant statutory provision, anything seized may be retained only for as long as is necessary. Property should not be retained if a copy or image would be sufficient.

15.2 Generally, property may be retained, among other purposes:

- for use as evidence at a trial for an offence;
- to facilitate the use in any investigation or proceedings to which it is linked;
- for forensic examination or other investigation; or
- in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence or its ownership is otherwise in dispute.

- 15.3 The occupier or their representative should be allowed supervised access to the property to examine or photograph it, or should be provided with a photograph or copy, in either case within a reasonable time following any request and at their own expense, unless the authorised person in charge has reasonable grounds for believing this would:
- prejudice the investigation of any offence or criminal proceedings;
 - lead to the commission of an offence by providing access to unlawful material; or
 - compromise the personal safety of security staff and/or the security of storage facilities.
- 15.4 In exceptional circumstances, and in the interest of the personal safety of an individual, access to lawfully held property, for example, medication or personal items left in a seized vehicle should be made available to the individual.
- 15.5 A record should be made of the grounds for denying any such request.

16 Other persons

- 16.1 Anyone accompanying an authorised person under their authority onto premises should be encouraged to abide by this Code as a matter of best practice. The authorised person should ensure that he/she has the right to take that person on to the premises before doing so.

17 Conduct

- 17.1 Where a power of entry is exercised without the consent of an occupier an authorised person should identify themselves clearly to the landowner or occupier (where present) by showing his/her authorisation or other means of formal identification (except in situations where the safety of authorised personnel would be compromised by doing so), disclose their authority to exercise the power of entry and explain clearly the purpose of the visit. When requested to do so, he/she should:
- give his/her name and the name of his/her organisation; and
 - provide an official contact address and telephone number.
- 17.2 Whilst exercising powers an authorised person should:
- not exercise any powers other than those granted under legislation;
 - comply with the requirements under relevant legislation including relevant safeguards;
 - exercise their powers reasonably and courteously and with respect for persons and property;
 - be impartial and fair at all times;
 - comply with any restrictions on seizure e.g. legally privileged material;

Code of Practice– Powers of Entry

- only **use reasonable force** where this is expressly permitted under the legislation that provides the power of entry and before doing so be satisfied that it is both necessary and proportionate in the circumstances and
- be clear about what associated powers may be exercised (such as powers to inspect, search, seize or survey) and exercise those legally and fairly.

17.3 In many cases powers to search for evidence of an offence will be subject to PACE Code B however where powers to search are subject to this Code premises should be searched only to the extent necessary to achieve the purpose of the search. In particular:

- The search should no longer continue once the object of that search has been achieved or it is clear that whatever is sought is not on the premises.
- Searches should be conducted with due consideration for the property and privacy of the occupier with no more disturbance than is necessary.
- When **reasonable force** is lawfully permitted it may be used only when justified and because the co-operation of the occupier cannot be obtained or is insufficient for the purpose. In all cases where a power authorises the use of force, only the **minimum force necessary** to achieve the purposes of the power may be used.
- When only one person is present on the premises at the time when a power is to be exercised, a friend, neighbour or other person should be allowed to witness any search that is undertaken if the occupier wishes and where it is practicable to do so, unless the authorised person in charge of the entry has reasonable grounds to suspect that this would seriously disrupt the purposes of the entry, or would lead to an unreasonable delay in its exercise.

17.4 Unless taking such steps would frustrate the purpose of the visit, when exercising powers to enter business premises authorised persons should:

- seek to minimise the potential for causing reputational damage to businesses, particularly where the high visibility of operations, for example during peak business trading hours, may give rise to customer concerns; and
- have regard to businesses' ability to continue legitimate trading operations and seek to cause as little disruption to the legitimate conduct of business as possible, where that is reasonably practicable.

17.5 The landowner or occupier may accompany authorised persons during the course of a visit if it is not explicitly restricted by the relevant statute or, in the opinion of the authorised person in charge, it would not interfere with the purposes of the visit.

17.6 If an authorised person requests that a landowner / occupier does not accompany him/her during the visit he/she should give that person clear reasons, for example health and safety issues.

18 Assistance from occupiers

18.1 In certain circumstances, an occupier should give an authorised person reasonable assistance if required by the authorised person to do so (for instance opening locked doors or containers). If an authorised person requires such assistance from an occupier, the authorised person should give the person clear instruction as to

what assistance is required and make that person aware of why, in the authorised person's opinion, the person is required to give that assistance and whether non-compliance carries a sanction under the relevant legislation.

19 Leaving premises

- 19.1 If premises have been **entered by force**, before leaving, the authorised person in charge should make sure the property is left as secure as possible and in as close to the original condition before entry as practicable.

20 Action after exercise of powers

- 20.1 The authorised person in charge of the exercise of a power of entry should make or have made a record of any exercise of powers of entry or associated powers. This is particularly important where powers of entry are used for enforcement purposes. Generally, a record should include:

- the statutory provision under which the power was exercised;
- the approval process that allowed for the exercise of the power of entry, and whether it was exercised with or without a warrant;
- the address of the premises entered;
- whether the occupier granted consent and what attempts were made to obtain consent;
- the date, time and duration that powers were exercised;
- the names of those involved in exercising powers and names of any other persons present (if known), unless operational imperatives are sensitive and require that the names of those involved are withheld or not disclosed;
- any grounds for the refusal of any requests made by an occupier;
- a list of any items seized, and if not covered by a warrant, the grounds for their seizure;
- whether **reasonable force** was used; and if so, why;
- details of any damage caused and the reason / circumstances; and
- details, where known, of premises crossed to gain access to other premises.

- 20.2 When powers are exercised under warrant, following its use, the record should show as a minimum:

- the name of Justice of the Peace or judge / judicial authority issuing the warrant;
- the date and time the warrant was executed, and if present name of occupier or person in charge of the premises;
- names of authorised persons executing warrant and anyone accompanying them;
- whether a copy of the warrant (together with Notice of Powers and Rights) was handed to the occupier, or, left on the premises and where;

Code of Practice– Powers of Entry

- whether any articles specified in the warrant were found, and their location,
- whether any other articles were seized;
- advice provided to the occupier about consequences of any obstruction; and
- information about any obstructive conduct by an occupier.

20.3 A briefer record may be appropriate in certain situations such as routine inspections or visits or where the occupier consents to the visit and no issues of concern arise. Such records should nevertheless make clear the statutory power being exercised and details of the purposes and outcomes of the inspection or visit.

20.4 In the case of routine checks on vehicles at ports, where a check or search is brief, the person concerned consents to the search and no issues of concern arise, it may not be necessary to maintain a record of the search. Operational discretion should be exercised, bearing in mind the possibility that a challenge to the legal justification for, or conduct of, the search may be raised at a later date.

21 Register of exercise of powers

21.1 Ideally, a register should be maintained containing the record of exercise of powers of entry or associated powers under paragraph 20 of this Code.

22 Conflict of interests

22.1 An authorised person should notify his / her manager immediately if any situation arises which might reasonably be perceived as a conflict of interests.

23 Complaints

23.1 Any complaints procedures should be explained in straightforward language to the occupier of the premises including explaining where they might obtain further information from or a copy of this Code of Practice.

24 Staff training

24.1 Authorities should ensure that all relevant persons are familiar with this Code of Practice.

25 Further information

25.1 Further copies of this Code are available from the GOV.UK website
<https://www.gov.uk/powers-of-entry>

ISBN 978-1-4741-1271-0



9 781474 112710