



Home Office

DRAFT CODES OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002

Consultation Document

July 2015

Introduction

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 operation of certain powers within POCA are subject to guidance issued by the Secretary of State in various codes of practice. The existing codes need updating due to certain provisions in the Serious Crime Act 2015 and the full extension of POCA powers to Northern Ireland.

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 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, replacing one introduced on 1 June 2015, and a new code relates to the exercise of certain functions in Northern Ireland.
- 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 relating to Northern Ireland introduced on 6 April 2008 to include the new power to search vehicles. The code also replaces one relating to England and Wales and Scotland introduced in 1 June 2015. The new code relates to the whole of the UK, but only in relation to the exercise of certain functions 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 in Northern Ireland on 1 April 2008 to include extended powers relating to civil recovery and confiscation investigations and transfer of jurisdiction from the High Court to the Crown Court in detained cash investigations. The code also replaces one introduced on 1 June 2015 in England and Wales so as to include guidance relating to the extended confiscation investigation powers. The code relates to England and Wales and Northern Ireland, but only in relation to the exercise of certain functions in Northern Ireland.

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 exercising 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) as amended by the Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009 (SI 2009 No. 2707) and includes members of staff of the Serious Fraud Office, Environment Agency and the Department for Work and Pensions.

The codes of practice closely parallel the provisions in other codes and earlier versions of the same code. Officers operating the powers will therefore already be familiar with 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 are ones issued by the Department of Justice in Northern Ireland, the Attorney General and the Advocate General in Northern Ireland. These are the subject of separate consultation exercises which will be published on their respective websites.

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 delivering the revised training package to Northern Ireland is estimated at £5,000. This will include provisions introduced by the Serious Crime Act 2015 into England and Wales. 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. There is a requirement to design and deliver new templates to support the new provisions.

Where any “appropriate officer” or “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, the Crime and Courts Act 2013 and the Serious Crime Act 2015. Many of these provisions are already in force in England and Wales and Northern Ireland but are now being extended to Northern Ireland. 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.

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 Friday 2nd October 2015

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

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 Friday 2nd October 2015

We will consider the responses to this consultation and modify the draft Codes if appropriate. We will then lay the Codes in Parliament for debate 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 Stephen Goadby by email at:

Stephen.Goadby@homeoffice.x.gsi.gov.uk

Alternatively, you may wish to write to him at:

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