
SEARCH WARRANTS



RESPONDING TO
SEARCH WARRANTS
IN SCOTLAND

Search warrants in Scotland

A criminal investigation has the potential to cause significant financial and reputational damage to any organisation. During a criminal investigation businesses need to understand how to respond quickly and effectively to contact from the investigating authorities. Scotland has a distinct criminal justice system and criminal procedure from the rest of the UK. In this short briefing note we provide a practical overview about search warrants in Scotland.

What is the procedure for granting a search warrant?

An application for a search warrant will be made by the Crown in Scotland. An application will normally be made by a Procurator Fiscal Depute on the basis of information provided to him/her by the investigating authority. Although other investigating authorities, such as HMRC, may seek a warrant they are most commonly applied for by Police Scotland.

🗨️ Warrants to search premises must **specify the purpose and limitations** of the search. Wide or indefinite warrants are illegal and unenforceable.

An application for a warrant is heard by a sheriff sitting in chambers and the police officer seeking the warrant may also be present. In certain circumstances, the police officer seeking the warrant will be required to provide additional information to the sheriff on oath.

What does a search warrant entitle a person to do?

A common law search warrant is an authorisation issued by the court to a person that entitles them to use reasonable force to:

- obtain entry to premises;
- search premises;
- take reasonable steps to preserve documents or prevent interference with them; and
- seize original documents, if such action appears to be necessary for preserving the documents or preventing interference with them, or if it is not reasonably practicable to take copies of the documents on the premises.

We strongly recommend that a business takes legal advice when responding to a search warrant and before providing any documents to the investigating authorities. The investigating authorities may not examine in detail or copy documents that are not relevant to the warrant; examine in detail or copy documents that are legally privileged; or require answers that might infringe an individual's right against self-incrimination.

We also recommend that a business should retain copies of all documents copied or removed by the investigating authority.

Has the warrant been validly executed?

It is important to check whether the warrant is properly signed. Warrants are only enforceable if they are validly executed by the relevant authorities. They must be signed by the sheriff or justice of the peace who grants them. A sheriff / justice of the peace can grant a warrant in respect of premises outside the jurisdiction of the relevant court.



How specific does the warrant need to be?

Warrants to search premises must specify the purpose and limitations of the search. Wide or indefinite warrants are illegal and unenforceable.

A widely drawn warrant to search for documents in premises in order to find evidence of guilt could be illegal if it covered confidential documents that would need to be read before their relevancy could be confirmed.

The investigating authorities executing a warrant must be aware of the terms, otherwise the search will be random and illegal, and the results may be inadmissible.

“ At a trial it is also possible to **challenge the admissibility** of evidence obtained under a search warrant.

However, the general principle is that once the police are lawfully on premises with a search warrant, they may take any suspicious articles they happen to see, but cannot actively search for articles outwith the warrant or take away articles which might on further examination disclose further offences.

Can the premises be inspected without a warrant?

Investigating authorities have very limited powers of inspection where no warrant has been issued. It is competent for the police to search without a warrant in circumstances of urgency. If an inspection is taking place without a warrant the police may not force entry, but it is still an offence to obstruct an investigation (for example by refusing entry to premises). The police are not entitled to search premises without a warrant, but may ask to be taken to specific parts of the premises where documents are kept, to inspect them in their original location.

How do you challenge a warrant?

Warrants may be challenged by way using a procedure called a Bill of Suspension in the High Court in Scotland. A challenge may be brought before the warrant is executed, in the course of its execution, or after its execution. The grounds of challenge include that it was incompetent to grant the warrant or that there was no reasonable basis for granting the warrant based on the information put before the sheriff. At a trial it is also possible to challenge the admissibility of evidence obtained under a search warrant. Admissibility of evidence found after search depends upon the whole circumstances including whether or not the search was carried out under a valid warrant.



Key contact



Paul Marshall
PARTNER
+44(0)131 656 0062
paul.marshall@brodies.com

