



Attorney
General's
Office

CODE 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 investigatory powers within POCA by prosecutors in England, Wales and Northern Ireland are subject to guidance issued by the Attorney General and the Advocate General for Northern Ireland in a code of practice. The existing guidance needs to be updated due to certain provisions in the Serious Crime Act 2015 and the full extension of POCA powers to Northern Ireland.

This Code of Practice (the Code) is issued by the Attorney General 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 introduced on 1 June 2015 in respect of England and Wales, and on 1 April 2008 in respect of Northern Ireland. The revised Code relates to the whole of the UK, but only in relation to certain officers operating in Scotland and Northern Ireland.

POCA provides that when the Attorney General and Advocate General for Northern Ireland propose to issue or revise a Code of Practice they must prepare and publish a draft; consider any representations made; modify the draft as appropriate; and lay it before Parliament for approval.

There is a separate consultation and Code of Practice issued by the Home Secretary covering the operation of these powers by the Director of the National Crime Agency and officers of that agency, financial investigators, constables, officers of Revenue and Customs and immigration officers.

Where a prosecutor fails to comply with any provision of the 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.

The revised Code includes 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 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 Code, these amendments are contained in the Code.

How to Respond

The consultation is open to other Government Departments, interested organisations using these powers and the public via the Attorney General's Office website.

The consultation is in respect of the Code's 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 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 to make in relation to the advice contained within the Codes?

Question 2

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

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@attorneygeneral.gsi.gov.uk

Or you can write to us at:

POCA Codes of Practice

Attorney General's Office

20 Victoria Street

London SW1H 0NF

Alternative Formats

You should also contact us as specified above should you require a copy of this consultation paper in any other format.

Responses: Confidentiality and Disclaimer

The information you send us may be passed to colleagues within 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.