Dawn Raids: What to do when you get the knock on the door
Introduction

A number of criminal and regulatory authorities in the UK have wide ranging powers to gain entry to and conduct a search of private premises as part of their investigations into potential wrongdoing. These searches are called dawn raids. They are made without prior notice and, given the powers being exercised, will happen whether you want it to or not.

Recent changes in the law and an increased focus on corporate responsibility for criminal wrongdoing in both regulated and unregulated markets make the prospect of being subject to a dawn raid all the more real for any company operating in the UK.

All companies should, therefore, know how to handle a dawn raid and have procedures in place in order to ensure that the company complies with its legal obligations and that its legal rights are respected.

Our guide will help you focus on the key practical and legal issues that commonly arise from the time when the raid starts until it is over. It covers action taken by the SFO, the Police, the FCA and PRA, the HSE, the Environment Agency and local authorities. The powers of authorities operating under domestic and European competition laws are outside the scope of this note. It does not cover all the issues that may arise in the context of dawn raids as many issues are fact specific and legal advice should be sought based on the particular circumstances of your case.

DAC Beachcroft’s Financial Crime and Regulatory specialists can answer any questions you have about the impact of dawn raids on your business and can act for you in the event of a dawn raid taking place. We also provide training on dawn raids in a variety of scenarios.

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Immediate Action

Dawn raids start at the front door. Consequently, receptionists need to have clear instructions on how to proceed and who to contact.

It is vital that those people who have first substantive contact with the investigators are calm and co-operative. The first piece of documentation that needs to be seen, before the search starts, is a warrant or other notice that gives the authority the right to conduct the search, states the reasons for it and, importantly, the scope of the search.

Instructions must also be issued to all employees that documents are not to be destroyed or deleted and any routine documentation destruction policies are to be suspended.

With the agreement of the investigators, employees need to be made aware that a search is being conducted, that they are not to do anything to obstruct it and that they should not discuss it with anyone, internally or externally, unless authorised to do so.

Instructions must also be issued to all employees that documents are not to be destroyed or deleted and any routine documentation destruction policies are to be suspended.

Conduct of the search

All businesses arrange their operations in different ways, whether by physical layout or via electronic infrastructure. Consequently, the first thing the search response team should do is seek to agree with the investigators how the search is to take place. In addition, the search response team should:

- If not already obtained, obtain a copy of the warrant/notice and review it, focusing on the validity and scope;
- Ensure the investigators know who can answer any questions they have in order to ensure, so far as is possible, that incorrect, incomplete or misleading information is not inadvertently provided by non-authorised employees;
- Ensure the investigators are supervised throughout the whole of the time they are on the premises and remain directed to the subject matter of the search they have permission to conduct. There is no obligation to allow investigators to roam freely about the premises and this should be avoided.
- Keep a written record of the conduct of the search including the parts of the premises visited, the files and computers examined or removed as well as questions asked and answers given.
Save where legal privilege applies, documents requested by investigators need to be provided. A note needs to be kept of any documents the investigators take, including electronic media. Where originals are taken, you should seek to obtain copies, although be aware that the investigator has no obligation to agree to you doing so.

Where the investigators ask questions, ensure that any replies are purely factual. Questions that go beyond seeking factual information are not permissible. Employees need to know they can be asked questions and that they should provide factual replies.

Investigators have the power to seal rooms or cabinets/cupboards, seize and/or disconnect electronic equipment and block email accounts during an investigation. Employees need to know not to tamper with anything done by investigators in this respect.

Dealing with electronic material may be more problematic. It may not be possible to prevent the investigators from taking copies of devices, hard drives or servers but it is important to identify they may contain privileged material. Steps can then subsequently be taken to isolate privileged material from any subsequent interrogation of this media.

You do not have a right to withhold confidential information, but it is important to identify it to the investigators as there are restrictions on any disclosure to third parties.

**Consequences of Obstructing a Search**

If an individual resists or obstructs the raiding authority during the course of its investigation the individual may be guilty of a criminal offence.

Any attempt to destroy or hide documents could also amount to perverting the course of justice. The offence is committed where a person acts or embarks in a positive way on a course of conduct that has a tendency to and is intended to pervert the course of public justice.

**Financial Conduct Authority and the Prudential Regulation Authority**

The intentional obstruction of an investigation amounts to a criminal offence under section 177(6) FSMA 2000 and the individual may be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £5,000, or both.
A failure without reasonable excuse to comply with a statutory document or information request, or to comply with an interview request, may be certified to court by the appropriate regulator and the individual would be treated as if he were in contempt of court.

Under Principle 11 of the Principles for Business, a firm must be open and cooperative with its regulator. If a company fails to comply with its duty to cooperate under Principle 11, the company may be subject to enforcement proceedings by either the FCA or the PRA, which could result in an unlimited fine. For breaches of Principle 11, the FCA may decide to cancel a firm’s authorisation under Part 4A of FSMA 2000 to carry on regulated activities.

HM Revenue and Customs

Any person who fails to comply, without reasonable excuse, with the requirements imposed on him by the Serious Organised Crime and Police Act 2005 (SOCPA) or any person who obstructs an investigation under a SOCPA warrant will be guilty of an offence punishable by up to 51 weeks’ imprisonment and / or a fine of up to £5,000 (section 67(4) SOCPA). Any person who makes a statement in response to a request under SOCPA which he knows to be false or misleading, or recklessly makes such a statement, may be guilty of an offence punishable by up to 2 years in prison and / or a fine (section 67(5) SOCPA).

Serious Fraud Office

It is a criminal offence to fail to comply with a requirement to provide information or documentation without reasonable excuse. This is a summary-only offence with a maximum penalty of six months imprisonment or a fine of up to £5,000, or both, for offences committed before 12 March 2015. For offences committed in England and Wales on or after 12 March 2015, there is no upper limit to the fine which the magistrates can impose. Conviction on indictment carries a maximum sentence of seven years imprisonment or a fine or both (section 2(16) CJA 1987 and section 85 of LASPO 2012).

Police

Any person who obstructs a police officer from carrying out an investigation shall be guilty of an offence punishable by imprisonment, a fine, or both under the Police Act 1996, section 89.

Health and Safety Executive

Anyone obstructing an inspector carrying out his powers of entry under section 20 of the Health and Safety at Work etc. Act 1974 (HSWA 1974) will be guilty of a criminal offence (section 33(1)(h) HSWA 1974) which attracts up
to 51 weeks’ imprisonment and / or a fine of up to £5,000 (Schedule 3A HSWA 1974). Directors who are convicted of health and safety breaches may also be disqualified for a period of time (section 2(1) of the Company Directors Disqualification Act 1986).

When the search is over

You hope the search is over in a day, but sometimes it isn’t. In either event, you need to meet with the investigator at the end of the first day.

In relation to continuing searches, the search response team will want to ascertain:

- What further areas are left to be searched and what, if any, steps should be taken overnight to secure/seal any areas/electronic media;
- Where multiple sites are being searched, which sites investigators will attend and at what time;
- Whether there are any disputed documents, whether that dispute can be resolved and if not, what needs to be done to have that documentation set aside pending resolution.

The investigators will most likely have made their own record of the search which will include an inventory and details of the questions asked and replies given. This note should be checked for accuracy and any corrections/additions made. Where there is a disagreement over the content of the note, such disagreement should also be noted. Ask for a copy of the note. If you are asked to sign it, only do so if you agree its contents.

Next steps

As soon as the investigators have left the premises there is an urgent need to deal with the following matters:

- The search response team should meet to discuss and agree strategy for dealing with the investigation;
- Consider whether any further information or documentation should be provided to the investigatory authority;
- Suspend routine document destruction policies, paying particular attention to electronically stored information;
- Assess whether any employees are implicated in the subject matter of the investigation. If necessary, remove them from their duties or suspend them (in accordance with employment law and policies);
- Prepare a written report of the search;
- Ensure that everyone knows not to make comments about the investigation as what is said could be disclosable and, potentially, prejudicial.
- If anyone has been arrested, ensure that they have appropriate legal representation, specifically in relation to any interviews held under caution;
- Consider, with your legal advisers, whether any reporting obligations arise or whether any report should be made to regulatory bodies;
- Notify insurers;
- In anticipation of press interest, prepare a short statement. This may be nothing more that stating the fact that a search has been conducted and the company is co-operating with the authorities, but reputational risk will be a key issue and should be proactively managed.
Conclusion

With greater focus on corporate responsibility and the potential criminality attached to certain types of wrongdoing, the need to be ready to deal with a dawn raid has increased. A well organised search response team will ensure that the company complies with its legal obligations and protects its legal rights.

However, this requires the company to invest the time in ensuring relevant employees, from the receptionist to senior management and legal and compliance staff know what to do. The consequences of getting it wrong can be very serious. Getting it right may well prove priceless.

Appendix

Who has the power to carry out a Dawn Raid?

1. Financial Conduct Authority and the Prudential Regulation Authority

The Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) can carry out dawn raids on the premises of firms which they regulate to collect evidence whenever the regulator suspects that the law in relation to financial services regulation has been breached. Under the Financial Services and Markets Act 2000 (FSMA 2000), section 176, either regulator may apply for a warrant to enter premises where documents or other information is being held.

Where is the power derived from?

A warrant may be obtained by the FCA and/or PRA in the limited circumstances described in section 176 of FSMA 2000, where:-

- A person on whom an information requirement has been served has failed to comply with it and there are documents or information on the premises that are the subject of the information request; or
- There are reasonable grounds to believe that an information request would not be complied with; or the documents or information to which it related would be removed, tampered with, or destroyed; or
- Information or documents are on the premises that relate to a FSMA 2000, section 168 offence (which, among other things, include offences involving criminality and market abuse).

Certain other criteria must also be satisfied.
There is parallel legislation for Northern Ireland. PACE does not apply in Scotland but there is legislation containing powers and safeguards that mirror the PACE provisions, adapted to the Scottish legal system. The remainder of this section refers to the legislation in England and Wales.

**What does HMRC have the power to do?**
Under section 8 of PACE 1984, when conducting a criminal investigation, HMRC has the power to apply to a magistrate for a warrant to enter and search premises. It can also seize and retain any material covered by the warrant. (Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2015, SI 2015/1783, Schedule 1).

HMRC can remove any material (including, if necessary, computer hardware) to which the search warrant relates. If requested, it must provide copies (or permit access for copying) of any material it removes within a reasonable time of the raid.

HMRC is not entitled to remove anything outside the scope of the warrant, or anything subject to legal professional privilege. However, if it is not practical to separate privileged and non-relevant material during the course of the raid, HMRC has the power to copy an entire computer hard drive, so the analysis can take place later.

A warrant issued to the PRA or the FCA under section 176 of FSMA 2000 entitles the relevant regulator to:-

- Enter the premises specified in the warrant;
- Search the premises and take possession of documents or other information that appears to be relevant to investigation;
- Take copies of, or extracts from, any such documents or information that appears to be of the relevant kind;
- Require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
- To use such force as may be reasonably necessary.

**Where is the power derived from?**
HMRC’s powers are derived from PACE 1984.

HM Revenue and Customs (HMRC) can investigate suspected tax-related criminal offences in England and Wales.

**Where is the power derived from?**
HMRC’s powers are derived from PACE 1984.

The Serious Fraud Office (SFO) is a specialist prosecuting authority with a remit to investigate serious or complex fraud, bribery and corruption.

**Where is the power derived from?**
The SFO’s powers are derived from the Criminal Justice Act 1987 (CJA 1987) and the Proceeds of Crime Act 2002 (POCA 2002).
What does the SFO have the power to do?

Under section 2 of the CJA 1987, the SFO can require individuals and companies to produce documents, to attend interviews to provide verbal evidence and to obtain warrants to search premises. These are steps taken with notice to the company and/or individual. However, where there is a risk that evidence may be destroyed the SFO can conduct a dawn raid without notice, which it would do in conjunction with the police having obtained a warrant to enter the premises and seize evidence. (Code B of the PACE 1984 codes of practice).

In addition to investigating and prosecuting criminal cases, the SFO aims to recover the proceeds of crime so that fraudsters do not benefit from their own offending and victims can be compensated. Mainly using the powers in the POCA 2002, this often involves:

- Carrying out confiscation investigations and seeking confiscation orders against those convicted in our cases;
- Obtaining compensation orders for the victims of fraud;
- Enforcing the confiscation orders obtained; and
- Seeking civil recovery orders in the High Court in respect of property which represents the proceeds of criminal conduct, even if there is no criminal conviction.

4. Police

The police may search premises on the authority of a warrant from a court, or with or without warrant under a number of statutory powers.

Where is the police’s power derived from?

Many of the police’s powers are governed by PACE 1984, Part II and Code B of the PACE 1984 codes of practice. The powers to search premises after an arrest are found in PACE 1984, sections 18 and 32.

Under section 32 of PACE 1984 for the police to search on arrest arises where a person has been arrested other than at a police station. The arrest must be for an indictable offence. Under this power, a constable can enter and search the premises where the arrest occurred, or those that the arrested person had left immediately before the arrest. The constable can search for evidence relating to the offence for which the person has been arrested and the constable must have reasonable grounds for believing that such evidence is on the premises.

Under section 18 of PACE 1984, when a suspect had been arrested for an indictable offence, a constable may enter and search premises occupied or controlled by him if there are reasonable grounds for suspecting that there is evidence on the premises (other than items subject to legal privilege) that relates either to that offence, or to some other indictable offence connected with or similar to that offence. Generally, a PACE 1984 section 18 search can only be carried out if it is authorised in writing by an officer of the rank of inspector or above. However, a constable can conduct a search without authorisation and before taking the arrested person to the police station, or before releasing him on street bail if the presence of that person at a place other than a police station is necessary for the effective investigation of the offence. In such a case, the officer must inform an inspector or above of the search as soon as practicable afterwards.

Under PACE 1984, Code B, section 5, a search of premises is always permissible either before or after an arrest with the consent of a person entitled to grant entry, although consent should be obtained in writing if practicable.
5. Health and Safety Executive

The Health and Safety Executive (HSE) is the main regulator for health and safety offences for factories, farms, construction sites and similar premises. The HSE’s powers are often more wide ranging than police powers. Local authorities also act as regulators for health and safety law in respect of certain industries and premises (for example retail and warehouse premises).

Where is the HSE’s power derived from?

HSE is established by section 10 of the Health and Safety at Work etc. Act 1974 (as amended) (HWSA 1974) in order to support the aim of health and safety at work through research, through the provision of training and information and through enforcement.

What does the HSE have the power to do?

Inspectors appointed under section 19 of HSWA 1974 have broad powers to enforce compliance with health and safety and related regulations.

These powers are set out in sections 20(2) and 25 of HSWA 1974 and include the power to:-

- Enter any premises without a warrant which inspectors think it necessary to enter for the purposes of enforcing HSWA 1974 (HSWA 1974, section 20(2)(a)).
- Make such examination and investigation as may be necessary to enforce HSWA 1974 (HSWA 1974, section 20(2)(d)).
- Order areas to be left undisturbed, take measurements, photographs and recordings, take samples and take possession of, and carry out tests on, articles and substances that appear to have caused (or be likely to cause) danger (HSWA 1974, section 20(2)(e)).
- Take samples of any articles or substances (HSWA 1974, section 20(2)(g)).
- In the case of an article or substance which appears to him to have caused or be likely to cause danger to health and safety to cause it to be dismantled or destroyed (HSWA 1974, section 20(2)(h)).
- Require anyone they think might give them relevant information to answer questions and sign a declaration of the truth of the answers (HSWA 1974, section 20(2)(j)).
- Require the production of, inspect and take copies of relevant documents (HSWA 1974, section 20(2)(k)).
- Require facilities and assistance to be provided (HSWA 1974, section 20(2)(l)).

Inspectors are also given “any other power which is necessary for the purpose” of carrying into effect the relevant statutory provisions (HSWA 1974, section 20(2)(m)).

In addition, inspectors have limited powers to arrest a person who has committed, or is in the act of committing, an indictable offence, or anyone inspectors have reasonable grounds to suspect is committing or has committed such an offence under PACE 1984, section 24A.

6. The Environment Agency

The Environment Agency and local authorities are responsible for the enforcement of environmental law. Their Enforcement powers are derived from the Environment Act 1995 and mainly relate to the control of pollution.

What does the Environment Agency have the power to do?

Environment Agency inspectors and local authority Environmental Health Officers have powers in order to determine whether or not any provisions of relevant pollution control laws are being, or have been, complied with; of exercising or performing one or more of their pollution control functions; or of determining whether and, if so, how such a function should be exercised or performed.
Their powers are set out in section 108(4) of the Environment Act 1995 and include the following:

- to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises and to take persons or equipment, as required in order to make any necessary examination and investigation.
- to direct that those premises or any part of them, or anything in them, shall be left undisturbed for so long as is reasonably necessary for the purpose of an examination or investigation;
- to take such measurements and photographs and make such recordings for the purpose of an examination or investigation
- to take and retain samples of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- in the case of any article or substance found which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or tested and detained.
- to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation above to answer such questions to sign a declaration of the truth of his answers;
- to require the production of any records (including digital records) which are required to be kept under relevant pollution control laws, and to inspect and take copies of them;
- to require that facilities and assistance be provided;

The Environment Agency and local authorities also have powers derived from specific environmental regulation. For example, under Section 34 of the Environmental Protection Act 1990 and Regulation 35 of the Waste (England and Wales) Regulations 2011 they can require companies to produce waste transfer records within 7 days.

7. Food Safety

The Food Safety Act 1990 is the dominant piece of food safety legislation in the UK. The work of enforcing food safety and hygiene law rests predominantly with environmental health and trading standards officers from local authorities. The Food Standards Agency enforces some regulations made under the Act (e.g. licensing of irradiated food facilities) and can become involved in emergency situations.

**Powers to Investigate Food Safety and Hygiene Offences**

The Act provides that authorised officers of food authorities with the following powers:

- To take samples of food and food ingredients for microbiological analysis;
- To enter food premises unannounced to investigate possible offences. If an initial request for entry has been refused, officers can apply to a Magistrate for a warrant authorising entry.
- The definition of “premises” in the Act is very broad. It includes buildings where food is prepared, stored or sold, such as food processing plants, supermarkets or restaurants. It also covers farms and vehicles used for transporting or delivering food, ships, aircraft, road-side and market stalls and also private dwellings if used by food businesses.
- To take their own visual records, such as still photographs and videos;
- To inspect food to see if it is safe. Officers may also detain suspect food or seize it and make an application to a Magistrate to determine whether it is unsafe and therefore should be condemned.