



Risk &  
Investigations

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# An inspector calls: raids and inspections by regulatory authorities

# Main powers of regulators in carrying out unexpected inspections

This is a general guide only and applies to the position in England and Wales. Seek specific legal advice for particular cases.

	Serious Tax Fraud worked as criminal investigation	Tax inspection	Serious Fraud	Criminal Offence N.B. Corporate Manslaughter will give rise to an inspection by both the Health and Safety Executive and the police acting under their ordinary powers to investigate	Confiscation, money laundering and civil recovery investigations	Breach of health and safety laws (which may also constitute a criminal offence)	Breach of energy laws (which may also constitute a criminal offence)
Authority	<b>HM Revenue &amp; Customs</b>	<b>HM Revenue &amp; Customs</b>	<b>Serious Fraud Office (SFO) and the Police</b>	<b>Police (and the National Crime Agency (NCA) for serious and organised crime)</b>	<b>NCA, the Police, FCA, possibly HM Customs &amp; Excise and other government agencies</b>	<b>Health and Safety Executive or local authority</b>	<b>Gas and Electricity Markets Authority</b>
What are the grounds for inspection by an authority?	Police and Criminal Evidence Act 1984 (PACE) Criminal Justice and Police Act 2001 Serious Organised Crime and Police Act 2005	Finance Act 2008	Section 2 Criminal Justice Act 1987 (CJA) for SFO	Police and Criminal Evidence Act 1984 (PACE) (not in Scotland)	Proceeds of Crime Act 2002 (POCA) and POCA Code of Practice	Health and Safety at Work Act 1974 (HSWA)/PACE is used in England and Wales	<b>The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013</b>
What is the authorising document?	Search Warrant	Notice of Inspection	Warrant issued to the Police	Warrant	Warrant or Production Order of the Court	Inspectors are authorised under s.20 of the HSWA.	<b>Warrant</b>
Can they proceed in the absence of the company's in-house lawyer?	Yes	Yes	Yes	Yes	Yes	Yes	Yes, although Ofgem's enforcement guidelines specify that it will allow a reasonable period of time for a legal representative of the owner or occupier of the premises to be present before the search is started
Do they have the power to enter the company's premises?	Yes	Yes, but refusal of entry (which is permitted) would result in a modest financial penalty	Yes	Yes	Yes	Yes	Yes
Power to use force to enter?	Yes	No	Yes	Yes	No	No	Yes
Can they search the premises?	Yes	No - may 'inspect' only, i.e. look at what can already be seen	Yes	Yes	Yes	Yes	Yes
Can they call for production of documents?	Yes	Yes but may only inspect the premises, bus. assets and bus. documents on such premises	Yes	Yes	Yes	Yes	Yes
Can they remove original documents?	Yes	Yes	Yes	Yes	Yes	Would normally take copies (but can remove documents in limited circumstances if they are unable to take copies on site).	<b>Yes</b>
Can they take copies of documents?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Must they provide a list of documents copied/seized?	Yes (on request)	Must provide (on request) a receipt and a copy of the document if 'reasonably required' for any purpose	No	England & Wales: must provide a record of what was taken	Yes	No (unless seized for copying, in which case notice should be given which identifies the documents seized).	<b>Yes</b>
Is legal advice protected?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
May they ask for oral examinations during a raid?	Unless PACE interview, only questions that are solely necessary for conducting the search	No	No	Yes	Yes	Yes	Yes
Is there a right against self incrimination?	Yes if PACE interview	N/A	N/A	Yes	Yes	In interviews under compulsion, there is protection against self-incrimination. In interviews under caution, there is no protection, but there is a right to silence.	<b>N/A</b>
Must the police be in attendance?	Generally not unless required to take fingerprints, charge or bail suspects	No	Yes	Yes	Possibly if s352(5)(ca) POCA – money laundering or confiscation investigation No if under s352(5)(b) POCA – civil recovery investigation	No	No
'Additional Powers of Seizure' of the Criminal and Police Act 2001 apply?	Yes	No	Yes	Yes	Yes	No (but they can direct you to leave something undisturbed).	<b>Not specifically referenced although the police may attend</b>

N.B. Company representatives should only be interviewed under caution i.e. PACE where the company is suspected of having committed an offence, not where a regulator is merely undertaking a fact finding exercise. \*This does not include the criminal cartel offence under the Enterprise Act 2002, whose procedures and processes are likely to be conducted under PACE and therefore be similar to the powers in relation to a Criminal Offence.

	Breach of environment laws (which may also constitute a criminal offence)	Pensions	Competition*	Search Orders	Financial Services and Markets Act 2000 investigations into criminal offences or where risk of destruction of material or non-compliance with a requirement	Lifesciences Regulatory (medicines and medical devices) Medicines and Healthcare Products Regulatory Agency (MHRA)
Authority	<b>Environment Agency, Natural Resources Wales ('NRW') or the Scottish Environment Protection Agency ('SEPA') are the main regulators</b>	<b>The Pensions Regulator (TPR)</b>	<b>Competition and Markets Authority (CMA), sectoral regulators, and/or European Commission (EC)</b>	<b>Solicitors</b>	<b>Financial Conduct Authority (FCA) and/ or Prudential Regulatory Authority (PRA)</b>	
What are the grounds for inspection by an authority?	Environment Act 1995 ('EA 1995') Sometimes PACE is also used in England and Wales	SS. 73, 74 and 78 Pensions Act 2004 ("PA 2004")	Ss25-29 Competition Act 1998. EU Articles 20-22 Reg 1/2003. Reasonable grounds to suspect a UK competition law breach/inspection is necessary to ascertain breach of EU competition law	Civil Procedure Act 1997 Civil Procedure Rules, Part 23 and 25	Note: PRA and FCA have other non-FSMA powers to apply for a warrant, and (in some cases without a warrant) to enter and search premises and seize documents.	Medicines and Healthcare Products Regulatory Agency (MHRA)
What is the authorising document?	Person carrying out investigation must be authorised in writing under s108 EA 1995 Code B Notice under PACE in England and Wales Some Environment Agency/ SEPA / NRW powers require notice to be given and must be authorised by a warrant.	Inspectors are authorised without warrant under ss.73-74 PA 2004 and with a warrant under s.78 PA 2004	CMA and/or sectoral regulator authorisation and/ or warrant and/or EC authorisation/ decision	Search Order	Financial Services and Markets Act 2000 (FSMA), principally s.176 and s.122D	Medicines: Medicines Act 1968 and Human Medicines Regulations 2012 (as amended)
Can they proceed in the absence of the company's in-house lawyer?	Yes	Yes	Yes	Not if you choose to seek legal advice and ask the court to vary or discharge the order; the solicitor supervising the search can be asked to delay the search for up to two hours or such other longer period as the solicitor may permit	Warrant (unless FCA/PRA exercising its supervisory/ enforcement powers against an authorised firm and issues a statutory information requirement requiring production of materials 'forthwith'). Authorised firms and their staff also have regulatory obligations to cooperate.	Medical devices: Consumer Protection Act 1987, Medical Devices Regulations 2002 and Consumer Rights Act 2015
Do they have the power to enter the company's premises?	Yes. In some cases this requires notice to be given to occupier and may require a warrant. Also limited powers to search vehicles	Yes, only at a reasonable time if no warrant. The premises must meet certain conditions depending on the search power used	Yes	Not unless the company agrees	Yes	Written authorisation from MHRA
Power to use force to enter?	Yes in limited circumstances under authority of a warrant or in an emergency. Police have common law powers of entry in Scotland	Yes, if warrant obtained	No for EU inspectors; yes for UK inspectors if they have warrant (including if assisting or on behalf of EC)	No	Warrant (unless FCA/PRA exercising its supervisory/ enforcement powers against an authorised firm and issues a statutory information requirement requiring production of materials 'forthwith'). Authorised firms and their staff also have regulatory obligations to cooperate.	Yes
Can they search the premises?	Yes	Yes, but if no warrant then it is "examination and inquiry" only	Yes (including domestic premises with a warrant)	Yes	Yes with a warrant but only by or under the supervision of the police. Safeguards under PACE must be observed	Yes, at any reasonable time
Can they call for production of documents?	Yes	Yes, but if reliant on warrant then in relation to hard copy documents it is only to require a person named in the warrant to state where documents may be found	Yes	Yes, provided it is covered by the terms of the Order	Yes if under warrant provided of 'the relevant kind' 'Prohibited items' protected by legal privilege cannot be required (s413 FSMA) Items protected by the duty of banking confidentiality may also be protected in limited circumstances (s175(5))	Yes, if warrant obtained
Can they remove original documents?	For Environment Agency and NRW – no, the express power in s108 EA 1995 only allows the taking of copies . Seizure of documents would require a warrant under PACE. For SEPA – yes, s108 EA 1995 allows documents to be seized and removed but a warrant under EA 1995 is required.	Yes	Yes if UK inspectors have UK warrant (incl. if assisting or on behalf of EC); no if no warrant	Yes, provided it is covered by the terms of the Order	Yes if under warrant provided of 'the relevant kind'	Yes, if warrant obtained
Can they take copies of documents?	Yes	Yes	Yes	Yes, provided it is covered by the terms of the Order	Yes if under warrant provided of 'the relevant kind'	Yes
Must they provide a list of documents copied/seized?	No	No	No but in practice they do	Yes	No	Medicines: Yes, must, where practicable, inform the person from whom it was seized, and the occupier of the premises from which it was seized
Is legal advice protected?	Yes	Yes – s.311 PA2004	Yes for external advice; in-house additionally - only if CMA or sectoral regulator inspects, not for EC	Yes	Yes - s. 413 FSMA	
May they ask for oral examinations during a raid?	Yes	Yes, but if reliant on warrant then only of a person named in the warrant and only to explain documents and where they may be found.	Yes but if UK inspectors, must give formal written notice before interviewing (can be simultaneous)	No	Yes to provide an explanation of any document or to explain where information may be found if 'of a relevant kind' as provided for under the warrant.	Medical devices: Yes
Is there a right against self incrimination?	In interviews under compulsion, there is protection against self-incrimination. In interviews under caution, there is no protection, but there is a right to silence.	Yes, but only against criminal charges and civil penalties, and answers can be used if the statement-maker introduces evidence relating to it	Yes – the authorities cannot compel self- incrimination	Yes	Interviews: Yes if if under PACE – if compelled interview, answers cannot be used against the statement maker in criminal offence or market abuse case [see comments – question needs to be clarified]	Yes
Must the police be in attendance?	No. Only in limited circumstances re searching of vehicles and to arrest (unless fisheries offence)	No	No	Yes, if the Search Order specifies	Yes if inspection is under a warrant	Yes
'Additional Powers of Seizure' of the Criminal and Police Act 2001 apply?	No but under s108(4)(h)-(g) EA 1995 there is an ability to seize items and there are separate powers in legislation to search and seize vehicles.	No	Yes if CMA or sectoral regulator has a UK warrant	No	Yes	Yes



# An inspector calls... emergency checklist

## Golden rules

### General

- Be polite, but firm
- Stay calm, be factual
- If you don't know the answer to a question, say so
- Tell the truth; never speculate even if asked to do so
- Be helpful (non-compliance may be a crime) but don't answer incriminating questions
- Consider your media strategy

### When the inspectors arrive

- Check identity, authorisation (warrant?) and scope of investigation
- Notify these people immediately
  - anyone the officials ask for by name
  - Managing Director
  - in-house legal
  - CMS - relevant inspection contact person

### When the inspection is underway

- Ensure you keep up to date with the progress of the inspection
- Always accompany investigating officials
- Keep a record of everything the inspectors do
- Do not allow inspectors to go beyond the scope of the investigation
- Do not let inspectors have documents that are privileged or outside scope of investigation

### When the inspectors leave

- Ensure you have a complete copy of all documents/ records removed by inspectors
- Consider your post-raid strategy

# Contacts

## Competition Raids and Investigations



### **Caroline Hobson**

Partner  
T +44 20 7367 2056  
E [caroline.hobson@cms-cmno.com](mailto:caroline.hobson@cms-cmno.com)



### **Brian Sher**

Partner  
T +44 20 7524 6453  
E [brian.sher@cms-cmno.com](mailto:brian.sher@cms-cmno.com)

## Data Protection



### **Emma Burnett**

Partner  
T +44 20 7367 3565  
E [emma.burnett@cms-cmno.com](mailto:emma.burnett@cms-cmno.com)

## Education, Social Care and Professional Risks



### **Chris Horsefield**

Partner  
T +44 114 279 4118  
E [chris.horsefield@cms-cmno.com](mailto:chris.horsefield@cms-cmno.com)



### **Rachel Cooper**

Partner  
T +44 161 393 4760  
E [rachel.cooper@cms-cmno.com](mailto:rachel.cooper@cms-cmno.com)

## Employment Investigations and Whistleblowing



### **Catherine Taylor**

Partner  
T +44 20 7067 3588  
E [catherine.taylor@cms-cmno.com](mailto:catherine.taylor@cms-cmno.com)



### **Steven Cochrane**

Partner  
T +44 20 7367 3746  
E [steven.cochrane@cms-cmno.com](mailto:steven.cochrane@cms-cmno.com)



### **Hannah Netherton**

Partner  
T +44 20 7067 3634  
E [hannah.netherton@cms-cmno.com](mailto:hannah.netherton@cms-cmno.com)

## Environment, Health & Safety Risks and Investigations



### **Olivia Jamison**

Partner  
T +44 20 7367 2055  
E [olivia.jamison@cms-cmno.com](mailto:olivia.jamison@cms-cmno.com)



### **Lukas Rootman**

Partner  
T +44 114 279 4022  
E [lukas.rootman@cms-cmno.com](mailto:lukas.rootman@cms-cmno.com)

## Financial and White Collar Crime



### **Omar Qureshi**

Partner  
T +4420 7367 2573  
E [omar.qureshi@cms-cmno.com](mailto:omar.qureshi@cms-cmno.com)



### **Eoin O'Shea**

Partner  
T +44 20 7367 2366  
E [eoin.oshea@cms-cmno.com](mailto:eoin.oshea@cms-cmno.com)



### **Colin Hutton**

Partner  
T +44 131 200 7517  
E [colin.hutton@cms-cmno.com](mailto:colin.hutton@cms-cmno.com)



### **Graeme MacLeod**

Partner  
& Investigations  
T +44 131 200 7686  
E [graeme.macleod@cms-cmno.com](mailto:graeme.macleod@cms-cmno.com)

## Financial Services Regulatory Investigations and Enforcement



### **Elisabeth Bremner**

Partner  
T +44 20 7367 3356  
E [elisabeth.bremner@cms-cmno.com](mailto:elisabeth.bremner@cms-cmno.com)



### **Alison McHaffie**

Partner  
T +44 20 7367 2785  
E [alison.mchaffie@cms-cmno.com](mailto:alison.mchaffie@cms-cmno.com)



### **Simon Morris**

Partner  
T +44 20 7367 2702  
E [simon.morris@cms-cmno.com](mailto:simon.morris@cms-cmno.com)

## Pensions



### **Johanna Clarke**

Partner  
T +44 20 7367 2606  
E [johanna.clarke@cms-cmno.com](mailto:johanna.clarke@cms-cmno.com)

## Life Sciences Regulatory



### **Shuna Mason**

Partner  
T +44 20 7367 2300  
E [shuna.mason@cms-cmno.com](mailto:shuna.mason@cms-cmno.com)

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CMS Cameron McKenna Nabarro Olswang LLP  
Cannon Place  
78 Cannon Street  
London EC4N 6AF

T +44 (0)20 7367 3000  
F +44 (0)20 7367 2000

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