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Home Office

# **CODES OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002**

Consultation Document

November 2014

## Introduction

The Home Office has previously consulted on earlier drafts of Codes of Practice from 10 July 2013 to 30 August 2013 (see [www.gov.uk/government/consultations/codes-of-practice-issued-under-the-proceeds-of-crime-act-2002](http://www.gov.uk/government/consultations/codes-of-practice-issued-under-the-proceeds-of-crime-act-2002)). The draft Codes have been updated since the consultation in 2013, although there have been no major changes of substance. The Home Office is therefore asking for comments and suggestions (drafting and otherwise) on the guidance in the draft Codes of Practice at Annexes A, B, C and D. Due to the previous consultation and the limited target audience, the consultation has been shortened to a period of 3 weeks for responses.

The Proceeds of Crime Act 2002 (POCA) contains a comprehensive package of measures designed to make the recovery of unlawfully held assets more effective. The Policing and Crime Act 2009, the Coroners and Justice Act 2009, the UK Borders Act 2007 and, most recently, the Crime and Courts Act 2013, amend and extend these powers. It is of note that the proposed amendments to POCA in the current Serious Crime Bill are not reflected in these Codes. Therefore any changes required by those new provisions may necessitate new updated codes in the future.

There are four separate Codes of Practice:

- Two Codes (Annexes A and B) providing guidance about exercising the powers to search and seize and detain property. The property is retained in order for it to be sold to meet the value of a confiscation order in certain circumstances. One Code relates to England and Wales and one to certain officers operating in Northern Ireland.

Please note, the Code for Northern Ireland refers also to immigration officers. POCA was amended by the Crime and Courts Act 2013 to add an immigration officer to the list of “appropriate officers” in sections 190A and 195A, and to define “senior officer” in section 195G to include a definition of senior officer in relation to immigration officers. Corresponding amendments were not made to section 195S, to add immigration officers to the list of officers to whom this code applies, and to amend the definition of senior officer accordingly. These omissions were in error, section 195S should have been so amended. . However, an Order is currently before Parliament that will make the necessary amendments to section 195S. The Order requires the approval of both Houses of Parliament before it can be made. The Code for Northern Ireland will not be made in the form being consulted on, i.e. including immigration officers, unless and until that Order is made.

- A Code providing guidance on the operation of the powers to search for cash where there are reasonable grounds for suspecting that it is recoverable property (property obtained through unlawful conduct) or it is intended for use in unlawful conduct (Annex C). This Code will replace an earlier one introduced on 6 April 2008 so as to include the new power to search vehicles. The Code relates to the whole of the UK, but only in relation to certain officers operating in Scotland and Northern Ireland.
- A Code providing guidance on the exercise of the investigation powers in POCA (Annex D). This Code will replace an earlier one introduced on 1 April 2008 so as to include extended powers relating to civil recovery investigations and transfer of jurisdiction from the High Court to the Crown Court in detained cash investigations. The Code relates to England and Wales and Northern Ireland, but only in relation to certain officers operating in Northern Ireland.

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POCA provides that when the Secretary of State proposes to issue or revise a Code of Practice the Secretary of State must prepare and publish a draft; consider any representations made; modify the draft as appropriate; and lay it before Parliament for approval.

The Codes will cover the operation of the various powers under POCA. The persons operating these powers will be the Director General of the National Crime Agency and officers of that agency, accredited financial investigators, constables, officers of Her Majesty's Revenue and Customs and Immigration Officers.

An accredited financial investigator is an investigator accredited under section 3 of POCA to have access to some or all of the powers of investigation. In some instances, the accredited financial investigator must come within a category set out in an order made by the Secretary of State under section 453 of POCA. The latest order is the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (SI 2009 No. 975) and includes members of staff of the Serious Fraud Office, Environment Agency and the Department for Work and Pensions among others.

The new Codes of Practice closely parallel the provisions in existing Codes, and the revised Codes build on earlier versions of the same Code. Officers operating the powers will therefore already be familiar with most of the procedures and safeguards. Familiarisation with the text of the Code in the financial investigation community will not be an onerous exercise.

Associated with these Codes is the Code made by the Attorney General or Advocate General for Northern Ireland for prosecutors under section 377A of POCA. This will be consulted upon separately and published on the Attorney General's website.

For existing investigators, training on the new Codes will form part of their Continuous Professional Development activity. It is envisaged that officers will familiarise themselves with the Codes and undertake practical exercises. This training is expected to be no more than half a day. For new financial investigators, the training will be incorporated in pre-course study and the pre-course online exam. This will be followed with a practical based case study worked through in the classroom phase of the initial training. At the end of the consultation and Parliamentary process, the Codes will be available on the Financial Investigation Support System, a secure web-based support system for financial investigators.

The total cost of devising and delivering this training package has been estimated at approximately £10,000. Training and awareness of the new powers and the Codes would be required and the impact on equality would form part of the training delivered to the officers who will exercise the powers.

Where an appropriate officer fails to comply with any provision of the Codes, 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. Because a court may take account of any failure to comply with the provisions in the Codes in determining any question in the proceedings, it is essential that the training is provided.

The new Codes and the new passages in the amended Codes provide guidance on the new and extended powers introduced by the Policing and Crime Act 2009 and the Crime and Courts Act 2013. At the time of publishing the Bills which became those Acts, it was determined that the proceeds of crime provisions did not fulfil the criteria for requiring a Regulatory Impact Assessment to be undertaken.

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An Equality Impact Assessment (EIA) was completed in respect of the new provisions during the passage of the relevant legislation and it was identified that amendments would be required to the Codes of Practice, these amendments are contained in these Codes.

## **How to Respond**

The consultation is open to other Government Departments, interested organisations using these powers and the public (via the Home Office gov.uk website).

The consultation is in respect of the Codes of Practice providing guidance on the exercise of the powers, rather than the actual powers. Respondents should be aware of this distinction in making specific comments and suggestions. The Codes are intended to be self-explanatory and so we would welcome views on any passages that are confusing, ambiguous or lacking in clarity. In particular, we would welcome answers to the following questions:

### ***Question 1***

The draft Codes will affect organisational responsibilities in relation to the seizing and retention of property. Do you have any comments to make in relation to the advice contained within the Codes?

### ***Question 2***

Will the draft Codes have an adverse impact on your organisation?

### ***Question 3***

The Cash Seizure Code (Annex C) and the Investigations Code (Annex D) have been in existence for some time. Do you have any comments to make in relation to how those Codes have operated?

## **The closing date for comments is 14<sup>th</sup> December 2014**

There are a variety of ways in which you can provide us with your views:

**You can email us at:** [POCACOPconsultation@homeoffice.gsi.gov.uk](mailto:POCACOPconsultation@homeoffice.gsi.gov.uk)

**Or you can write to us at:**

POCA Codes of Practice  
Strategic Centre for Organised Crime - Pursue  
Home Office  
6th Floor Peel Building  
2 Marsham Street  
London  
SW1P 4DF

## **Alternative Formats**

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**

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

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 1998 (DPA)).

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.

An automatic confidentiality disclaimer generated by your IT system will not, by itself, be regarded as binding on the Department.

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.

The Department will process your personal data in accordance with the DPA - in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual contributions will not be acknowledged unless specially requested.

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## **What Will Happen Next?**

### **The Consultation Period will end on 14<sup>th</sup> December 2014**

We will consider the responses to this consultation and modify the draft Codes if appropriate. We will then lay the Codes in Parliament for approval, following which they will come into force.

### **Consultation Co-ordinator**

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office Co-ordinator Laieque Pir by email at:

**Laieque.Pir@homeoffice.x.gsi.gov.uk**

**Alternatively, you may wish to write to him at:**

Mr Laieque Pir  
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2 Marsham Street  
London  
SW1P 4DF