



Attorney  
General's  
Office

# **DRAFT CODE OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002**

**Amendments to the Code to reflect the full commencement of  
the Criminal Finances Act 2017 in Northern Ireland**

Consultation Document

November 2020



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## Introduction

1. The Proceeds of Crime Act 2002 (POCA) contains a comprehensive legal framework for investigating, and the recovery of, the proceeds of crime. The Criminal Finances Act 2017 (CFA) added to the asset recovery and investigation powers in POCA and was commenced in England and Wales and Scotland in April 2017. The operation of certain powers within POCA, including those inserted by the CFA, are subject to Codes of Practice issued by the Home Secretary, the Attorney General for England and Wales and the Advocate General for Northern Ireland, the Department of Justice, Northern Ireland, and Scottish Ministers.
2. The existing guidance needs to be updated in advance of the full commencement of the CFA amendments to POCA in Northern Ireland. Please note that the CFA's amendments will not be commenced in Northern Ireland until the relevant secondary legislation is passed in Parliament and by the Northern Ireland Assembly.
3. POCA provides that when a Code of Practice is revised, the relevant authorities must prepare and publish a draft, they must consider any representations made and modify the Codes as appropriate, and they must lay the Codes before Parliament or the Northern Ireland Assembly (as appropriate) for approval.

## The Code

4. This consultation seeks views on one Code, issued by the Attorney General for England and Wales and Advocate General for Northern Ireland under section 377A of POCA. The Code provides guidance for prosecutors in England, Wales, and Northern Ireland on the exercise of the investigation powers in Chapter 2, Part 8 of POCA. The Code will replace earlier Codes issued under section 377A of POCA. The revised Code relates to the whole of the UK, and the only significant amendments to the Code are those that seek to apply the CFA to officers operating in Northern Ireland.



5. The Home Office and the Department of Justice, Northern Ireland, have published consultations in tandem with this one, which seek views on eight further Codes.
6. Where an officer subject to the Codes fails to comply with any provision of any Code they would not, by reason of that failure alone, be liable to any criminal or civil proceedings, but the Code is admissible as evidence in such proceedings.

## How to respond

7. The consultation is open to other Government departments, interested organisations using these powers, and the public via the Attorney General Office's website. The two other consultations issued by the Home Office and the Department of Justice, Northern Ireland, are available on their websites.
8. The consultation is in respect of the draft revised Code governing the exercise of the powers provided by the CFA in Northern Ireland. The consultation does not seek views on the powers themselves or their commencement in Northern Ireland. Respondents should be aware of this distinction in making specific comments and suggestions. The Code is intended to be self-explanatory and so we would welcome views on any passages that are confusing or lacking in clarity. In particular, we would welcome answers to the following questions:
  - **Question 1:** Do you have any comments about the proposed amendments to the Code?
  - **Question 2:** Will the proposed amendments to the Code have an adverse impact on your organisation?
9. **The closing date for comments is 22 January 2021.**



10. There are a variety of ways in which you can provide us with your views. Given the current situation with Covid-19, we would appreciate consultation responses being sent via email to: [CFAconsultation@attorneygeneral.gov.uk](mailto:CFAconsultation@attorneygeneral.gov.uk).
  
11. Alternatively, you can write to us at:

POCA Code of Practice consultation  
Attorney General's Office  
102 Petty France  
London  
SW1H 9EA

12. If we believe that your response relates to the Codes of Practice issued by the Home Office or the Department of Justice, Northern Ireland, we will share your response with the relevant department.

## What will happen next?

13. We will consider the responses to this consultation and modify the draft Code if appropriate. We will then lay the relevant Code in Parliament for debate, under cover of a statutory instrument. If Parliament approves the Code and statutory instrument, the Code will come into force. Its coming into force will be synchronised with the commencement of the powers to which they relate in Northern Ireland.

## Alternative formats

14. You should also contact us as specified above should you require a copy of this consultation paper in any other format, e.g. Braille, large font, or audio.

## Responses: confidentiality and disclaimer

15. The information you send us may be passed to colleagues within the Government, the Devolved Administrations, the Appointed Person and related agencies.



16. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)).
17. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which sets out, amongst other things, the obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.
18. An automatic confidentiality disclaimer generated by your IT system will not, by itself, be regarded as binding on the Department.
19. Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.
20. The Department will process your personal data in accordance with the data protection legislation in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
21. Individual contributions will not be acknowledged unless specially requested.
22. Representative groups are asked to give a summary of the people and organisations they represent when they respond.