

An Inspector Calls: Raids and inspections by regulatory authorities

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 – see insert to this pack “unwanted media attention?”

– **When the inspectors arrive**

- Check identity, authorisation (warrant?) and scope of investigation
- Notify these people immediately
 - anyone for whom the officials ask by name
 - Managing Director
 - in-house legal
 - CMS Cameron McKenna - 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 which are privileged or outside scope of investigation

– **When the inspectors leave**

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

Main powers of HM Revenue & Customs, Serious Fraud Office, Police, Health and Safety Executive, Environment Agency, OFT/European Commission, Solicitors and Financial Services Authority 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 environment laws (which may also constitute a criminal offence)	Competition	Search Orders	Breach of Financial Services and Markets Act 2000 (may also constitute a criminal offence) /insider dealing
Authority	HM Revenue & Customs	HM Revenue & Customs	Serious Fraud Office (SFO) and the Police	Police (and the Serious Organised Crime Agency (SOCA) for serious and organised crime)	SOCA, the Police, OFT, possibly HM Customs & Excise and other government agencies	Health and Safety Executive or local authority	Environment Agency or the Scottish Environment Protection Agency ("SEPA")	Office of Fair Trading and/or European Commission	Solicitors	Financial Services Authority
What are the grounds for investigation by an authority?	Police and Criminal Evidence Act 1984	Finance Act 2008	Section 2 Criminal Justice Act 1987 (CJA)	Police and Criminal Evidence Act 1984 (PACE) (not in Scotland)	Proceeds of Crime Act 2002 (POCA) and POCA Code of Practice, possibly also SOCA)	Health and Safety at Work Act 1974 (HSWA)	Environment Act 1995 ("EA 1995") Sometimes PACE is also used	Reasonable grounds to suspect a UK competition law breach/inspection is necessary to ascertain breach of EU competition law	Civil Procedure Rules, Part 25	Ss165-169 FSMA
What is the authorising document?	Search Warrant	Notice of Inspection	Warrant issued to the Police	Warrant	Warrant or Production Order of the Court	None	None under s108 EA 1995 Code B Notice under PACE	OFT authorisation and/or warrant and/or EC authorisation/ decision	Search Order	Police Warrant, unless FSA exercising its supervisory powers against an authorised firm in which case firm must allow entry
Can they proceed in the absence of the company's in-house lawyer?	Yes	Access can be denied -modest fines for non-cooperation	Yes	Yes	Yes	Yes	Yes	Yes	Not if you choose to seek legal advice	Yes
Do they have the power to enter the company's premises?	Yes	Not unless company agrees	Yes	Yes	Yes	Yes	Yes	Yes	Not unless the company agrees	Yes
Power to use force to enter?	Yes	No	Yes	Yes	No	No	Yes in limited circumstances	No for EU inspectors; yes for UK inspectors	No	Yes
Can they search the premises?	Yes	No - may "inspect"	Yes	Yes	Yes	Yes	Yes	Yes if OFT has warrant; no if OFT has no warrant; no for EU inspectors	Yes	Yes
Can they call for production of documents?	Yes	May only look at statutory records, premises and assets	Yes	Yes	Yes	Yes	Yes	Yes	Yes, provided it is covered by the terms of the Order	Yes and if under warrant provided of "the relevant kind" (s176(5) FSMA)
Can they remove original documents	Yes	Yes	Yes	Yes	Yes	No	No under s108 EA 1995	Yes if OFT has UK warrant; no if OFT has no warrant; no for EU inspectors	Yes, provided it is covered by the terms of the Order	Yes and if under warrant provided of "the relevant kind"
Can they take copies of documents?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes, provided it is covered by the terms of the Order	Yes and if under warrant provided of "the relevant kind"
Must they provide a list of documents copied/seized?	Yes	Must provide a receipt and a copy of the document if "reasonably required"	No	England & Wales: Must provide a record of what was taken	Yes	No	No	No	Yes	England and Wales: Must provide a "record of what was taken"
Is legal advice protected?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes for external advice; in-house only if OFT inspects	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	Yes if EU inspectors; yes if OFT inspects on EU's behalf; no if OFT inspects on its own behalf	No	Yes to provide an explanation or to explain where information may be found. Yes if authorised firm
Is there a right of silence?	Yes	N/A	N/A	Yes	Yes	No	No	No	N/A	Yes if criminal offence investigation and suspect interviewed under caution
Must the police be in attendance?	Generally not unless take fingerprints, charge or bail suspects	No	Yes	Yes	Possibly if s352(5)(a) POCA investigation No if under s352(5)(b) POCA	No	No	No	Yes, if the Search Order specifies	Yes if investigation is under a warrant
"Additional Powers of Seizure" of the Criminal and Police Act 2001 apply?	Yes	No	Yes	Yes	Yes	No	No	Yes for UK competition or cartel offence investigation	No	Yes

NB 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.

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