

CODES OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002

Consultation Document

July 2017

Introduction

The Proceeds of Crime Act 2002 (POCA) contains a comprehensive package of measures to recover of unlawfully held assets more effectively. The Criminal Finances Act 2017 amends and extends these powers.

The Home Office has previously consulted on POCA Codes of Practice from 10 July 2015 to 2 October 2015, see www.gov.uk/government/consultations/codes-of-practice-issued-under-the-proceeds-of-crime-act-2002-poca).

The ATCSA Code of Practice is effectively being re-written to include guidance for officers on the exercise of the various new seizure, detention and forfeiture powers which have been created by the Criminal Finances Act. The existing Code is limited in scope and has not been updated since 2001. Officials are therefore liaising with CT policing colleagues to ensure, for example, that the revised Code reflects current best practice and aligns with their procedures; and also with HMT to agree how the duty to consult with them before exercising certain powers will work in practice.

The draft Codes have been updated since the consultation in 2015 to reflect amendments made by the Criminal Finances Act 2017 to the Proceeds of Crime Act (POCA) 2002 and the Anti-Terrorism, Crime and Security Act (ACTSA) 2001. A period of 4 weeks is available for responses.

There are six separate Codes of Practice:

- A Code providing guidance on exercising the powers to search and seize and detain property. The Code has been updated to reflect the inclusion of SFO officers, new offences of assault and obstruction, the change in authority for civilian accredited financial investigators (FIs) and the abolition of certain restrictions relating to officers of Revenue and Customs.
- A Code providing updated 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. This Code will replace an earlier one introduced on 1 March 2016 to reflect changes similar to those contained in the search, seizure and detention Code. 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 updated guidance on the exercise of the investigation powers in POCA. This Code will replace an earlier one introduced in March 2016 so as to include new and extended powers relating to unexplained wealth orders and disclosure orders. The Code also covers the extension of civil recovery powers to officers of Revenue and Customs and officers of the Financial Conduct Authority. The Code relates to England and Wales and Northern Ireland, but the provisions in the Criminal Finances Act will initially only apply to England and Wales. Those powers currently unavailable in Northern Ireland are specified throughout the Code.
- A new Code covering search powers related to the seizure of certain personal (moveable) property including precious metal and stones, artistic works and other listed assets derived from, or intended for use in, unlawful conduct.
- A Code providing updated guidance for prosecutors on the operation of investigation powers. This Code is issued by the Attorney General.

- An ACTSA Code relating to new powers to administratively forfeit terrorist cash and the introduction of new powers to seize, detain and forfeit special moveable property held in bank and building society accounts.

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 and ACTSA. 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, Immigration Officers, Serious Fraud Office officers and officers of the Financial Conduct Authority.

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 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.

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. 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.

Training and awareness of the new powers and the Codes will be required and the impact on equality will 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 Code and the new passages in the amended Codes provide guidance on the new and extended powers introduced by the Criminal Finances Act 2017.

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

With the exception of the Code relating to personal (moveable) property, the Codes have been in existence for some time. Do you have any comments to make in relation to how those Codes have operated?

Question 4

Do the Codes provide adequate guidance to officers on how to discharge their responsibilities?

The closing date for comments is 25 August 2017

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

You can email us at: Criminalfinancesact@homeoffice.x.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 25 August 2017

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 John Woodthorpe by email at:

John.woodthorpe@homeoffice.x.gsi.gov.uk

Alternatively, you may wish to write to him at:

John Woodthorpe
Home Office
6th Floor Peel Building
2 Marsham Street
London
SW1P 4DF