



**Law
Commission**
Reforming the law

SEARCH WARRANTS

Summary of final report

INTRODUCTION

A search warrant is a document issued by a magistrate or judge ('the issuing authority') to a police officer or other investigator. A search warrant grants legal authority to enter premises and search for specified material.



There are approximately **176** different search warrant provisions across **138** different pieces of legislation. Most search warrants are obtained in order to search premises for evidence of a criminal offence. Around **40,000** search warrants are issued in England and Wales every year.

The importance of the law and procedure governing search warrants operating efficiently and fairly is clear. Search warrants are a vital tool for the effective investigation of all forms of crime – including murder, terrorism, fraud, rape and child sexual abuse – and the protection of the public from harm. At the same time, search warrants are one of the most intrusive powers of the state. The execution of a search warrant not only amounts to an interference with an individual's privacy rights, but may significantly adversely impact on an individual's life and lead to the collection of large volumes of personal material.

The consequences of search warrants law and procedure failing to operate properly can be severe. Where there are deficiencies in the law, law enforcement agencies will not have the means to obtain evidence and effectively investigate, detect, prevent and prosecute serious criminality. This creates a heightened risk of harm to members of the public.

Where there are procedural errors, the search warrant and any entry, search and seizure may be declared unlawful. In recent years, dozens of search warrants have been declared unlawful by the courts. Inappropriately obtained search warrants can lead to entire criminal investigations collapsing and millions of pounds incurred by public bodies on legal fees and damages. This can also erode public trust and confidence in law enforcement agencies.

Significant reputational damage and stress may also be caused to innocent individuals who are the subject of a search. The impact on a person's social life, academic studies or the running of their business can also be particularly acute where electronic devices are seized and retained.

THE REPORT

Our report represents the conclusion of our search warrants project. It is almost 600 pages in length and makes 64 recommendations. This summary explains the recommendations that we make and the background of the project. The full report can be viewed at <https://www.lawcom.gov.uk/project/search-warrants/>

We undertook this project at the request of the Home Office. This request followed from comments made by senior members of the judiciary suggesting that the law governing search warrants was in need of reform. These comments followed a series of high-profile cases in which search warrants were declared unlawful.

Work began on the project in January 2017. We met with a diverse range of stakeholders to gather evidence of the problems with the current law and set about producing provisional proposals in a consultation paper. Our consultation paper was published on 5 June 2018, which marked the beginning of a three-month public consultation period.

To foster ideas for reform, we held several roundtable events with law enforcement agencies, practitioners and the judiciary. We were also given an operational insight into applying for and executing search warrants.

We received a total of 47 consultation responses, which has shaped the formulation of our policy and informed the 64 recommendations contained in our report.

PROBLEMS WITH THE CURRENT LAW

The law and procedure which governs search warrants is unnecessarily complex, inconsistent, outdated and inefficient. There are four principal ways in which these problems manifest themselves.

Errors

Errors are often made.



A review undertaken by the National Crime Agency in 2016 into **268** separate operations in which search warrants were obtained revealed potentially significant deficiencies in **22** operations and minor deficiencies in an additional **189** operations.¹

In other words, 78.73% of investigations had defective warrants, 8.2% of which had potentially significant deficiencies in the warrants obtained.

¹ National Crime Agency, *Warrant Review Closing Report* (31 March 2016) p 15.

Operation Midland is a high-profile case in point, in which six search warrants were obtained following false allegations made relating to historic child sexual abuse. A report by Sir Richard Henriques into Operation Midland found serious errors in the search warrant applications.² The consequences of errors such as these can be millions of pounds incurred by public bodies, the erosion of public trust and confidence in law enforcement agencies, and significant reputational damage to innocent individuals.

Procedural inefficiency

The problems that we have identified lead to procedural inefficiency. In some cases it can take police forces three weeks to obtain a search warrant. The longer it takes to obtain and execute a search warrant, the higher the risk of evidence being lost. There will also be a longer period of potential offending and therefore harm being caused to members of the public.

When a search warrant has been executed, and material seized, logistical challenges may arise when material is subsequently examined. This can lead to excessive cost and delay, thereby impeding law enforcement agencies from investigating crime effectively.

There is also a significant backlog of electronic devices awaiting examination – in some cases up to a year. Individuals whose electronic devices are seized may be left without material that is integral to their lives.

Insufficient powers

Law enforcement agencies lack the powers to investigate, detect, prevent and prosecute crime effectively. Nowhere is this issue more acute than in the area of electronic material.

We live in an age where terabytes of material can be stored electronically, in some cases on remote servers in an unknowable jurisdiction. The law has failed to keep pace with the modern digital landscape and the ways in which criminality now occurs. As a result, law enforcement agencies do not have the powers to obtain electronic evidence which is vital for the successful investigation and prosecution of serious criminal offences.

Inadequate safeguards

The safeguards and protections that apply to those affected by a search warrant vary considerably based on which powers are exercised and how they are exercised. As a consequence, some individuals have fewer statutory protections than they might otherwise have. It is also difficult for individuals to understand the extent of the state's powers, the safeguards that protect them, and what means of redress they have.

The current law creates a particular risk that insufficient consideration is given to the necessity and proportionality of the search for and seizure of electronic devices and data. Vast amounts of data may be seized which are irrelevant to an investigation or which fall within special categories granted heightened protection under the law. There is also insufficient regulation around new technology and the treatment of electronic material once it has been acquired.

2 Sir Richard Henriques, *Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence* (4 October 2019) para 2.4.64.

Law enforcement agencies have, in many cases, been left to develop their own practices regarding the acquisition and treatment of electronic material. The result is that there is a heightened risk of law enforcement agencies acting unlawfully and incompatibly with human rights and obligations to protect personal data.

OUR RECOMMENDATIONS

Search warrants are vital to criminal investigations; they also raise important constitutional issues concerning the rule of law and the proper balance between the powers of the state and the rights and freedoms of individuals. The tension between these competing public interests was described by Bingham LJ, as he then was, as follows:

“There is an obvious tension between these two public interests because crime could be most effectively investigated and prosecuted if the personal and property rights of citizens could be freely overridden and total protection of the personal and property rights of citizens would make investigation and prosecution of many crimes impossible or virtually so.”³

The overarching aim of the recommendations in our report has therefore been to strike a fair and appropriate balance between these competing public interests. More specifically, our recommendations would render the law simpler, fairer, more modern and efficient.



We make **64** recommendations in our report. Some of our recommendations would require implementation through primary legislation. Other recommendations would require changes to Code B of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure Rules (CrimPR) and the Criminal Practice Directions (CrimPD).

³ *R v Lewes Crown Court ex parte Hill* (1991) 93 Cr App R 60, 66.

The operation of the statutory safeguards

In Chapter 2 we recommend reform to the safeguards that must be followed when applying for and executing a search warrant. Statutory safeguards which an investigator must follow when applying for and executing a search warrant are contained within sections 15 and 16 of PACE. These sections help ensure compliance with the European Convention of Human Rights' (ECHR) requirement that any search under warrant is a proportionate interference with the right to respect for private and family life protected by article 8.

We recommend that statutory safeguards, modelled on sections 15 and 16 of PACE, are inserted into the Criminal Justice Act 1987 (CJA), which enables a member of the Serious Fraud Office (SFO) to apply for a search warrant. This would provide clarity and enforceable standards of conduct in SFO investigations.



Code B of PACE is a code of practice which governs the exercise of police powers to search premises; it restates many of the safeguards found in sections 15 and 16 of PACE and supplements them with further guidance. We note that it is unclear to what extent non-police investigators must have regard to Code B of PACE, and that the number of law enforcement agencies that can apply for and execute warrants has increased significantly. We therefore recommend that Code B of PACE should provide guidance for non-police investigators in complying with the provisions of the Code.

Section 15(1) of PACE provides that an entry on or search of premises under a warrant is unlawful unless 'it' complies with sections 15 and 16 of PACE. We conclude that 'it' refers to the warrant, entry and search and recommend that section 15(1) of PACE is amended to make this clear. We then discuss the elements of the search rendered unlawful following a breach of sections 15 and 16 of PACE. We observe that the Divisional Court has on a number of occasions expressed the view that non-compliance with section 15(1) of PACE also renders seizure unlawful, in addition to entry and search. We again recommend that section 15(1) of PACE is amended to make this clear.

Agencies empowered to apply for and execute search warrants

In Chapter 3 we consider whether some agencies which are not at present entitled independently to apply for and execute search warrants should be given the power to do so.

The National Health Service (NHS) is estimated to be vulnerable to £1.21 billion worth of fraud each year. The NHS Counter Fraud Authority (NHSCFA) and NHS Counter Fraud Service Wales (NHSCFSW) investigate high value economic crime within the NHS. However, they do not have the power to

apply for a search warrant. This can inhibit the effective investigation of fraud against the NHS. We therefore recommend that the NHSCFA and NHSCFSW be empowered to apply for and execute search warrants when certain conditions are met.

The Insolvency Service are currently permitted to apply for a search warrant, however, only for certain categories of material. The police must also execute a warrant obtained by the Insolvency Service, which can place an unnecessary burden on police resources. We therefore recommend that the Insolvency Service be empowered to apply for search warrants for wider categories of material and execute their own warrants.

We also recommend dispensing with the current requirement under the CJA and the Financial Services and Markets Act 2000 that a constable must be present in order for accompanying agencies to exercise their powers of search and seizure. This would render the law more efficient and cost effective because a constable who is no longer needed during the execution of a warrant once lawful entry has been facilitated could leave the premises.

Search warrant application documents

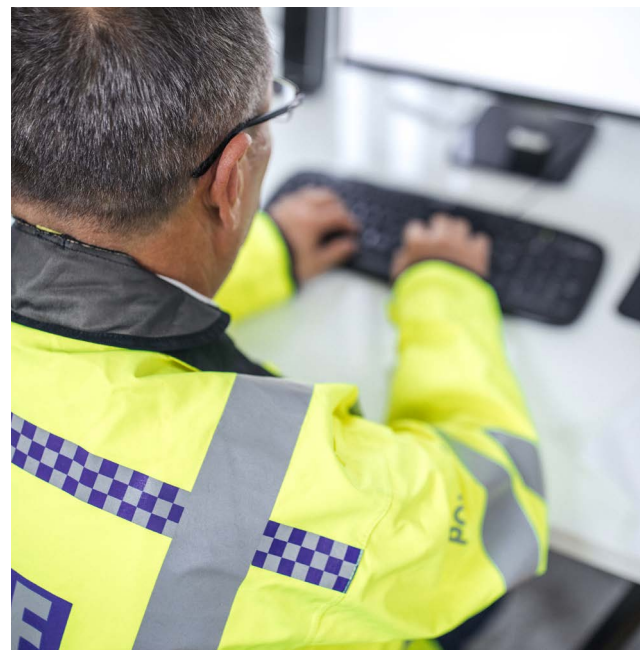
In Chapter 4 we recommend reform to the documents used to apply for a search warrant. We make recommendations which would improve procedural efficiency, reduce the scope for serious errors and ensure that the issuing authority is presented with an accurate and complete picture of the investigation.

We conclude that there would be real benefit in the creation of entry warrant application forms and an entry warrant template. This is because, currently, law enforcement agencies must modify forms and templates, which increases the risk that errors will be made.

We therefore recommend the creation of a specific entry warrant application form for applications under the Consumer Rights Act 2015, and a generic entry warrant application form that can be modified. We also recommend the creation of a standard entry warrant template.

Failure to observe the duty of candour is one of the most frequent challenges to search warrants. Given that there are countless matters that may be relevant to discharging the duty of candour, we recommend that search warrant application forms are amended to include within the guidance notes an extensive (but non-exhaustive) list of factors which could be relevant to discharging the duty, along with specific questions as appropriate.

At present, search warrant application forms are typically downloaded, completed on a computer, and then emailed to the relevant court centre. We conclude that an online search warrants application portal would bring a host of benefits, and therefore recommend that Her Majesty's Courts and Tribunals Service (HMCTS) consider the practicability of designing and implementing an interactive online search warrants application portal.



Applying for a search warrant

In Chapter 5 we recommend reform to the wider framework governing the search warrants application process. As above, our recommendations would improve procedural efficiency, reduce the scope for serious errors and ensure that the issuing authority is presented with an accurate and complete picture of the investigation.

We conclude that steps ought to be taken to make the common law duty of candour more accessible and comprehensible outside of application forms. Given the importance of the duty, we recommend that the duty of candour be codified in section 15 of PACE. We also recommend that the duty of candour is set out in greater detail in the CrimPD and Code B of PACE.



There is no standard procedure for arranging a search warrant application hearing. Comments from consultees lead us to make two recommendations:

- we recommend that all law enforcement agencies take steps to ensure that sufficient training is provided to officers involved in applying for and executing search warrants to ensure that applications are consistently completed to a high standard; and
- we recommend that HMCTS consider the practicability of making more search warrant application hearing slots available, or pursuing other measures which would decrease both the length of time it takes to obtain a search warrant and the disruption to other court business.

There is a tendency for junior officers with very limited knowledge of the investigation to be tasked with seeking search warrants. This may cause wasted time and expense if applications are refused owing to officers being unable to satisfactorily answer questions.

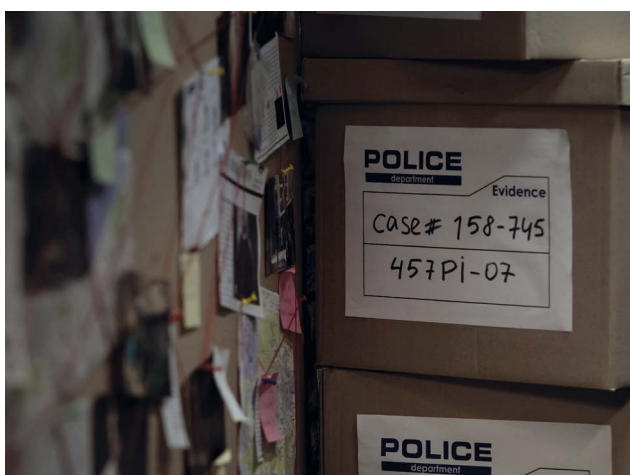
We therefore recommend that Code B of PACE be amended to include the requirement that a person applying for a search warrant has adequate knowledge to answer questions asked by the issuing authority.

Issuing a search warrant

In Chapter 6 we recommend reform to the procedure for issuing a search warrant. Our focus is on how procedures can be improved to ensure that the legal requirements are fully adhered to and there is adequate judicial oversight. To that end, we recommend that only those magistrates who have undergone specialist training should have the power to issue a search warrant. We also recommend formalising the practice of magistrates being advised by a legal adviser in the Criminal Procedure Rules.

Additionally, we recommend formalising the procedures by which search warrants are issued both during and outside court hours and examining the practicability of the audio-recording of search warrant hearings. These recommendations aim to make the procedures by which a search warrant is issued simpler and more efficient, while also reducing the scope for error.

We also consider that the use of search warrants ought to be more transparent. Therefore, we recommend a requirement to record and publish statistics on the use of search warrants. In addition to improving transparency, collecting and publishing search warrants data would increase the likelihood of understanding key trends, and being able to respond to them.



The conduct of a search under warrant

In Chapter 7 we recommend reform to various aspects of the execution of a search warrant. We make recommendations that would improve the ability of law enforcement agencies to investigate crime effectively. The recommendations that we make would also promote the proportionate exercise of search warrant powers and provide more information to individuals regarding their rights.

To rationalise and strengthen law enforcement powers, we recommend:

- amending search warrant provisions under several statutes to provide for the authority to enter and search premises on more than one occasion ('multiple entry warrants') and any premises occupied or controlled by a specified person ('all premises warrants');
- that a constable be permitted to search a person found on premises at which a search warrant under PACE is being executed where specific conditions are met; and
- clarifying in a number of Acts that an applicant need only specify the function or description of a person to accompany the officer executing the warrant rather than their name.

To strengthen safeguards and promote proportionality, we recommend:

- amending Code B of PACE to (1) provide guidance as to what constitutes a reasonable hour when deciding when to execute a search warrant; (2) clarify when and in what form a search warrant must be provided to an occupier; and (3) state that an occupier has a right to ask for a legal representative to observe the execution of a warrant;

-
- introducing a statutory requirement for law enforcement agencies executing search warrants to provide an occupier with a notice of powers and rights;
 - the introduction of a specific search warrants ‘your rights and the law’ webpage on the Government website; and
 - that application forms are amended to invite the issuing authority to record their reasons for granting a warrant which may be executed outside usual hours.

Challenging a search warrant

In Chapter 8 we examine how challenges can be made to both the lawfulness of a search warrant and the way in which a search under warrant has been conducted.

After carefully considering consultation responses, we are no longer of the view that there would be merit in the introduction of an entirely new procedure to challenge search warrants in the Crown Court. Crucially, we consider that recommendations made elsewhere in our report would promote access to justice and produce greater efficiency in the system. However, we do make the following recommendations regarding the procedure under Part 2 of the Criminal Justice and Police Act 2001 (CJPA) to apply for the return of seized property:

- that a judge hearing an application under section 59 of the CJPA have the power to order costs between parties; and
- that a judge hearing a judicial review challenge to a search warrant have the powers and duties of the Crown Court in relation to the return or retention of material under section 59 of the CJPA.

Sensitive material and public interest immunity

In Chapter 9 we recommend reform to the procedure for dealing with sensitive information contained in an application for a search warrant, and claims for public interest immunity.

We conclude that more prescriptive rules governing the handling of sensitive material in the CrimPR would be beneficial given the lack of a consistent approach in practice. We provide a suggestion of what more prescriptive rules might look like and then recommend that the CrimPR are amended to include rules governing the storage of sensitive material provided to the court during a search warrant application.

At present, an investigator may register an objection to an application by a person affected by a warrant to be provided with the underlying information sworn in support of the warrant application. We recognise the concerns expressed to us that the current procedure carries the risk that an investigator might not have notice of a request for disclosure of an application in time, or at all, resulting in the disclosure of highly sensitive information. We therefore recommend that consideration be given to amending the rules governing an investigator’s right to make an objection, with the aim of ensuring that the investigator receives notice of the relevant request.

To promote consistency in decision-making, we also recommend that consideration be given to amending the CrimPD to set out matters that should be considered by the court when determining whether sensitive material ought to be withheld on the grounds of public interest immunity.

Iniquitous material

In Chapter 10 we recommend reform to the operation of what is known as the ‘iniquity exception’ or ‘crime-fraud exception’. Under this rule, the protection afforded to special categories of material is lost or precluded when, broadly speaking, it is created, acquired or held for an iniquitous purpose.

We conclude that neither a clear nor coherent approach to the principle of iniquity exists under the current law. The lack of clarity around the categories of material to which the principle applies, the test to be applied and its effect if it does apply, creates confusion and other problems in practice. For this reason, we recommend that the Government considers whether the law relating to iniquitous material in the context of criminal investigations ought to be reformed.

The treatment of legally privileged material

In Chapter 11 we consider reform to the way in which legally privileged material is sifted and how disputes regarding its treatment are resolved.

We begin the chapter by examining the case for introducing a formal procedure by which independent counsel are instructed to assist in identifying legally privileged material and separating it from other material. To encourage consistency in practice, yet retain flexibility, we recommend that the procedure for instructing independent counsel to resolve issues associated with legal privilege be set out in a new code of practice. We recommend a new code of practice in Chapter 17 of our report.

In Chapter 17 we also recommend that a person with an interest in electronic material be able to apply to the Crown Court for a judge to decide how electronic material, such as legally privileged material, should be sifted. This procedure would also enable a law enforcement agency to seek judicial approval of a protocol which details how they propose to sift material and resolve disputes between the parties. This will assist in identifying legally privileged material, so that it can be segregated, returned and deleted more quickly.

The treatment of excluded material

In Chapter 12 we recommend reform to the way in which ‘excluded material’ (i.e. confidential personal records, human tissue and fluid and confidential journalistic material) is treated under PACE.

We conclude that the current statutory conditions under PACE for a search warrant regarding confidential personal records are too restrictive, thereby impeding serious criminal investigations. There are issues both in respect of how the statutory conditions operate and their underlying policy. Further, other mechanisms to obtain confidential personal records are unsatisfactory.

We conclude that it would be desirable for confidential personal records to be subject to the same statutory access conditions as ‘special procedure material’, which are set out in paragraph 2 of schedule 1 to PACE. However, we do not make a firm recommendation for reform. Instead, we recommend that the Government considers whether the law governing access to confidential personal records, human tissue and tissue fluid under PACE strikes the right balance between the competing interests at play, and whether the law ought to be reformed.

We then consider the position of confidential journalistic material. We adopt much the same analysis as we do in respect of confidential personal records. We conclude that confidential journalistic material should remain obtainable under PACE in very limited circumstances. We again recommend that the Government considers whether the law governing access to confidential journalistic material under PACE strikes the right balance between the competing interests at play, and whether the law ought to be reformed.

The treatment of special procedure material

In Chapter 13 we consider reform to the way in which ‘special procedure material’ (i.e. non-confidential journalistic material and confidential business records) is treated.

Consultation responses revealed that investigators find it difficult to ascertain whether material falls within the definition of special procedure material under PACE. We conclude that greater clarity is needed to identify when material constitutes special procedure material, in order better to inform law enforcement agencies and to reduce the risk of unlawful search and seizure. We recommend that Code B of PACE is revised to provide guidance on when material constitutes special procedure material.

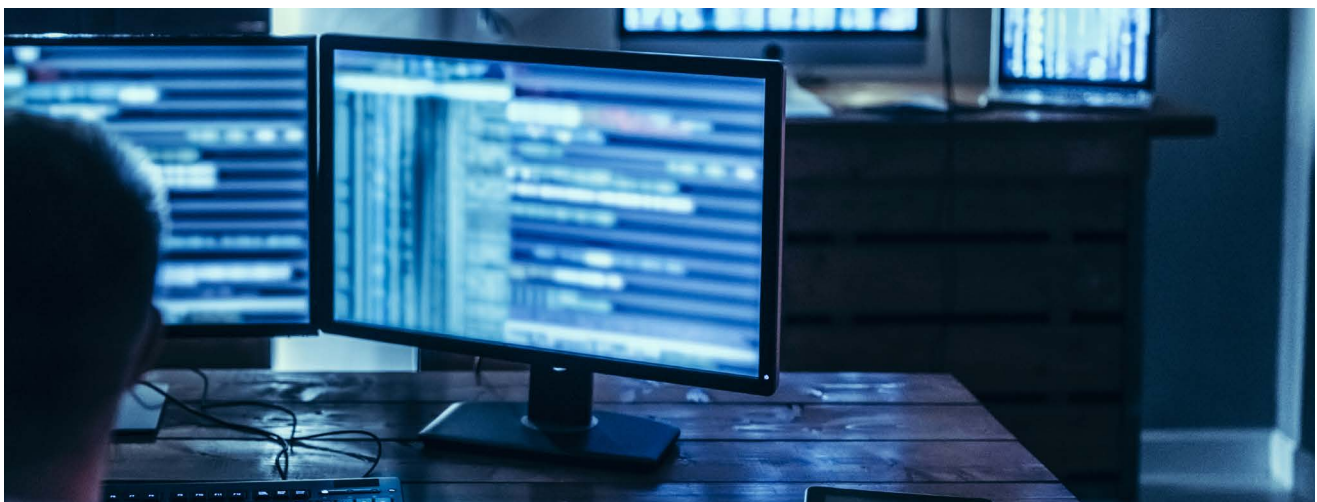
Electronic material

In Chapters 14 to 18 we examine how the law governing search warrants applies to electronic devices and electronic data (‘electronic material’). The central question with which these chapters are concerned is: what ought to be the law and procedure when an investigator seeks to obtain electronic data stored on, or accessible from, a device on premises under the authority of a search warrant?



We have concluded that the area of electronic material is the most in need of reform. The legal framework that currently governs the search and seizure of **electronic material** is no longer adequate.

Dramatic technological change has created legal uncertainty in respect of search warrant regimes. As a result, the current law both inhibits criminal investigations and has significant privacy implications for those whose electronic devices are searched and seized.



The search for and seizure of locally stored electronic material

In Chapter 15 we recommend reform to the law relating to the search for and seizure of electronic devices and electronic data stored locally on those devices. We reach the following conclusions and make the following recommendations.

- All forms of electronic material should be, and under certain regimes are, on their face, capable of being the target of a search warrant.
- Search warrant provisions should continue to permit electronic devices to be the target of a search warrant where investigators seek relevant information in electronic form. However, we recommend that search warrant provisions are amended to clarify that, when electronic data is sought, electronic devices can be the target of a search warrant so long as the data satisfies the statutory conditions relating to the target material.
- We recommend that search warrant application forms be amended to require an investigator, who seeks to obtain a warrant to search for and seize electronic devices to acquire electronic data, to explain: (1) in as much detail as practicable what information on the devices is sought; and (2) why they believe that the information is on the devices and why the information would satisfy the statutory conditions.
- Electronic devices should be capable of being specified on the face of the warrant as the material to be searched for on premises and seized. However, we recommend that search warrants be required to contain two parts when electronic devices are sought for the purpose of obtaining information in the form of electronic data: (1) the first part should specify the electronic device(s) to be searched for and seized; and (2) the second part should specify the information on the electronic device(s) that is sought.
- Search warrants should continue to permit the seizure or copying of entire electronic devices where it is necessary to do so and safeguards are adhered to. We recommend that search warrant provisions are amended to make clear that the power to seize an electronic device includes the power to copy all or some of the electronic data stored on the electronic device while on the premises.
- It is unclear whether certain search warrant provisions permit an investigator to search electronic devices while on the premises. We recommend that search warrant provisions should be amended to permit an investigator to apply for authority to conduct a search of electronic devices found during a search where certain conditions are met. If granted, the warrant should authorise the search for and copying of any electronic data stored on the device that falls within the information specified in the second part of a search warrant.

The search for and seizure of remotely stored electronic data

Remote storage poses difficult and unique challenges for the law governing search warrants. Evidence of criminality may be stored outside the jurisdiction in a known, unknown or unknowable location. Remotely stored data may also theoretically be accessible from any electronic device on any premises with the right tools and access details to an online account.

In Chapter 16 we discuss the powers that law enforcement agencies ought to have to search for and seize (ie copy) remotely stored electronic data under a search warrant. We reach a number of conclusions and make several recommendations.

We conclude that the arguments for and against search, seizure and production exercised within this jurisdiction in relation to remotely stored data being classified as extraterritorial are finely balanced. However, it is unlikely that the presumption against a statute having extraterritorial effect would operate so as to prevent search powers being exercisable in respect of remotely stored data.

We also conclude that the circumstances in which the search, seizure and production of remotely stored data is permissible under international law is unclear. State practice indicates certain instances in which the conduct might be deemed acceptable, however, concerns clearly remain in the international community with no clear international consensus. That said, there will be many instances in which the search, seizure or production of remotely stored data pursuant to a warrant is unlikely to lead to an objection from another state and that any infringement on the sovereignty of another state would be too minimal to be taken into consideration.

We conclude that law enforcement agencies require the power to enter premises where electronic data is held remotely, search electronic devices and copy remotely stored data. The current circumstances in which law enforcement agencies can do so is unclear. Law enforcement agencies should therefore be given the powers to enter premises, search for and copy remotely stored data when executing a search warrant. To reach a definitive conclusion on the appropriate model to be adopted will require further technical and cross-sectional input. We therefore recommend that the Government considers the desirability of amending the law to permit law enforcement agencies to obtain authorisation to search for and copy remotely stored data when executing a search warrant.



Virtually all electronic data is protected by either a password, encryption or two-factor authentication. Without a power to require passwords or decryption, any power to search for and copy remotely stored material will be rendered ineffective in certain circumstances. There are concerns that the current law governing the compelling of passwords is inadequate and requires reform. We therefore recommend that the Government considers the desirability of amending the law governing the power to compel the production of passwords and other access information with the aim of making the law clearer and more effective.

With remotely stored data, even if an electronic device is seized, data stored in an online account can still be accessed, and therefore modified or deleted, by using another device to connect to the online account. There are few, if any, statutory powers that could be relied on as a lawful basis to modify or alter remotely stored data for the purpose of preventing interference with it. We recognise the rationale of a power to modify or alter data to prevent interference, as well as the valid concerns that would be raised by such an intrusive power. We therefore recommend that the Government considers the desirability of introducing a power to modify or alter remotely stored data exercisable pursuant to a search warrant.

The treatment of seized electronic material

In Chapter 17 we consider the law and procedure which governs the treatment of electronic material once it is in the possession of a law enforcement agency following the execution of a search warrant.



We recommend a new statutory regime, modelled on Part 2 of the CJPA, to govern the treatment of electronic material seized or copied pursuant to a search warrant.

We also recommend that the regime is supplemented by a new code of practice which would regulate the acquisition and treatment of electronic material in search warrant cases.

The statutory regime would therefore prescribe the result to be achieved by setting out overarching and enduring duties. The code of practice would then set out the method by which the duties can be achieved. This is an area in which flexibility is crucial. There cannot be a one-size-fits-all approach to the treatment of electronic material. Technology and digital forensics continue to evolve. A code of practice would provide flexibility and permit updating to reflect best practice.

We recommend the following statutory powers and duties.

- An investigator should be required to provide the following information within a reasonable time from a person with an interest in the electronic material making a request for it: (1) as specific a description of what was seized as is reasonably practicable; (2) details of what action was taken in respect of electronic devices on premises in as much detail as practicable; and (3) protocols setting out how electronic material is to be examined.
- An investigator should be required to: (1) return electronic devices following seizure on premises as soon as reasonably practicable; (2) return and/or delete electronic material as soon as reasonably practicable; and (3) return and/or delete non-responsive electronic material so far as is reasonably practicable.
- A person with an interest in electronic material should be able to apply to the Crown Court for: (1) a judge to approve of, or adjudicate on disputes regarding, the way in which the investigator intends to examine electronic material; and (2) the return or deletion of particular electronic data or return of an electronic device on certain limited grounds.

The recommendations would permit operational flexibility and practical justice to be achieved on a case by case basis.

“Our recommendations would introduce strong and consistent safeguards to the treatment of electronic material. They would lead to greater transparency, accountability and limit the interference with property and privacy rights. At the same time, the recommendations would facilitate the expeditious examination of electronic material in a way which does not inhibit criminal investigations or impose unreasonable demands on law enforcement agencies.”

A wider review of the law governing electronic material

The problems relating to electronic material discussed in our report transcend search warrants. Amendments to search warrants legislation would also not be a viable long-term solution to the problems posed by cloud computing. The interconnectivity of investigative powers also raises questions over where certain powers should be contained. There are also arguments that some of our recommendations should apply beyond the search warrants context. Additionally, consultation responses indicated that there are several other statutory powers that may require reform.

In Chapter 18 we therefore recommend a wider review of the law governing the acquisition and treatment of electronic material in criminal investigations, which is not confined solely to search warrants. Without being exhaustive, we set out a number of topics which we consider merit further examination:

- the desirability of powers to search electronic devices not contingent on premises, or to search electronic data directly;
- the operation of sections 19(4) and 20(1) of PACE which permit a constable to require electronic data accessible from premises to be produced; and
- the regulation of data extraction devices, in addition to the extraction of data from complainants' devices.

Consolidating search warrants legislation

In Chapter 19 we discuss the desirability of consolidating search warrant provisions, as well as repealing unnecessary provisions and standardising certain statutory conditions. We do not recommend reform for a number of reasons. The burden of consolidation, in terms of the time demands on the Office of the Parliamentary Counsel, consultees and Parliament, would be unlikely to outweigh any benefit. Consolidation would also have to be considered as part of a much wider review of investigative powers, and not simply confined to search warrants.



