



Home Office

# **The Police, Crime, Sentencing and Courts Act 2022**

## **Consultation: The Extraction of Information from Electronic Devices: Code of Practice**

May 2022



## Ministerial Foreword

With so much more of our lives lived online, devices such as mobile phones now hold large volumes of information about us, some of which is highly sensitive and personal. When someone is a complainant or a witness to a crime there may be crucial information on a device that could help to bring someone to justice.

The invasive nature of the process around disclosure of this digital information has long been raised as an issue by victims and can stop someone from reporting a crime or continuing with a prosecution. It is vital that victims and witnesses are confident they will be treated with sensitivity and dignity when reporting crimes and that their rights to privacy are protected so that more victims feel able to come forward.

That is why I have introduced, in the Police, Crime, Sentencing and Courts [Act] new statutory powers to govern the practice of extraction information from electronic devices. This Act completed Parliamentary passage in April and creates a clear statutory basis for police and other authorities to extract this information with the agreement of a device user. These powers contain important safeguards that prioritise the privacy of the individual and ensure any request to obtain information from a victim or witness is necessary and proportionate.

The use of the powers will be supported by a code of practice, and it is this guidance which I now seek views on. The draft code has a number of important functions and includes:

- Detailed guidance on when and how these powers should be used and the considerations when making assessments of necessity and proportionality including where there is a risk of obtaining either confidential information or information which may not be necessary for the purpose for which the powers are being exercised.
- An overview of the existing responsibilities for authorised persons under the Human Rights Act and the Data Protection Act
- Guidance on ensuring a device is provided voluntarily by a user (or on behalf of the user) and with their agreement to the extraction of information.
- Specific guidance on the use of the powers with children and adults without capacity
- Detailed guidance about the use of the powers with victims who may be vulnerable due to the trauma they have experienced and who may need more support to make decisions about issues that affect them, such as whether to provide agreement to the extraction of information from their device.

These new powers and the code of practice present an opportunity to drive real cultural change in the way information belonging to complainants and witnesses is obtained, putting an individual's right to privacy at the centre of the decision-making process.



Rt Hon Kit Malthouse MP

# Contents

Scope of the consultation	3
Basic Information	3
Background	4
What is the code of practice?	5
Why are we consulting?	5
Extraction powers - Summary table	7
Questionnaire	8
About you	15
Contact details and how to respond	16
Consultation principles, disclosure of responses and data protection	17

## Scope of the consultation

Topic of this consultation:	This consultation is on the draft Extraction of Information from Electronic Devices: code of practice under Part 2, Chapter 3 of the Police, Crime, Sentencing and Courts Act 2022.
Scope of this consultation:	This consultation seeks representations on the draft code of practice.
Geographical scope:	UK-wide

## Basic Information

To:	Representations are welcome from public authorities that have powers under Part 2, Chapter 3 of the Police, Crime, Sentencing and Courts Act 2022, statutory consultees as detailed within the Act, other professional bodies, interested groups and the wider public.
Duration:	Commencing on 17 <sup>th</sup> May for 8 weeks, closing on 12 <sup>th</sup> July.
Enquiries and responses:	Please email your enquiries and responses to <a href="mailto:PCSCExtractioncode@homeoffice.gov.uk">PCSCExtractioncode@homeoffice.gov.uk</a>
After the consultation:	Following the consultation period, responses will be analysed, and the draft code will be revised as necessary. The code will then be laid before Parliament for approval.

## Background

<p>Getting to this stage:</p>	<p>The Government introduced, in Part 2, Chapter 3 of the Police, Crime, Sentencing and Courts Act, new statutory powers for the extraction of information from electronic devices. These powers provide authorised persons with a clear legal basis in which devices can be examined in a limited number of scenarios where strict criteria has been met. This is needed to limit the amount of sensitive personal information being extracted from devices belonging to victims and witnesses and to better protect the privacy of these individuals.</p> <p>The power in section 37 of the Act allows authorised persons to extract information stored on a device used by a victim or witness when it has been voluntarily provided and agreement has been given that information can be extracted. This power may only be exercised for the purposes of preventing, detecting, investigating, or prosecuting crime, helping to locate a missing person, or protecting a child or an at-risk adult from neglect or physical, mental, or emotional harm. The power in section 41 of the Act allows authorised persons to extract information from a device where a person who was a user of the device has died and, immediately before they died, they were a user of the device. This power may be exercised for the purposes of certain investigations or inquests into the person's death.</p> <p>These powers strengthen the law to ensure that there is a consistent approach to requesting information from phones and other electronic devices, and that in all cases, requests to complainants and witnesses are necessary and proportionate.</p> <p>The PCSC Act creates a requirement for the Secretary of State to prepare a code of practice on the lawful use of these powers. This code will give clear guidance for all authorities exercising these powers. Amongst other things, the code will address assessing if use of the powers is necessary and</p>
-------------------------------	---

	<p>proportionate and how to ensure agreement is freely given and the device user's rights are understood. All authorised persons have a duty to have regard to the code when exercising, or deciding whether to exercise, the power. The code is admissible in evidence in criminal or civil proceedings and failure to act in accordance with it may be taken into account by a court.</p> <p>We published the first draft of the code in July 2021 to support Parliamentary scrutiny of the extraction of information clauses and an updated draft in the autumn to reflect further feedback from stakeholders, interested groups and the Government during the Bill's passage up to that point.</p> <p>The draft of the code of practice published for this consultation reflects the final clauses contained in the PCSC Act, and continued consultation with the bodies affected and other interested groups.</p> <p>In preparing the draft code we have consulted extensively with civil society organisations, the law enforcement community and technical experts, the Information Commissioner's Office, the Victim's Commissioner for England and Wales and the Devolved Administrations of Scotland and Northern Ireland.</p>
--	--

## What is the Code of Practice?

Chapter 3, Part 2 of the Police, Crime, Sentencing and Courts Act 2022 establishes for the first time, a clear statutory basis for the extraction of information from electronic devices with the agreement of the device user, and introduces safeguards to protect the privacy of victims, witnesses, and others.

The new powers and the code of practice will ensure that there is a consistent approach to requesting the information from phones and other electronic devices, and that in all cases, requests to victims and witnesses are necessary and proportionate. The code also makes clear that the powers should only be used as last resort.

The code sets out the processes and safeguards governing the use of the extraction powers by law enforcement agencies, including the police. The new powers and the code introduce a set of strict criteria that limit the amount of sensitive personal information that can be extracted from the devices used by complainants and witnesses. The code gives detail on how the relevant powers should be used, including examples of best practice. It is intended to provide detailed guidance on the lawful use of these powers and to ensure the highest standards of professionalism and compliance with this legislation. The code also provides a summary of some of the relevant Human Rights and Data Protection requirements and considerations. It does not replace other codes of practice or guidance for other legislation.

The code is intended to guide those law enforcement and public authorities which can exercise the powers under Part 2, Chapter 3 of the Police, Crime, Sentencing and Courts Act 2022, but may also be useful to other agencies and professionals who support victims and witnesses.

## Why are we consulting?

Under the Police, Crime, Sentencing and Courts Act 2022, the Secretary of State is required to prepare a code of practice containing guidance about the powers in section 37(1) and 41(1) of the Act.

In preparing the code, the Secretary of State must consult-

- (a) the Information Commissioner,
- (b) the Scottish Ministers,
- (c) the Department of Justice in Northern Ireland,
- (d) the Commissioner of Victims and Witnesses,
- (e) the Domestic Abuse Commissioner,
- (f) the Commission for Victims and Survivors for Northern Ireland, and
- (g) such other persons as the Secretary of State considers appropriate.

We are taking the opportunity to consult the bodies listed above as well as all who may be affected by these powers.

Following consultation, the Secretary of State will consider any representations made about the draft code. The code will be laid before Parliament before it can come into effect.



# Extraction powers – Summary table

<b>Section 37</b> – Extraction power	<p>Defines the criteria that must be met to use the extraction power for the purposes of:</p> <ul style="list-style-type: none"> <li>• preventing, detecting, investigating or prosecuting crime</li> <li>• helping to locate a missing person</li> <li>• protect a child or an at-risk adult from neglect or physical, mental or emotional harm</li> </ul>
<b>Section 38</b> – The application of section 37 where the device user is a child or an adult without capacity	<p>Defines who can make decisions on behalf of a child or an adult without capacity</p>
<b>Section 39</b> – Requirements for voluntary provision and agreement	<p>Defines the information that must be provided and the criteria that must be met to ensure that the device has been voluntarily provided and agreement lawfully obtained</p>
<b>Section 40</b> – Three special cases where the section 37 power can be used without agreement	<p>May be used when:</p> <ul style="list-style-type: none"> <li>• the user of the device has died, and the person was a user of the device immediately before their death, or</li> <li>• the user of the device is a child or an adult without capacity, and the user's life is at risk or there is a risk of serious harm to them or</li> <li>• the user of the device is missing, they were a user of the device immediately before they went missing, and their life is at risk or there is a risk of serious harm to them</li> </ul>
<b>Section 41</b> – Extraction power	<p>Defines the criteria that must be met to use the extraction power for the purposes of assisting an investigation into the person's death where the device user has died, and they were a user of the device immediately before their death under:</p> <ul style="list-style-type: none"> <li>• Chapter 1 of Part 1 of the Coroners and Justice Act 2009</li> <li>• The Coroners Act (Northern Ireland) 1959</li> <li>• An investigation into the person's death by the Lord Advocate or</li> <li>• for the purposes of determining whether an investigation should be conducted, or an inquest should be held</li> </ul>
<b>Section 42</b> – Code of Practice	<ul style="list-style-type: none"> <li>• Requires the Secretary of State to prepare a code of practice containing guidance about the exercise of the powers in sections 37(1) and 41(1)</li> </ul> <p>Defines who must be consulted on the code of practice</p>
<b>Section 43</b> – Confidential Information	<p>Defines the meaning of "confidential information" for the purposes of the section 37 and 41 powers</p>
<b>Section 44</b> – Authorised persons	<p>Defines with are authorised persons for the purposes of the section 37 and 41 powers</p>

# Questionnaire

We welcome comments on any aspect of the guidance in the code but have also set out some specific questions on the recommended approach to exercise of the powers and clarity of guidance in the code.

You do not need to answer every question.

Part 1 of the code provides information on when the section 37 and 41 powers can be used and the criteria that must be met before doing so.

**Q1. To what extent do you agree or disagree with the guidance the code of practice provides on the circumstances in which the powers can be used and the requirements that must be met?**

**a) for Section 37?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

**b) for Section 41?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

Part 2 of the code provides an overview of how the new powers interact with the data protection regimes of the Data Protection Act and the UK General Data Protection Regulation (UK GDPR), and human rights legislation.

**Q2. To what extent do you agree or disagree with the guidance that the code of practice provides on the exercise of the powers in accordance with data protection and human rights legislation?**

**a) for Section 37?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

**b) for Section 41?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

Part 3 of the code provides information on when and for what purposes the section 37 and 41 powers can be used, and guidance on reasonable belief, necessity, and proportionality requirements.

**Q3. To what extent do you agree or disagree with the guidance offered in the code on assessing necessity, proportionality, relevance to reasonable line of enquiry or reasonable belief when determining when the powers in sections 37 and 41 should be used?**

**a) for Section 37?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Please explain the reason for your answer, including any alternative approaches or changes to the guidance you think are needed

b) for Section 41?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Please explain the reason for your answer, including any alternative approaches or changes to the guidance you think are needed

Part 4 of the code provides guidance on the criteria that must be met for a person to be treated as having voluntarily provided a device and agreed to the extraction of information from it.

**Q4. To what extent do you agree or disagree with the guidance the code of practice provides on how authorities meet the requirements stated in section 37(1) in the Act, to ensure a person has voluntarily provided their device and agreed to the extraction of information from it?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Please explain the reason for your answer

Part 5 of the code provides guidance on what authorised persons should consider when using the section 37 power with persons who may be vulnerable due to the trauma they have experienced, and who may need more support to make an informed decision as to whether they volunteer their device and agree to the data extraction from it.

**Q5. To what extent do you agree or disagree with the guidance that the code of practice provides on how to recognise when a person is vulnerable?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

**Q6. To what extent do you agree or disagree with the guidance that the code of practice provides on how a vulnerable person should be supported?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

Part 6 of the code provides information on who is deemed to be a child or an adult without capacity for the purposes of the powers, who can make a decision on their behalf, and how they should be engaged with and supported during the process.

**Q7. To what extent do you agree or disagree with the guidance the code of practice provides on who is considered a child, how authorities must where possible involve and support them, and who can make decisions on their behalf?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

**Q8. To what extent do you agree or disagree with the guidance the code of practice provides on who is considered an adult without capacity, how authorities must where possible involve and support them, and who can make decisions on their behalf?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

Part 7 of the code provides guidance on applicable devices, ensuring that the extraction of information is not excessive and that the intrusion into the device user's privacy and the privacy of others is minimised.

**Q9. To what extent do you agree or disagree with the guidance the code of practice provides on applicable devices for extraction, and the recommendation that selective extraction should be used where possible to minimise intrusion into the device user's privacy?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

Part 8 of the code sets out how authorised persons should consider confidential information when using these powers, including what confidential information is, guidance on how to assess the risk of obtaining confidential information and guidance on how to proceed depending on that risk assessment.

**Q10. To what extent do you agree or disagree that with the approach the code of practice provides on how to assess and manage the risk of obtaining confidential material, and how to proceed when it is unintentionally obtained?**

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

**Please explain the reason for your answer**

Thinking now about the overall approach to the exercise of the powers that is recommended in the code.

**Q11. In your view is the suggested approach to use of the powers detailed in the code one that can be implemented operationally?**

Yes or No

**Please explain the reason for your answer**

**Q12. Are there any gaps in the guidance that should be addressed?**

Yes or No

**Please explain the reason for your answer**

**Q13. Does the code contain links to all relevant material that an authorised person would need in order to ensure lawful use of the powers?**

Yes or No

If no, please suggest any additional reference material that should be included

**Thank you for participating in this consultation.**



# About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (for example, member of the public)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable)	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

---

---

---

---

# Contact details and how to respond

Responses can be [submitted online](#)

Enquiries (including requests for the paper in an alternative format) to:

**Email:** PCSCExtractioncode@homeoffice.gov.uk

**Or by post to:**

The Extraction of information code of practice consultation  
The Data and Identity Directorate  
2 Marsham Street  
London  
SW1P 4DF

## Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

## Publication of response

A paper summarising the responses to this consultation will be published. A response paper will be available online at [www.gov.uk/government/consultations](http://www.gov.uk/government/consultations)

# Consultation principles, disclosure of responses and data protection

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles. These can be found here:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

The Home Office, 2 Marsham Street, London, SW1P 4DF, is the data controller in respect of any information you provide in your answers. Your personal data is being collected and processed by the Home Office on the basis of informed consent. We will hold the data you provide for a maximum of 2 years. Further information can be found within the Government's Home Office Personal Information Charter.

We will process the names and addresses and email addresses provided by respondents, and information about which organisations respondents belong to, where this is provided. We will also process the information that you provide in relation to your responses. When the consultation ends, we will publish a summary of the key points raised on the Home Office website.

This will include a list of the organisations that responded, but not any individual's personal name, address, or other contact details. All responses and personal data will be processed in compliance with the Data Protection Act 2018 and the UK General Data Protection Regulation.

If you want some or all of the information you provide to be treated as confidential, it would be helpful if you could clearly identify the relevant information and explain why you consider it confidential in your response. Please note that we may be required by law to publish or disclose information provided in response to this consultation in accordance with the access to information regimes: primarily the Freedom of Information Act 2000 and the Data Protection Act 2018 and the UK General Data Protection Regulation. If we receive any request to disclose this information, we will take full account of your explanation, but cannot give you an absolute assurance that disclosure will not be made in any case. We will not regard an automatic disclaimer generated by your IT system as a relevant request for these purposes.

Once you have submitted your response to the consultation you will not be able to withdraw your answers from the analysis stage. However, under the Data Protection Act 2018 (and the UK General Data Protection Regulation), you have certain rights to access your personal data and have it corrected or erased (in certain circumstances), and you can withdraw your consent to us processing your personal data at any time.

You have the right to lodge a complaint to the Information Commissioner's Office about our practices, to do so please visit the Information Commissioner's Office website or contact the Information Commissioner at [casework@ico.org.uk](mailto:casework@ico.org.uk) or:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Telephone: 0303 123 1113  
Textphone: 01625 545860  
Monday to Friday, 9am to 4:30pm.

If you need any further information please contact us  
at: [PCSCExtractioncode@homeoffice.gov.uk](mailto:PCSCExtractioncode@homeoffice.gov.uk)



© Crown copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.uk/government/consultations](http://www.gov.uk/government/consultations)

Any enquiries regarding this publication should be sent to us at <http://www.gov.uk/government/consultations>