

**CODE OF PRACTICE
ON DESIGNATED PROPERTY SEARCHES FOR
CIVIL FORFEITURE**

*Issued under section 58 of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey)
Law, 2023*

March 2024

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Code of Practice on Designated Property Searches for Civil Forfeiture

Issued under section 58 of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023

Officers must be aware of their mandatory obligations under the legislation and act in accordance with those duties. This is an absolute requirement regardless of any interpretation of this Code or any other document or guidance.

INTRODUCTION

1. The purpose of this Code is to guide officers in the exercise of certain powers under Part III of the Law. This Code should not be regarded as a complete or authoritative statement of the law. Only the courts can give an authoritative interpretation of the legislation, and the contents of this Code may be affected by subsequent judicial decisions and changes to the legislative provisions referred to.
2. In this Code, references to sections are to sections of the Law unless otherwise stated.

Definitions and application

3. The following table explains the meaning of abbreviations and terms used in this Code:

Term used in this Code	Meaning
Appropriate judicial authority	See section 35(6) and paragraph 46 of this Code
Child	Person under 18 years of age
Designated property	Cash and specified kinds of assets: see section 34
Designated recoverable property	Designated property which is, or (as the case may be) is suspected to be, recoverable property
Guernsey police officer	A member of the salaried police force or of the special constabulary of the Island of Guernsey

Term used in this Code	Meaning
The Law	The Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey), 2023 ¹
Officer	See paragraph 5 of this Code
Senior officer	" Senior officer " within the meaning of section 139
PPACE	The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003
Recoverable property	See Schedule 1 to the Law

4. Unless the context requires otherwise, other expressions used in this Code have the meanings given to them in the Law.
5. This Code of Practice is issued in connection with the exercise of the search powers conferred on officers by sections 35 to 38. This Code applies to "**police officers**" within the meaning of the Law, namely the following persons² (referred to as "**officers**" throughout this Code) –
- a member of the salaried police force or of the special constabulary of the Island of Guernsey;
 - a member of any police force which may be established by the States of Alderney or a special constable appointed under section 47 of the Government of Alderney Law, 2004;
 - the Constable of Sark, the Vingtenier, an Assistant Constable of Sark or a special constable appointed under section 54 of the Reform (Sark) Law, 2008;
 - a customs officer, where the officer has reasonable grounds for suspecting that the unlawful conduct (to which the property concerned relates) relates to an "**assigned matter**" (see paragraph 28);
 - the Director of the Economic and Financial Crime Bureau;
 - a member of the Financial Intelligence Unit; and
 - a designated person under the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022.
6. This Code is issued by the Committee for Home Affairs under section 58. It applies to all searches made in the Bailiwick under the powers in sections 35 to 38 and to the

¹ Order in Council No. VI of 2023.

² Definition of "police officer" in section 144(1).

application by officers for approval from a senior officer under section 38(2) in order to exercise the search powers. It applies to searches and applications made on or after the commencement of the Law.

7. This Code does not apply to searches carried out under any other provisions. If such searches result in designated property being seized under section 39, the provisions of this Code do not apply to that search retrospectively. However, if an officer is exercising an additional and separate function or power, for example, investigation powers under Part V of the Law, the officer should have regard to any code connected to the exercise of that function or power (in the case of investigation powers under Part V of the Law, the *Code of Practice on Investigatory Powers for Civil Forfeiture (March 2024)* as amended or substituted from time to time).
8. The expectation is that the provisions of this Code will apply to all searches carried out under this Code. However, any decision not to follow this Code should be carefully considered and noted.
9. Where an officer fails to comply with any provision of this Code, they would not, by reason only of that failure, be liable to any criminal or civil proceedings.
10. This Code is admissible as evidence in criminal or civil proceedings and will be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant³.
11. This Code should be made available for reference by officers using the powers and by members of the public. In particular, it should be made available to the public online on a website and at ports where the powers are, or are likely, to be used. Law enforcement agencies staffed by officers who can exercise the relevant search powers should also make arrangements for the code to be available at their public offices (if any).
12. Officers should be aware of the legislation and detail of the particular provisions under which they operate. They should seek legal advice and/or guidance where necessary in advance of using the powers.

Use of powers

13. The rights to respect for private and family life and to the peaceful enjoyment of property under the European Convention of Human Rights ("**ECHR**") are safeguarded by the Human Rights (Bailiwick of Guernsey) Law, 2000⁴. Powers of search may involve significant interference with the privacy and property of those whose persons or premises are searched and therefore need to be fully and clearly justified before they are used.

³ Section 133(2).

⁴ Order in Council No. XIV of 2000; this enactment has been amended.

14. In particular, officers should consider at every stage whether the necessary objectives can be achieved by less intrusive means. In all cases officers should exercise their powers fairly, courteously, responsibly, respectfully, without unlawful discrimination and in accordance with any statutory duties placed on them. For example, a service provider (which would include agencies employing officers) must not discriminate against, victimise or harass another person, under section 28 of the Prevention of Discrimination (Guernsey) Ordinance, 2022⁵ when carrying out searches. The following are "protected grounds"⁶ in relation to which discrimination (or victimisation or harassment) is prohibited: disability, race, carer status, sexual orientation, religion or belief. In addition, the Human Rights (Bailiwick of Guernsey) Law, 2000 prohibits interferences with the enjoyment of rights and freedoms set out in the ECHR on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
15. An officer should take special care and have particular regard to an individual's vulnerabilities and possible difficulties when conducting a search. This is particularly relevant in the case of a search of a person who is a child or person with a mental or physical disability. Officers should have regard to the need to safeguard and promote the welfare of all persons under the age of 18 years in compliance with obligations under Article 3 of the UN Convention on the Rights of the Child.
16. When considering making or authorising a search, an officer should consider whether to carry out a public impact assessment. Any public impact assessment should be included in any application for a warrant, and any operational order attached to a warrant. Where a law enforcement agency other than the Island Police Force carries out a search, the Chief Officer of Police should be notified beforehand if practicable, and where this is not practicable, should be notified as soon as possible thereafter. Similarly, the Constable or the Vingtenier should be notified before any search (by any agency) is carried out in Sark where practicable, and where this is not practicable, should be notified as soon as possible thereafter.
17. The officer should consider whether carrying out a public impact assessment or notifying any person for the purposes of paragraph 16 of this Code could jeopardise an ongoing wider operation or investigation. In such circumstances, it may not be advisable.
18. A refusal by a person to allow a search of their person, premises or vehicle may, in some instances, constitute an offence including but not limited to obstruction of an officer in the exercise of a power conferred by the Law⁷.

⁵ Ordinance No. XVIII of 2022; this enactment has been amended.

⁶ See sections 1 to 5 of the Prevention of Discrimination (Guernsey) Ordinance, 2022.

⁷ E.g. section 114.

This would be a criminal matter and is not an issue for, or subject to, this Code. Officers should be aware of other legislation and codes applicable in these circumstances.

SEARCH POWER

Scope

19. Officers should not exercise the search powers if the designated property that is believed to be recoverable property is known or believed to have a value of less than £1,000.
20. Section 35 provides powers for officers to search for designated property (as defined in section 34) on premises (including vehicles⁸). This power is available where the officer has reasonable grounds for suspecting that there is on the premises any designated recoverable property **AND** the officer is lawfully on the premises, for example under the authority of a warrant under section 35(3) or when an officer is exercising powers of entry under PPACE.
21. In addition, officers are also given powers to search a vehicle subject to the conditions set out in section 36(1), namely –
 - the officer has reasonable grounds for suspecting that there is designated recoverable property in the vehicle;
 - it appears to the officer that the vehicle is under the control of a person who is in, or in the vicinity of, the vehicle;
 - that the vehicle is in a place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or any other place to which at that time people have ready access but which is not a dwelling; and
 - if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise those powers only if the officer has reasonable grounds for believing -
 - (a) that the suspect does not reside in the dwelling, and
 - (b) that the vehicle is not in the place in question with the express permission of the person who resides in the dwelling.
22. Section 36(2) contains the power to require a suspect to permit entry to and search of the vehicle.

⁸ See definition of "**premises**" in section 144(1), and paragraph 95 of this code.

23. Section 37 provides for the power to search a person, and any article the person has with him or her, if the officer has reasonable grounds for suspecting that that person is carrying designated recoverable property.
24. Section 38(1) sets out the power to carry out (or arrange for the carrying out of) tests on anything found during the course of the search for the purpose of establishing whether it is designated property. This is especially useful in any case where there may be doubt whether the property is designated property.

Limitations

25. Where a vehicle is not on private premises on which the officer is lawfully present, the search powers in relation to a vehicle only apply where the vehicle is in a place to which the public has access (such as on the street), or is within the environs of a dwelling, and the officer has reasonable grounds for believing that the person does not reside in that dwelling, and that the vehicle is there without the permission of the person who resides there. Otherwise the vehicle is on private property and the power to search premises is relevant instead.
26. The search and related powers conferred are civil in nature and exercisable only so far as is reasonably required for the purposes of finding designated property.

Limitations for customs officers

27. The power to search for designated recoverable property is exercisable by a customs officer only if the officer has reasonable grounds for suspecting that the unlawful conduct (to which the designated property relates) relates to an "**assigned matter**"⁹.
28. An "**assigned matter**" is any matter in relation to which the Chief Revenue Officer is required to perform any duties under any enactment, and these enactments include-
 - the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972¹⁰;
 - the Import and Export (Control) (Guernsey) Law, 1946¹¹;
 - the Export Control (Bailiwick of Guernsey) Law, 2006¹².

⁹ "**Assigned matter**" is defined in section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

¹⁰ Ordres en Conseil Vol. XXIII, p. 573; this enactment has been amended.

¹¹ Ordres en Conseil Vol. XII, p. 332; this enactment has been amended.

¹² Order in Council No. XIV of 2007; this enactment has been amended.

29. However, this is not an exhaustive list of assigned matters.

Reasonable grounds for suspicion

30. In order to exercise the search powers an officer must have reasonable grounds for suspecting that designated recoverable property is on the premises, in a vehicle or being carried by a person.
31. All officers should recognise that searches are more likely to be effective and legitimate and secure public confidence when their reasonable grounds for suspicion are based on a range of objective factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to officers and they are well informed about local crime patterns. Senior officers have a duty to ensure that those under their command who exercise search powers have access to such information, and the officers exercising the powers have a duty to acquaint themselves with that information.
32. Whether there are reasonable grounds for suspicion will depend on the circumstances in each case. There should be some objective basis for that suspicion based on facts, information and/or intelligence, which are relevant to the likelihood that the designated property (which is recoverable property) in question will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts and information and/or intelligence.
33. An officer should take into account such factors as how the person(s), vehicles(s), or premises were identified, previous intelligence regarding the person(s), vehicles(s), or premises, previous law enforcement involvement with the person(s), vehicles(s), or premises, and suspected links with criminal activities, whether in the Bailiwick or elsewhere. Officers should therefore be able to explain the basis for suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned.
34. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour that provides an objective basis for that suspicion. For example, a person's race or religion could not be used alone or in combination with other personal factors as the reason for establishing suspicion. Reasonable suspicion could not be based on generalisations or stereotypical images of certain groups or categories of people being more likely to be involved in criminal activity.
35. This means that unless an officer has information or intelligence which provides a description of a person suspected of carrying designated recoverable property, the following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for searching any individual, including any vehicle-

- a person's physical appearance with regard, for example, to any of the "protected grounds" set out in the Prevention of Discrimination (Guernsey) Ordinance, 2022: disability, race, carer status, sexual orientation, religion or belief;
 - the fact that the person is known to have a previous conviction; and
 - generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity.
36. Reasonable suspicion should normally be linked to accurate and current intelligence or information. It can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. However, reasonable suspicion could not be founded retrospectively. Officers should be able to explain the basis for their suspicion by reference to intelligence or information about, or specific behaviour by, the person concerned.

Approval to search

37. Section 38(2)(b) requires the officer to obtain prior approval before the exercise of any of the search powers under sections 35 to 37, unless in the circumstances it is not practicable to obtain that approval before exercising the power.
38. Prior approval -
- in the case of a Guernsey police officer, means the approval of a Guernsey police officer of at least the rank of inspector;
 - in the case of an Alderney police officer (if an Alderney police force is established), means the approval of an Alderney police officer of at least the rank of inspector;
 - in the case of the Assistant Constable or special constable of Sark, means the approval of the Constable or the Vingtenier;
 - in the case of a customs officer, means the approval of a customs officer of at least the rank of senior officer or Senior Investigation officer; and
 - in the case of a designated person in the Economic and Financial Crime Bureau, means the approval of a designated person appointed as senior officer by the Director of the Bureau¹³.

¹³ See section 33(1)(f).

39. Senior officers are exempt from the requirement for prior approval for searches.¹⁴ "Senior officer"¹⁵ means any of the persons who are authorised to give 'approvals' as listed in paragraph 38 above.
40. The officer will need to explain that the search is necessary because they have reasonable grounds to suspect that there is designated recoverable property. If, after obtaining prior approval and when it comes to the time to conduct the search, the grounds on which the officer obtained the prior approval no longer apply, the officer may not exercise the powers¹⁶.

Prior approval impracticable

41. The approval of a senior officer is not required where it is not practicable to obtain that approval.
42. Prior approval could be impracticable because of the immediacy of the circumstances of the case. This is more likely to be the case in relation to the search of a person or vehicle than the search of premises, but officers should assess each case on its merits. There should be no assumption that approval is impracticable for all searches. Officers should carefully consider and record the reasons for any decision not to obtain prior approval.
43. It is unlikely that approval by a senior officer will be impracticable unless, for example, there is some problem in making contact with the senior officer. If a search is conducted without any prior approval from a senior officer, the officer should explain to a senior officer the reasons for the search and for not obtaining prior approval as soon as that is reasonably practicable and, in any event, no later than 24 hours following the exercise of the power. The senior officer should also make a written record of those reasons.
44. If prior approval has been obtained for one search power, that approval does not apply to other search powers. For example, if prior approval was obtained for the search of a person and during that search the officer decides to undertake the search of a vehicle that the person is in control of, separate prior approval is required for that power to be exercised.

Seeking senior officer approval

45. The officer should explain to the senior officer the reasonable grounds for suspicion for undertaking the search. The senior officer should only give approval when satisfied that the relevant conditions are met. The senior officer should make a

¹⁴ Section 38(3).

¹⁵ Section 139.

¹⁶ See sections 35(2), 36(1) and 37(1).

written record of the decision and the basis for making it. An oral approval should be supported by written approval as soon as is reasonably practicable. In addition, the written approval should set out why it was necessary to seek and then give oral approval in the first instance.

Applying for a warrant

46. In order to search premises where an officer would (without a warrant) otherwise be present on those premises unlawfully, the officer would need to apply for and obtain a warrant from the appropriate judicial authority¹⁷. "**Appropriate judicial authority**"–
- (a) means a Judge of the Magistrate's Court;
 - (b) in Alderney, includes the Chairman of the Court of Alderney or (if absent or unable to act) a Jurat of that court authorised by the Chairman; or
 - (c) in Sark, includes the Seneschal of Sark.
47. The usual reason to hear an application without notice and in private would be to avoid alerting persons connected to the designated property concerned that such action is being considered. Being so alerted could have the effect of the person(s) seeking to move that property, thereby frustrating the operation of the powers. If there is no concern that the designated property could be moved, then the person(s) connected to the asset should normally be notified of the intention to make an application for prior approval to search.
48. So far as practicable, the officer should apply for the warrant in accordance with the procedure for applying for a search warrant set out in paragraphs 3.1 to 3.8 (excluding paragraph 3.4) of *Code B of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 Codes of Practice - Code of Practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises*. Those paragraphs should be applied with any appropriate modifications suitable for a warrant under section 35. An application for a search warrant must be supported by a signed written approval from a senior officer, subject to paragraphs 37 to 45 of this Code.

Refusal of approval or warrant

49. If an application for prior approval, or for a search warrant, is refused, the officer should not undertake a search or make a fresh application for a search of the same person(s), premises or vehicle(s) unless there are new reasonable grounds for suspicion. The officer, on any new application, should inform the senior officer or

¹⁷ Section 35.

appropriate judicial authority of the prior refusal and the reasons. The officer should also detail any prior approval granted that did not lead to a search.

Reports to the appointed person

50. If a search under section 35, 36 or 37 is conducted without a warrant, irrespective of whether senior officer approval has been obtained, the officer carrying out the search should prepare a report for the appointed person in the following circumstances -
 - if no designated property is seized; or
 - if any designated property is seized and detained for no more than the initial period specified in section 40 (48 hours or a further 48 hours with the approval of a senior officer, calculated in accordance with section 40).
51. However, no report is required where in the course of exercising those search powers, the officer seizes any cash and the cash seized is detained for more than the initial period specified in section 40.
52. The written report must detail the information and circumstances which led the officer to believe that the search powers were exercisable. These factors could include -
 - why the officer was on the premises when the search took place;
 - the reasonable grounds for suspicion; and
 - why the officer considered there was a need for a search.
53. If senior officer approval was obtained, the report should also state which senior officer gave approval together with the senior officer's reasons.
54. If no senior officer approval was obtained, this should be set out in the report together with the reasons for the approval not being obtained as well as which senior officer was subsequently informed and when.
55. A report is required in relation to each exercise of the powers. In some cases, multiple searches from one investigation are carried out simultaneously in different locations, or multiple persons are searched at the same time, or a single search may be carried out by several officers. For the purposes of reporting in such cases, officers should consider whether a single report or multiple reports are the most appropriate way of making the report to the appointed person. The information should be presented in the way which is most helpful to the appointed person, but which is transparent about the facts pertaining to the case, and the decision making process. Where appropriate, cross references to linked reports or relevant information appearing elsewhere in the report should be highlighted to bring it to the attention of the appointed person.

56. For the purposes of this reporting requirement, the "**appointed person**" means any person appointed for this purpose by the Committee for Home Affairs.
57. For simultaneous searches at multiple locations, the justification for searching each location should be considered in relation to each location separately. For simultaneous searches of multiple persons, the justification for searching each person should be considered separately. However, there may be an overarching justification underlying the decision to conduct the searches, for example, to prevent the destruction of evidence at other locations owned by the same person; or in the case of a group of persons suspected of a common enterprise. In such cases, one report might be more appropriate. However, the justification for searching each location or each person should be set out separately. If there is no thread of common justification relating to the searches, separate reports would be more appropriate.
58. Where a single search is carried out by several officers, a single report to the appointed person would be appropriate. Such a situation may arise as the result of a decision by one officer that a search is appropriate, and other officers are asked to assist because of the size of the search. In such cases the officer who took the decision to proceed should make the report. It is less likely that several different officers working on an investigation will have come to separate independent decisions about carrying out a search, but if that were the case, then each officer should make their own report. If there were separate justifications, because of different strands of investigation carried out by different officers, then those justifications should be set out separately in the report or reports.
59. The written report should be submitted to the appointed person at the principal address of that Committee, addressed to -

The Appointed Person
c/o Forfeiture of Assets in Civil Proceedings
[insert principal address of the Committee].
60. The written report should be submitted as soon as is reasonably practicable and, in any event, no later than 21 days following the exercise of the power.
61. Following submission of the written report, the officer should cooperate, facilitate and assist the appointed person in relation to any inquiries made by the appointed person into the exercise of the search powers.
62. Any request by the appointed person for supplementary information should be submitted by the officer within 14 days of submission of the written report. Any supplementary information which the appointed person reasonably requires should be submitted by the officer within 14 days.
63. The officer and the appointed person should each keep a copy of the report and any supplementary information in a safe and secure place in accordance with the Data

Protection (Bailiwick of Guernsey) Law, 2017¹⁸ and the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018¹⁹.

SEARCH OF A PERSON

64. Where the power to search a person is exercised under section 37, the officer may, so far as the officer thinks it necessary or expedient for the purposes of searching for designated recoverable property, require the person -
- to permit a search of any article the person has with them; or
 - to permit a search of the person.
65. A refusal to permit a search may in some instances constitute an offence including but not limited to obstruction of an officer in the exercise of a power conferred by the Law²⁰. This would be a criminal matter and is not an issue for, or subject to, this Code. Officers should be aware of other legislation and codes applicable in these circumstances.
66. The officer may detain the person to carry out the search but the intrusion on the person's liberty should be for no longer than is necessary, unless the person is arrested or detained under another power.

Steps prior to search of a person

67. If the officer has reasonable grounds for suspecting that the person has designated recoverable property concealed on their person, the officer should -
- give the person their name or other identifier, such as a warrant card;
 - give the name and location of the office or station to which the officer is attached;
 - inform the person that there are reasonable grounds for suspecting that the person is carrying designated property on their person that is recoverable property;
 - give the person a clear explanation of the reasonable grounds for this suspicion;
 - inform the person that they can be required to permit a search under section 35 for the purposes of finding such the designated property; and

¹⁸ Order in Council No. VI of 2018; this enactment has been amended.

¹⁹ Ordinance No. XI of 2018; this enactment has been amended.

²⁰ E.g. see section 114.

- (where applicable) warn that failure to comply could amount to a criminal offence.
68. The officer should also -
- give or show the person any document authorising the search (if applicable);
 - ask the person to confirm or deny whether the person has designated recoverable property on their person;
 - allow the person the opportunity to produce and hand over the relevant designated property; and
 - inform the person of the person's entitlement to a copy of the record of the search.
69. These steps need not be followed in the above order. The officer will have flexibility depending on the circumstances of an individual case, but all of the steps should be undertaken prior to the search.
70. Officers not in uniform should show their warrant cards or other suitable form of identification.
71. If the person to be searched does not appear to understand what is being said or the officer has doubts as to the person's ability to speak and/or understand English, or that the person is deaf or has difficulty with hearing or speaking, the officer should take reasonable steps to ensure that the person understands. Where desirable and practicable someone who can act as an interpreter should be identified, but if no such person can be identified, the search must not proceed if the officer cannot determine whether the person understands. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search or for abandoning one.

Conduct of searches – persons

72. The power to search a person should be used fairly, courteously, responsibly, respectfully and without unlawful discrimination against the person concerned. Every reasonable effort should be made to minimise the embarrassment that a person being searched may experience. The person should be searched by a person of the same sex unless the contrary has been specifically agreed by the person to be searched. This agreement should be obtained in writing. The co-operation of the person to be searched should be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate. If the officer believes the officer will be in danger undertaking the search, the officer should take appropriate precautions.

73. An officer who has reasonable grounds for suspicion may detain the person only for so long as is necessary to carry out the search²¹. Before carrying out the search the officer may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion.
74. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be eliminated. However, reasonable grounds for suspicion cannot be founded retrospectively, the suspicion should exist prior to the questioning.
75. If, as a result of questioning before a search, or other circumstances come to the attention of the officer, there cease to be reasonable grounds for suspecting that the person is carrying designated recoverable property, no search of the person may take place.
76. In the absence of any other lawful power to detain, the person in such circumstances is free to leave and should be so informed. There is no power to detain a person under the Law so that grounds can be identified for a search. If reasonable grounds for suspicion emerge during an encounter with a person, an officer may search the person, even though no grounds existed when the encounter began. If an officer detains someone for the purpose of a search, the officer should inform the person as soon as the detention begins.
77. The length of time for which a person may be detained should be only for so long as is necessary for the exercise of the search. The thoroughness and extent of a search will depend on the type and suspected value of the designated recoverable property that is suspected of being carried. If the person is being detained under some other power, this aspect of the code will not apply to that.
78. A person may be searched only to the extent necessary to achieve the object of the search²². A search may not continue once the designated recoverable property has been found and no search may continue once the officer is satisfied that the relevant designated property is not on the person. This does not prevent a further search with prior approval (if practicable) if new information comes to light justifying such a search.
79. The search power under section 37 does not extend to requiring a person to undergo an intimate search or strip search. An intimate search is one involving a physical (and not just a visual) examination of a person's body orifices. A strip search is any search that is not an intimate search but involves the removal of an article of clothing that is being worn (wholly or partly) on the trunk; and is being so worn either next to the skin or next to an article of underwear²³.

²¹ Section 37(3).

²² Section 38(2)(a).

²³ Section 72(6) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

80. If a search reveals an item reasonably suspected of being or containing designated recoverable property but this is in an article of clothing being worn on the trunk and next to the skin or next to an article of underwear which is next to the skin (for example precious stones) the officer can only invite the person to remove it. If the person refuses there is no power to force the person to remove it.
81. A person should not be asked to remove any article of clothing in public other than an outer coat, jacket or gloves. A search in public of a person's clothing that has not been removed should be restricted to a superficial examination of outer garments. This does not, however, prevent an officer from placing their hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonable in the circumstances. Subject to the restrictions on the removal of headgear, a person's hair may also be searched in public. Particular sensitivity should be exercised where the person being searched is wearing items of clothing which the person says, or the officer believes, are of religious significance.
82. If, on reasonable grounds it is considered necessary to conduct a more thorough search this should be undertaken out of the view of the public.
83. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear may only be conducted by an officer of the same sex as the person searched. The search may not be made in the presence of anyone of the opposite sex unless the person being searched specifically agrees. Any agreement should be obtained in writing.
84. If the officer discovers designated recoverable property during a search the officer should give the person who has possession of it an opportunity to provide an explanation of its ownership, origins, purpose and destination. If, in a particular case, the questioning covers whether the person has committed an offence, it is likely to constitute questioning outside the scope of this Code that requires a caution.

Recording requirements – searches of a person

85. An officer who has carried out a search under section 37 should make a written record of the search at the time, unless there are exceptional circumstances that could make this impractical. If such a written record is not made at the time then the officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the written record. There may be situations in which it is not practical to obtain all the information necessary to complete a written record, but the officer should make every reasonable effort to do so and, if necessary complete a partial record.
86. The following information should always be included in the search record even if the person searched does not wish to provide any personal details -

- the name, address and date of birth of the person searched, (if provided) and, in appropriate cases, their estimated height, weight, build, clothing and distinguishing features.
 - ethnic background (if provided);
 - the date, time, duration and place that the person was first detained;
 - the date, time and place the person was searched (if different);
 - the names and details of any witnesses;
 - the grounds for conducting the search;
 - whether the prior approval of a senior officer was obtained. If a search was conducted without prior senior officer approval, the reason for not obtaining such approval;
 - the outcome of the search (for example seizure of designated property or no further action);
 - a list/description of the seized designated property (if any), preferably signed by the person;
 - any explanation given by the person as to the ownership, origins, purpose and destination of the designated recoverable property found;
 - details of any damage to property or injury to person caused;
 - the name of the officer who carried out the search and other persons present; but in the case of enquiries linked to the investigation of terrorism, or otherwise where the officer reasonably believes that giving any of those names might put the officer or person concerned in danger, a warrant or other identification number should be given in the case of an officer, and a pseudonym given in the case of any other person; and the name of the law enforcement agency to which the officer is attached; and
 - any other relevant information.
87. For the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched. The person is under no obligation to provide this information and they should not be asked to provide it for the purpose of completing this record.
88. A record is required for each person searched. The record of the grounds for making a search should explain, with sufficient detail, the reasonable grounds for suspecting

the person concerned was carrying designated recoverable property by reference to the person's behaviour and/or other circumstances. If a person is detained with a view to performing a search, but the search is not carried out due to the reasonable grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

89. A copy of any written record made at the time should be given immediately to the person who has been searched unless it is impractical to do so or would jeopardise a wider ongoing operation or investigation. If a record is not made at the time, the person should be told of the reasons and also how they can apply for a copy of the record once it is made. The searching officer should ask for the name, address and date of birth of the person searched, but there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.
90. When an officer makes a record of the search electronically and is unable to produce a copy of the form at the time of the search, the officer should explain how the person can obtain a full copy of the record of the search and give the person a receipt which contains -
 - a unique reference number and guidance on how to obtain a full copy of the report;
 - the name of the officer who carried out the search; but in the case of enquiries linked to the investigation of terrorism, or otherwise where the officer reasonably believes that giving that name might put that officer in danger, a warrant or other identification number should be given; and the name of the law enforcement agency to which the officer is attached;
 - the power used to search them.
91. In the case of searches undertaken by Guernsey police officers the record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search should be maintained in a suitable form, i.e. the record should be easily accessible, retrievable and subject to reasonable rules for storage, in particular in relation to the length of time before the record is destroyed.
92. In order to promote public confidence in the use of the powers, law enforcement agencies using these powers should be prepared to explain the use of the powers in response to a reasonable request.

SEARCH OF PRIVATE PREMISES (INCLUDING VEHICLES ON THOSE PREMISES)

93. No right of entry is conferred by section 35 in order to search private premises for designated recoverable property (unless a search warrant is obtained). An officer should already be lawfully on the premises and, unless it was not practicable to obtain

it, should have prior approval to conduct the search under section 38(2)(b). This could include a search of premises undertaken with the consent of a person entitled to grant entry to the premises. It could also include a search carried out where the officer has exercised a power of entry conferred by a search warrant or power of entry conferred under some other legislation.

94. A refusal to allow a search of premises may in some instances constitute an offence including but not limited to obstruction of an officer in the exercise of power conferred by the Law or acting under a search warrant²⁴. This would be a criminal offence and is not an issue for, or subject to, this Code. Officers should be aware of other legislation and codes applicable in these circumstances.
95. The term "premises" is defined in section 144(1) and has the same meaning as in section 91(3) of PPACE. This includes any place and, in particular, would include any vehicle, vessel, aircraft, offshore installation, tent or moveable structure located on the premises, but note that there is a separate power under section 36 to search vehicles where the vehicle is not situated on private premises.
96. If the officer proposes to search premises with the consent of a person who is entitled to grant entry to the premises, the consent should be secured in writing before the search takes place. It is for the officer to make any necessary enquiries in order to be satisfied that the person is in a position to give consent. The officer should record enquiries made, together with any responses, in writing.
97. Before seeking consent the officer in charge of the search should explain to the person the purpose of the proposed search and its extent. This information should be as specific as possible. The person concerned should be clearly informed and should clearly understand that they are not obliged to give consent and that any consent given can be withdrawn at any time, including before the search starts or while it is underway. The officer should record what information the officer provided to the person, together with any responses, in writing.
98. Before undertaking a search the officer should make reasonable enquiries to –
 - establish if anything is known about the likely owner(s) or occupier(s) of the premises or someone else entitled to grant entry and the nature of the premises themselves;
 - establish if the premises have been searched previously and when this occurred; and
 - obtain any other relevant information.
99. An officer cannot enter and search premises or continue to search premises if the officer entered with consent (and not under any other power) and that consent was

²⁴ Section 114.

given under duress or misrepresentation, is withdrawn, or it becomes known that the person who gave consent was not actually in a position to do so. If the search ends because of those reasons, the officer should record this in writing.

Steps prior to search of premises

100. If an officer has reasonable grounds for suspecting that designated recoverable property is on the premises, the officer should take the following steps –
- Give the person who is entitled to grant entry to the premises their name or other identifier, such as a warrant card;
 - the person should be given the name and location of the office or station to which the officer is attached;
 - inform the person that there are reasonable grounds for suspecting that the premises contains designated recoverable property;
 - give a clear explanation of the reasonable grounds for suspicion; and
 - inform the person of the power to search the premises under section 35 for the purposes of finding the designated recoverable property and (if applicable) warn the person that failure to comply could amount to a criminal offence.
101. The officer should –
- give or show the person any document authorising the search (e.g. a search warrant);
 - ask the person to confirm or deny whether there is designated recoverable property on the premises;
 - allow the person the opportunity to produce and hand over the relevant designated recoverable property; and
 - inform the person of their entitlement to a copy of the record of the search.
102. The officer should ideally provide this information to the person who gave consent for entry to the premises searched, or if consent was not required, to the person in charge of the premises searched, being the owner or occupier as appropriate.
103. These steps do not necessarily have to be followed in the order presented. The officer will have flexibility depending on the circumstances of an individual case, but all of the steps should be undertaken prior to the search of the premises.

104. If the person to be searched does not appear to understand what is being said or the officer has doubts as to their ability to speak and/or understand English, or to hear and/or speak, then the officer should take reasonable steps to ensure that the person understands. If these reasonable steps cannot be fulfilled, for example a suitable interpreter cannot be found, then the search must not proceed. In all cases, the officer should record any difficulties encountered and the reasons for proceeding with any search or for abandoning one.

Conduct of searches – premises

105. A search should be made at a reasonable hour, for example, in the case of domestic premises, outside of normal sleeping hours and in the case of business premises during normal business hours, unless this might frustrate the purpose of the search. If a search takes place at an unreasonable hour, the officer should record their reasons for doing so in writing.
106. A person is not required to be cautioned prior to being asked questions that are necessary solely for the purpose of furthering the proper and effective conduct of a search. Examples would include questions to discover who the owner or occupier is, or the person entitled to grant access to specified premises, to find a key to open a locked drawer or cupboard, or to otherwise seek co-operation during a search or to determine whether an item of designated property is liable to be seized.
107. Premises may be searched only to the extent necessary to achieve the object of the search. A search may not continue once the designated recoverable property has been found and no search may continue once the officer in charge of the search is satisfied that the designated recoverable property is not on the premises. This does not prevent a further search (with prior approval if practicable) if new information comes to light justifying such a search.
108. Searches should be conducted with due consideration for the premises and privacy of the owner or occupier and with no more disturbance than is necessary.
109. The person should be asked whether they would like a friend, neighbour or other person to witness the search. However, a search need not be unreasonably delayed for this purpose (unless the officer is relying on the person's consent to conduct the search, in which case the person is entitled to refuse consent until a friend, neighbour or other person arrives to witness the search). The person nominated should be allowed to witness the search unless the officer has reasonable grounds for believing that the presence of the person asked for would significantly hinder the search or any connected investigation or endanger other officers or people.
110. A record of the action taken, including the grounds for refusing a request, should be made on the premises search record. This requirement also relates to business and commercial premises if practical, as well as private addresses.

Leaving the premises

111. The officer should, before leaving the premises, be satisfied that they are secure either by arranging for the owner or occupier or person entitled to grant access or their agent to be present or by any other appropriate means.

Recording requirements – search of premises

112. An officer who has carried out a search under section 35 should make a written record of the search at the time, unless there are exceptional circumstances that could make this impractical. If such a written record is not made at the time then the officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the written record. There may be situations in which it is not practical to obtain all the information necessary to complete a written record, but the officer should make every reasonable effort to do so and, if necessary complete a partial record.
113. For the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the owner, occupier or person in charge of the premises. The person is under no obligation to provide this information and they should not be asked to provide it for the purpose of completing this record.
114. The following information should always be included in the search record:
- the address of the premises searched, and if relevant and possible the part of those premises searched (where a vehicle is searched because it is on the premises, the location of the vehicle);
 - the date, time and duration of the search;
 - the name of the officer and of any other persons involved in the search; but in the case of enquiries linked to the investigation of terrorism, or otherwise where the officer reasonably believes that giving any of those names might put the officer or person concerned in danger, a warrant or other identification number should be given in the case of an officer, and a pseudonym given in the case of any other person; and the name of the law enforcement agency to which the officer is attached;
 - the grounds for conducting the search;
 - any search warrant granted authorising the search;
 - the prior approval of a senior officer. If a search is conducted without prior senior officer approval, the reason for not obtaining such approval;
 - the names and dates of birth of any people on the premises if they are known;

- if appropriate, the written consent to undertake the search together with what information was given to the person about the search and their responses;
 - the name and details of any witness;
 - any grounds for refusing the person's request to have someone present during the search (if the consent of the person is not the basis for conducting the search);
 - any explanation given by the person as to the ownership, origins, purpose and destination of any designated recoverable property found;
 - confirmation that the premises were left secure and by what means;
 - details of any damage to property or injury to persons caused during the search and the circumstances in which it was caused;
 - the outcome of the search (for example, seizure of designated recoverable property or no further action);
 - a list/description of the seized designated recoverable property (if any) preferably signed by the person; and
 - any other relevant information.
115. When an officer makes a record of the search electronically and is unable to produce a copy of the form at the time of the search, the officer should explain how the person can obtain a full copy of the record of the search and give the person a receipt which contains –
- a unique reference number and guidance on how to obtain a full copy of the report;
 - the name of the officer who carried out the search; but in the case of enquiries linked to the investigation of terrorism, or otherwise where the officer reasonably believes that giving that name might put that officer in danger, a warrant or other identification number should be given; and the name of the law enforcement agency to which the officer is attached;
 - the power used to search the premises.
116. Unless it is impractical to do so or it would jeopardise a wider ongoing operation or investigation, a copy of a record of the grounds for making the search should be given immediately to the person who gave consent to entry to the premises searched, or, if consent was not required, to the person in charge of the premises searched, being the owner or occupier as appropriate. If a record is not made at the time the person

should be informed how they can apply for a copy of the record once it is made. If the search is not carried out due to the reasonable grounds for suspicion being eliminated as a result of speaking to any person, a record should still be made.

117. In the case of searches undertaken by Guernsey police officers, the record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search should be maintained in a suitable form, i.e. the record should be easily accessible, retrievable and subject to reasonable rules for storage, in particular in relation to the length of time before the record is destroyed.
118. In order to promote public confidence in the use of the powers, law enforcement agencies using these powers should be prepared to explain the use of the powers in response to a reasonable request.

SEARCH OF VEHICLES – SECTION 35 OR 36

General

119. An officer has no power to forcibly enter a vehicle. Where the officer has lawful authority to be present on private premises on which a vehicle is located and has reasonable grounds for suspecting that a vehicle contains designated recoverable property that may be seized under section 39 and it appears to the officer that the vehicle is under the control of a person who is in or in the vicinity of the vehicle, the officer may require that person to permit entry to, and a search of, the vehicle under section 36.
120. In these circumstances, the search power applies only where the vehicle is in a place to which the public has access, or is within the environs of a dwelling, and the officer has reasonable grounds for believing that the person does not reside in that dwelling, and that the vehicle is there without the permission of the person who does reside there. Otherwise, the vehicle is considered to be on private property and the power to search premises is relevant instead²⁵.
121. A refusal to permit entry to the vehicle may in some instances constitute an offence including but not limited to obstruction of an officer exercising a power conferred by the Law or acting under a search warrant²⁶. This would be a criminal offence and is not an issue for, or subject to, this Code. Officers should be aware of other legislation and codes applicable in these circumstances.

Steps prior to search of a vehicle

²⁵ See section 35

²⁶ Section 114.

122. If an officer has reasonable grounds for suspecting that a vehicle contains an item of designated recoverable property, the officer should take the following steps –
- the officer should give the person in control of the vehicle the officer's name or other identifier, such as a warrant card;
 - the person should be given the name and location of the office or station to which the officer is attached;
 - the person should be informed that there are reasonable grounds for suspecting that the vehicle contains designated recoverable property (the value of which is believed to be not less than £1,000);
 - the person should be given a clear explanation of the grounds for suspecting that the vehicle contains designated property;
 - the person should be given a clear explanation of the grounds for reasonable suspicion that the designated property is recoverable property;
 - the person should be informed that the vehicle can be searched under section 36 for the purposes of finding the designated recoverable property and (where applicable) warned that failure to comply could amount to a criminal offence;
 - the officer should give or show the person any document authorising the search (if applicable); and
 - the officer should ask the person to confirm or deny whether there is designated recoverable property in the vehicle.
123. The officer should allow the person the opportunity to produce and hand over any designated recoverable property; and the officer should inform the person in control of the vehicle of their entitlement to a copy of the record of the search.
124. These steps do not necessarily have to be followed in the order presented. The officer will have flexibility depending on the circumstances of an individual case, but all the steps should be undertaken prior to the search of the vehicle.
125. Officers not in uniform should show their warrant cards or other suitable form of identification.
126. If the person to be searched does not appear to understand what is being said or the officer has doubts as to their ability to speak and/or understand English, or to hear and/or speak, then the officer should take reasonable steps to ensure that the person understands. If these reasonable steps cannot be fulfilled, for example a suitable interpreter cannot be found, then the search must not proceed. In all cases, the

officer should record any difficulties encountered and the reasons for proceeding with any search or for abandoning one.

Conduct of searches – vehicles

127. Vehicles may be searched only to the extent necessary to achieve the object of the search²⁷. A search may not continue once the object of the search has been found and no search may continue once the officer is satisfied that the designated recoverable property is not in the vehicle. This does not prevent a further search (with prior approval if practicable), if new information come to light justifying such a search.
128. Searches should be conducted with due consideration for the vehicle and the person in control of it. Searches should be conducted with no more disturbance than is necessary. The officer should, before leaving the vehicle, be satisfied that it is secure by arranging for the person in control of the vehicle to be present or by any other appropriate means.

Recording requirements – search of vehicles

129. An officer who has carried out a search of a vehicle under section 35 or 36 should make a written record of the search at the time of the search, unless there are exceptional circumstances that could make this impractical. If such a written record is not made at that time then the officer should do so as soon as is reasonably practicable thereafter and also set out the reasons for the delay in making the written record. There may be situations in which it is not practical to obtain all the information necessary to complete a written record, but the officer should make every reasonable effort to do so and, if necessary, complete a partial record.
130. The following information should always be included in the search record even if the person does not wish to provide any personal details (for the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched). The person is under no obligation to provide this information and they should not be asked to provide it for the purpose of completing this record) -
- the location of the vehicle searched;
 - the vehicle registration number;
 - the date, time and duration of the search;
 - the name of the officer and of any other persons involved in the search; but in the case of enquiries linked to the investigation of terrorism, or otherwise where the officer reasonably believes that giving any of those names might

²⁷ Section 38(2).

put the officer or person concerned in danger, a warrant or other identification number should be given in the case of an officer, and a pseudonym given in the case of any other person; and the name of the law enforcement agency to which the officer is attached;

- the grounds for conducting the search;
- any search warrant granted authorising the search;
- the prior approval of a senior officer; if a search was conducted without prior senior officer approval, the reason for not obtaining such approval;
- the names and dates of birth of any person(s) in control of the vehicle if they are known;
- the names and details of any witnesses;
- if appropriate, the written consent to undertake the search together with what information was given to the person(s) in control of the vehicle and their responses;
- details of any damage to property or injury to person(s) caused during the search and the circumstances in which it was caused;
- the outcome of the search (for example, seizure of a designated recoverable property or no further action);
- a list/description of the seized designated property (if any) preferably signed by the person(s) in control of the vehicle;
- any explanation given by the person(s) in control of the vehicle as to the ownership, origins, purpose and destination of any designated recoverable property found;
- confirmation that the vehicle was left secured and by what means; and
- any other relevant information.

131. When an officer makes a record of the search electronically and is unable to produce a copy of the form at the time of the search, the officer should explain how the person can obtain a full copy of the record of the search and give the person a receipt which contains –

- a unique reference number and guidance on how to obtain a full copy of the report;

- the name of the officer who carried out the search; but in the case of enquiries linked to the investigation of terrorism, or otherwise where the officer reasonably believes that giving that name might put that officer in danger, a warrant or other identification number should be given; and the name of the law enforcement agency to which the officer is attached;
 - the power used to search the vehicle.
132. Unless it is impractical to do so or it would jeopardise a wider ongoing operation or investigation, the person(s) in control of the vehicle should be provided with a copy of the record. If a record is not made at the time the person should be told how they can apply for a copy of the record once it is made. If the search is not carried out due to the reasonable grounds for suspicion being eliminated as a result of speaking to any person, a written record should still be made.
133. In the case of searches undertaken by Guernsey police officers, a record of the search should be made, copied or referred to in the search register. In the case of searches undertaken by other officers the record of the search should be maintained in a suitable form, i.e. the record should be easily accessible, retrievable and subject to reasonable rules for storage, in particular in relation to the length of time before the record is destroyed.
134. In order to promote public confidence in the use of the powers, law enforcement agencies using these powers should be prepared to explain the use of the powers in response to a reasonable request.