



BRITISH INDIAN OCEAN TERRITORY

**REVISED REGULATIONS OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE POLICE AND CRIMINAL
EVIDENCE ORDINANCE 2019 (CODES
OF PRACTICE) (CODE B) ORDER 2019**

CHAPTER C.7

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains:

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) Order 2019 – SI No.3 of 2019

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**THE POLICE AND CRIMINAL EVIDENCE ORDINANCE
2019 (CODES OF PRACTICE) (CODE B) ORDER 2019**

CHAPTER C.7

RRBIOT c.C.7.

In exercise of the powers conferred on the Commissioner by section 66 of the Police and Criminal Evidence Ordinance 2019, the Commissioner hereby issues Code B: Code of Practice for searches of premises by Police Officers and the seizure of property found by Police Officers on persons or premises, as set out in the Schedule.

SCHEDULE

POLICE AND CRIMINAL EVIDENCE ORDINANCE 2019 (PACE)

CODE B

CODE OF PRACTICE FOR SEARCHES OF PREMISES BY POLICE
OFFICERS

AND

THE SEIZURE OF PROPERTY FOUND BY POLICE OFFICERS
ON PERSONS OR PREMISES

This Code applies to applications for warrants made after 00.00 on 3 February
2020 and to searches and seizures taking place after 00.00 on 3 February
2020.

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1 Introduction

1.1 This Code of Practice deals with police powers to:

- search premises
- seize and retain property found on premises and persons

1.1A These powers may be used to find:

- property and material relating to a crime
- wanted persons

1.2 The Magistrate may issue a search warrant granting powers of entry, search and seizure, e.g. warrants to search for stolen property, drugs, firearms and evidence of serious offences. Police also have powers without a search warrant. The main ones provided by the Police and Criminal Evidence Ordinance 2019 (PACE) include powers to search premises:

- to make an arrest
- after an arrest

1.3 Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

1.3A Powers to search and seize must be used fairly, responsibly, with respect for people who occupy premises being searched or are in charge of property being seized and without discrimination.

1.4 In all cases, police should therefore:

- exercise their powers courteously and with respect for persons and property
- only use reasonable force when this is considered necessary and proportionate to the circumstances

1.5 If the provisions of PACE and this Code are not observed, evidence obtained from a search may be open to question.

2 General

2.1 This Code must be readily available at the police station for consultation by:

- Police Officers
- police staff
- detained persons

- other persons present in the Territory

2.2 The Notes for Guidance included are not provisions of this Code.

2.3 This Code applies to searches of premises:

- (a) by police for the purposes of an investigation into an alleged offence, with the occupier's consent, other than:
 - routine scene of crime searches;
 - calls to a fire or burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms or discovery of insecure premises;
 - searches when paragraph 5.4 applies;
 - bomb threat calls.
- (b) under powers conferred on Police Officers by PACE, sections 17, 18 and 32;
- (c) undertaken in pursuance of search warrants issued to and executed by constables in accordance with PACE, sections 15 and 16 (see Note 2A);
- (d) subject to paragraph 2.6, under any other power given to police to enter premises with or without a search warrant for any purpose connected with the investigation into an alleged or suspected offence. (See Note 2B.)

For the purposes of this Code, 'premises' as defined in PACE, section 23, includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft, and any tent or moveable structure.

2.4 A person who has not been arrested but is searched during a search of premises should be searched in accordance with Code A. (See Note 2C.)

2.5 This Code does not apply to the exercise of a statutory power to enter premises or to inspect goods, equipment or procedures if the exercise of that 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.

2.6 This Code does not affect any directions or requirements of a search warrant, order or other power to search and seize lawfully exercised in the Territory that any item or evidence seized under that warrant, order or power be handed over to the police force, the court, or other authority outside the Territory.

2.7 *Not used.*

2.8 Written records required under this Code not made in the search record shall, unless otherwise specified, be made:

- in the recording officer's pocket book ('pocket book' includes any official report book issued to Police Officers) or
- on forms provided for the purpose

2.9 *Not used.*

2.10 The 'officer in charge of the search' means the officer assigned specific duties and responsibilities under this Code. Whenever there is a search of premises to which this Code applies one officer must act as the officer in charge of the search. (See Note 2F.)

2.11 In this Code a person authorised to accompany Police Officers in the execution of a warrant has the same powers as a constable in the execution of the warrant and the search and seizure of anything related to the warrant. These powers must be exercised in the company and under the supervision of a Police Officer. (See Note 3C.)

2.12 *Not used.*

2.13 *Not used.*

Notes for guidance

2A PACE sections 15 and 16 apply to all search warrants issued to and executed by Police Officers under any enactment, including those which are issued pursuant to a law that is listed in Schedule 2 of PACE.

2B An example of the other powers in paragraph 2.3(d) include the Road Traffic Ordinance 1998, section 31(11) giving police power to enter premises to arrest a person following:

- a positive breath test;
- failure to provide a specimen of breath;
- a reasonable suspicion that a person has alcohol or a drug in his body.

2C Persons may be searched under a warrant issued under the Misuse of Drugs Ordinance 1992, section 17(2) to search premises for drugs or documents only if the warrant specifically authorises the search of persons on the premises.

2D *Not used.*

2E *Not used.*

2F For the purposes of paragraph 2.10, the officer in charge of the search should normally be the most senior officer present.

2G *Not used.*

3 Search warrants and production orders

(a) Before making an application

- 3.1 When information appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought. (See Note 3A.)
- 3.2 The officer shall ascertain as specifically as possible the nature of the articles concerned and their location.
- 3.3 The officer shall make reasonable enquiries to:
- (i) establish if:
 - anything is known about the likely occupier of the premises and the nature of the premises themselves;
 - the premises have been searched previously and how recently;
 - (ii) obtain any other relevant information.
- 3.4 An application to the Magistrate must be supported by a signed written authority from the Chief of Police:
- 3.5 *Not used.*

(b) Making an application

- 3.6 A search warrant application must be supported in writing, specifying:
- (a) the enactment under which the application is made (see Note 2A);
 - (b) *Not used.*
 - (c) the object of the search (see Note 3B);
 - (d) the grounds for the application, including, when the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation;
 - (e) That there are no reasonable grounds to believe the material to be sought, when making application to the Magistrate:
 - (i) consists of or includes items subject to legal privilege;
 - (ii) consists of or includes excluded material or special procedure material;

- (f) if applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant. (See Note 3C.)

3.7 *Not used.*

3.8 If a search warrant application is refused, a further application may not be made for those premises unless supported by additional grounds.

Notes for guidance

3A The identity of an informant need not be disclosed when making an application, but the officer should be prepared to answer any questions the Magistrate may have about:

- the accuracy of previous information from that source, and
- any other related matters

3B The information supporting a search warrant application should be as specific as possible, particularly in relation to the articles or persons being sought and where in the premises it is suspected they may be found. The meaning of “items subject to legal privilege”, “excluded material” and “special procedure material” are defined by PACE, sections 10, 11 and 14 respectively.

3C Under PACE, section 16(2), a search warrant may authorise persons other than Police Officers to accompany the constable who executes the warrant. This includes, e.g. any suitably qualified or skilled person or an expert in a particular field whose presence is needed to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give them any right to force entry, but it gives them the right to be on the premises during the search and to search for or seize property without the occupier’s permission.

4 Entry without warrant - particular powers

(a) Making an arrest etc.

4.1 The conditions under which an officer may enter and search premises without a warrant are set out in PACE, section 17. It should be noted that this section does not create or confer any powers of arrest. See other powers in Note 2B(a).

(b) Search of premises where arrest takes place or the arrested person was immediately before arrest

4.2 When a person has been arrested for a designated offence, a Police Officer has power under PACE, section 32 to search the premises where the person was arrested or where the person was immediately before being arrested.

(c) Search of premises occupied or controlled by the arrested person

4.3 The specific powers to search premises which are occupied or controlled by a person arrested for a designated offence are set out in PACE, section 18. They may not be exercised, except if section 18(5) applies, unless the Chief of Police has given written authority. That authority should only be given when the Chief of Police is satisfied that the premises are occupied or controlled by the arrested person and that the necessary grounds exist. The record of the grounds for the search and the nature of the evidence sought as required by section 18(7) of the Ordinance should be made in:

- the custody record if there is one, otherwise
- the officer's pocket book, or
- the search record.

5 Search with consent

5.1 Subject to paragraph 5.4, if it is proposed to search premises with the consent of a person entitled to grant entry the consent must, if practicable, be given in writing before the search. The officer must make any necessary enquiries to be satisfied the person is in a position to give such consent. (See Note 5B.)

5.2 Before seeking consent the officer in charge of the search shall state the purpose of the proposed search and its extent. This information must be as specific as possible, particularly regarding the articles or persons being sought and the parts of the premises to be searched. The person concerned must be clearly informed they are not obliged to consent, that any consent given can be withdrawn at any time, including before the search starts or while it is underway and anything seized may be produced in evidence. If at the time the person is not suspected of an offence, the officer shall say this when stating the purpose of the search.

5.3 An officer cannot enter and search or continue to search premises under paragraph 5.1 if consent is given under duress or withdrawn before the search is completed.

5.4 It is unnecessary to seek consent under paragraphs 5.1 and 5.2 if this would cause disproportionate inconvenience to the person concerned. (See Note 5C.)

Notes for guidance

5A *Not used.*

5B If the intention is to search premises under the authority of a warrant or a power of entry and search without warrant, and the occupier of the premises co-operates in accordance with paragraph 6.4, there is no need to obtain written consent.

5C Paragraph 5.4 is intended to apply when it is reasonable to assume innocent occupiers would agree to, and expect, police to take the proposed action, e.g. if:

- a suspect has fled the scene of a crime or to evade arrest and it is necessary quickly to check surrounding gardens and readily accessible places to see if the suspect is hiding, or
- police have arrested someone in the night after a pursuit and it is necessary to make a brief check of gardens along the pursuit route to see if stolen or incriminating articles have been discarded.

6 Searching premises - general considerations

(a) Time of searches

6.1 Searches made under warrant must be made within three calendar months of the date the warrant is issued or within the period specified in the enactment under which the warrant is issued if this is shorter.

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

6.3 *Not used.*

(b) Entry other than with consent

6.4 The officer in charge of the search shall first try to communicate with the occupier, or any other person entitled to grant access to the premises, explain the authority under which entry is sought and ask the occupier to allow entry, unless:

- (i) the search premises are unoccupied;
- (ii) the occupier and any other person entitled to grant access are absent;
- (iii) there are reasonable grounds for believing that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people.

6.5 Unless sub-paragraph 6.4(iii) applies, if the premises are occupied the officer shall, before the search begins:

- (i) identify him or herself, show their warrant card (if not in uniform) and state the purpose of, and grounds for, the search, and
- (ii) identify and introduce any person accompanying the officer on the search (such persons should carry identification for production on request) and briefly describe that person's role in the process.

6.6 Reasonable and proportionate force may be used if necessary to enter premises if the officer in charge of the search is satisfied the premises are those specified in any warrant, or in exercise of the powers described in paragraphs 4.1 to 4.3, and if:

- (i) the occupier or any other person entitled to grant access has refused entry;
- (ii) it is impossible to communicate with the occupier or any other person entitled to grant access; or
- (iii) any of the provisions of paragraph 6.4 apply.

(c) Not used.

6.7 *Not used.*

6.8 *Not used.*

(d) Conduct of searches

6.9 Premises may be searched only to the extent necessary to achieve the purpose of the search, having regard to the size and nature of whatever is sought.

6.9A A search may not continue under:

- a warrant's authority once all the things specified in that warrant have been found;
- any other power once the object of that search has been achieved.

6.9 No search may continue once the officer in charge of the search is satisfied whatever is being sought is not on the premises (see Note 6B). This does not prevent a further search of the same premises if additional grounds come to light supporting a further application for a search warrant or exercise or further exercise of another power. For example, when, as a result of new information, it is believed articles previously not found or additional articles are on the premises.

6.10 Searches must be conducted with due consideration for the property and privacy of the occupier and with no more disturbance than necessary. Reasonable force may be used only when necessary and proportionate because the co-operation of the occupier cannot be obtained or is insufficient for the purpose. (See Note 6C.)

6.11 A friend, neighbour or other person must be allowed to witness the search if the occupier wishes unless the officer in charge of the search has reasonable grounds for believing the presence of the person asked for would seriously hinder the investigation or endanger officers or other people. A search need not be unreasonably delayed for this purpose. A record of the action taken should be made on the premises search record including the grounds for refusing the occupier's request.

6.12 A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search, see Code C, paragraph 10.1(c). For example, questions to discover the occupier of specified premises, to find a key to open a locked drawer or cupboard or to otherwise seek co-operation during the search or to determine if a particular item is liable to be seized.

6.12A If questioning goes beyond what is necessary for the purpose of the exemption in Code C, the exchange is likely to constitute an interview as defined by Code C, paragraph 11.1A and would require the associated safeguards included in Code C, section 10.

(e) Leaving premises

6.13 If premises have been entered by force, before leaving the officer in charge of the search must make sure they are secure by:

- arranging for the occupier or their agent to be present;
- any other appropriate means.

(f) Not used.

6.14 *Not used.*

6.15 *Not used.*

Notes for guidance

6A *Not used.*

6B It is important that, when possible, all those involved in a search are fully briefed about any powers to be exercised and the extent and limits within which it should be conducted.

6C In all cases the number of officers and other persons involved in executing the warrant should be determined by what is reasonable and necessary according to the particular circumstances.

7 Seizure and retention of property

(a) Seizure

7.1 Subject to paragraph 7.2, an officer who is searching any person or premises under any statutory power or with the consent of the occupier may seize anything:

- (a) covered by a warrant;
- (b) the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence but only if seizure is necessary to prevent the items being concealed, lost, disposed of, altered, damaged, destroyed or tampered with;

(c) *Not used.*

See Note 7B

7.2 No item may be seized which an officer has reasonable grounds for believing to be subject to legal privilege, as defined in PACE, section 10.

7.3 *Not used.*

7.4 An officer may decide it is not appropriate to seize property because of an explanation from the person holding it but may nevertheless have reasonable grounds for believing it was obtained in consequence of an offence by some person. In these circumstances, the officer should identify the property to the holder, inform the holder of their suspicions and explain the holder may be liable to civil or criminal proceedings if they dispose of, alter or destroy the property.

7.5 An officer may arrange to photograph, image or copy, any document or other article they have the power to seize in accordance with paragraph 7.1. An officer must have regard to their obligation to retain an original document or other article only when a photograph or copy is not sufficient.

7.6 If an officer considers information stored in any electronic form and accessible from the premises could be used in evidence, they may require the information to be produced in a form:

- which can be taken away and in which it is visible and legible, or
- from which it can readily be produced in a visible and legible form.

(b) *Not used.*

7.7 – 7.13 *Not used.*

(c) **Retention**

7.14 Subject to paragraph 7.15, anything seized in accordance with the above provisions may be retained only for as long as is necessary. It may be retained, among other purposes:

- (i) for use as evidence at a trial for an offence;
- (ii) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked (see Note 7H);
- (iii) for forensic examination or other investigation in connection with an offence;
- (iv) 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.

7.15 Property shall not be retained under paragraph 7.14(i), (ii) or (iii) if a copy or image would be sufficient.

(d) Rights of owners etc.

7.16 If property is retained, the person who had custody or control of it immediately before seizure must, on request, be provided with a list or description of the property within a reasonable time.

7.17 That person or their representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must be provided with a photograph or copy, in either case within a reasonable time of any request and at their own expense, unless the officer in charge of an investigation has reasonable grounds for believing this would:

(i) prejudice the investigation of any offence or criminal proceedings; or

(ii) lead to the commission of an offence by providing access to unlawful material such as pornography;

A record of the grounds shall be made when access is denied.

Notes for guidance

7A *Not used.*

7B The powers of seizure conferred by PACE, sections 18(2) and 19(3) extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to the police station for the purpose of preserving evidence.

7C – 7G *Not used.*

7H Inextricably linked material is material it is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings. For example, it may not be possible to separate items of data held on computer disk without damaging their evidential integrity. Inextricably linked material must not be examined, imaged, copied or used for any purpose other than for proving the source and/or integrity of the linked material.

8 Action after searches

8.1 If premises are searched in circumstances where this Code applies, unless the exceptions in paragraph 2.3(a) apply, on arrival at the police station the officer in charge of the search shall make or have made a record of the search, to include:

(i) the address of the searched premises;

(ii) the date, time and duration of the search;

- (iii) the authority used for the search:
 - if the search was made in exercise of a statutory power to search premises without warrant, the power which was used for the search;
 - if the search was made under a warrant or with written consent;
 - ~ a copy of the warrant and the written authority to apply for it, see paragraph 3.4; or
 - ~ the written consent;

shall be appended to the record or the record shall show the location of the copy warrant or consent;

- (iv) the names of:
 - the officer(s) in charge of the search;
 - all other officers and authorised persons who conducted the search;
- (v) the names of any people on the premises if they are known;
- (vi) any grounds for refusing the occupier's request to have someone present during the search, see paragraph 6.11;
- (vii) a list of any articles seized or the location of a list and, if not covered by a warrant, the grounds for their seizure;
- (viii) whether force was used, and the reason;
- (ix) details of any damage caused during the search, and the circumstances;
- (x) *Not used.*
- (xi) *Not used.*

8.2 On each occasion when premises are searched under warrant, the warrant authorising the search on that occasion shall be endorsed to show:

- (i) if any articles specified in the warrant were found and the address where found;
- (ii) if any other articles were seized;
- (iii) the date and time it was executed and if present, the name of the occupier or if the occupier is not present the name of the person in charge of the premises;

(iv) the names of the officers who executed it and any authorised persons who accompanied them, and

(v) *Not used.*

8.3 Any warrant shall be returned within three calendar months of its issue or sooner on completion of the search(es) authorised by that warrant, to the Clerk of the Court.

9 & 10 Not used.
