



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

CODES OF PRACTICE FOR NORTHERN IRELAND ISSUED BY THE DEPARTMENT OF JUSTICE UNDER THE PROCEEDS OF CRIME ACT 2002

Amendments to three existing codes and a new code to reflect the commencement of the relevant provisions of the Criminal Finances Act 2017 in Northern Ireland

Consultation Document

This consultation opens on 1 December 2020 and closes on 1 February 2021

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1. Introduction

1.1 The Department of Justice is responsible for issuing new and revised codes of practice covering the operation of various powers under the Proceeds of Crime Act 2002 (POCA). We are seeking views on three revised draft codes of practice and one new draft code of practice for Northern Ireland.

1.2 The codes have been prepared to take account of legislative changes to POCA in the Criminal Finances Act 2017 (CFA 2017). Provisions under Parts 2, 3 and 4 of the CFA 2017 have been commenced in Northern Ireland but the majority of provisions in Part 1 which amend POCA have not. In June 2020 the Justice Minister informed members of the NI Assembly that she intended to work with the Home Secretary to commence the outstanding provisions as soon as practical. The Minister's Written Ministerial Statement can be read at this link:

<http://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/departments-of-justice---commencement-of-the-criminal-finance-act-2017-and-the-crime-overseas-production-orders-act-2019-in-respect-of-relevant-provisions-relating-to-northern-ireland/>

1.3 It is the intention that the relevant provisions of the CFA 2017 will be commenced in Northern Ireland, as early as possible, in 2021. Legislative slots are being sought at Parliament as the majority of the provisions must be commenced by the Home Office. A small number of provisions will be commenced by the Department of Justice at the NI Assembly. The codes of practice need to be consulted on and finalised, ready to be brought into operation on the same date as the commencement of the relevant CFA 2017 provisions.

1.4 The draft codes of practice issued by the Department of Justice are:

- Search, Seizure and Detention of Property (Northern Ireland)
- Recovery of Cash: Search Powers (Northern Ireland)
- Investigations (Northern Ireland)
- Recovery of Listed Assets: Search Powers (Northern Ireland)

1.5 The consultation is to seek views on the guidance contained in the draft codes of practice about the exercise of POCA powers, not on the powers themselves as

enacted under POCA and amended or added to by other Acts¹ and by the commencement of the CFA 2017 in Northern Ireland. We would ask those commenting to be aware of this distinction when sending in responses. 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, or if you believe there are gaps.

1.6 The consultation is open to everyone, but is particularly relevant to anyone who is involved in or interested in the operation of the relevant powers contained in POCA. Responses to the consultation should be returned by 1 February 2021.

2. Background

2.1 POCA contains a comprehensive package of measures designed to enable the recovery of unlawfully held assets in an effective, human rights compliant way. POCA has been amended since it was originally enacted. The Acts that have amended and extended the powers in POCA include, but are not limited to, the Policing and Crime Act 2009, the Coroners and Justice Act 2009, the UK Borders Act 2007, the Crime and Courts Act 2013, the Serious Crime Act 2015 and, more recently, the Criminal Finances Act 2017.

2.2 POCA provides for codes of practice to be made to guide those using the powers on the requirements of the legislation and on their responsibilities in carrying out their functions under POCA.

2.3 The powers include POCA search and seizure powers and investigation powers. The Appointed Person under the Act provides effective oversight and scrutiny of reports of certain searches and seizures conducted under the legislation. The role of the Appointed Person includes providing public reassurance that the powers are being used effectively and proportionately or, if they are not, to provide meaningful recommendations and also to provide recommendations on the development of the framework of the operation of the powers. The role of the Appointed Person is highlighted in the following Northern Ireland codes: Search, Seizure and Detention of Property (Northern Ireland); Recovery of Cash: Search Powers (Northern Ireland); and Recovery of Listed Assets: Search Powers (Northern Ireland)

¹ See paragraph 2.1.

2.4 The making and revising of codes of practice in respect of certain POCA provisions falls to the Department of Justice in Northern Ireland and this consultation is part of that process. Until the first Northern Ireland codes issued by the Department came into operation in 2016, practitioners in Northern Ireland were covered by United Kingdom-wide codes of practice issued by the Secretary of State (the Home Secretary).

2.5 POCA provides that where the Department of Justice proposes to issue, or revise, a code of practice it must publish a draft; consider any representations made to it about the draft and, if the Department of Justice thinks it appropriate, modify the draft in the light of any such representations. The Department of Justice must then lay a draft of the code before the Northern Ireland Assembly. When the Department of Justice has laid a draft of the code before the Northern Ireland Assembly, the Department of Justice may bring it into operation by order. This process is required for all four codes.

2.6 It is important to note that the Home Office has updated and is consulting on four separate, but related, codes of practice. These codes, made by the Secretary of State, govern the use of POCA powers and the exercise of certain 'non-devolved' functions in Northern Ireland. The Attorney General for England and Wales and the Advocate General for Northern Ireland has updated a code to provide guidance to prosecutors on the relevant provisions of POCA in Northern Ireland. Scottish Ministers are responsible for the relevant codes of practice for that jurisdiction.

The link to the Home Office consultation is:

<https://www.gov.uk/government/consultations/draft-codes-of-practice-issued-under-the-proceeds-of-crime-act-2002-amendments-to-codes-to-reflect-the-criminal-finances-act-2017-in-northern-ireland>

The link to the Attorney General for England and Wales and the Advocate General for Northern Ireland consultation is:

<https://www.gov.uk/government/consultations/consultation-on-amendments-to-the-attorney-generals-code-of-practice-issued-under-section-377a-of-the-proceeds-of-crime-act-2002>

3. The draft codes of practice issued under the Proceeds of Crime Act 2002 for consultation

Draft Code of Practice issued under the Proceeds of Crime Act 2002 Search, Seizure and Detention of Property (Northern Ireland) – Appendix A.

3.1 The current version of the code was published in 2016: <https://www.justice-ni.gov.uk/publications/codes-practice-under-proceeds-crime-act-2002>. The code is issued under section 195T of POCA. It provides 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. It provides guidance on issues of approval and reports to the Appointed Person for Northern Ireland. The Appointed Person provides independent oversight of the use of certain powers under POCA that can be exercised without prior judicial approval.

3.2 The revisions to this Northern Ireland code to account for the future commencement of the CFA 2017 are minimal but include:

- References to CFA 2017.
- That any reference to “cash” includes gaming vouchers; fixed-value casino tokens and betting receipts as introduced by CFA 2017.

Draft Code of Practice issued under the Proceeds of Crime Act 2002 Recovery of Cash: Search Powers (Northern Ireland) – Appendix B

3.3 The current version of the code was published in 2016: <https://www.justice-ni.gov.uk/publications/codes-practice-under-proceeds-crime-act-2002>. The code is issued under Section 293A of POCA. It provides 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. The cash may be on premises, in a vehicle or being carried by a person. The code covers issues of approval as well as reports to the Appointed Person for Northern Ireland.

3.4 The revisions to this Northern Ireland code to account for the future commencement of the CFA 2017 include:

- References to CFA 2017.
- The extension of the definition of “cash” to include gaming vouchers, fixed-value casino tokens and betting receipts.
- The disapplication in certain circumstances of the requirement to make a report to the Appointed Person if no cash is recovered following a search which was not authorised by a judicial officer (a lay magistrate). If listed items of property are seized instead the requirement to make the report does not arise.

**Draft Code of Practice issued under the Proceeds of Crime Act 2002
Investigations (Northern Ireland) – Appendix C.**

3.5 The current version of the code was published in 2016: <https://www.justice-ni.gov.uk/publications/codes-practice-under-proceeds-crime-act-2002>. The code is issued under Section 377ZA of POCA. This code provides guidance on the exercise of the investigation powers in POCA, including confiscation investigations, detained cash investigations and money laundering investigations.

3.6 The revisions to this Northern Ireland code to account for the future commencement of the CFA 2017 include:

- References to CFA 2017.
- The exercise of powers in detained property investigations (related to certain personal (moveable) property – see new NI code at Appendix D).
- The exercise of powers in frozen funds investigations.
- Change to the definition of a confiscation investigation so that it includes an investigation into the available amount in respect of the person (Section 341(1)(c) of POCA).
- The amendment to allow disclosure orders to be used in money laundering investigations.
- The amendment to section 375(1) of POCA to allow “appropriate officers” to apply for a disclosure order instead of “a prosecutor” subject to the authorisation of a “senior appropriate officer” (unless that officer is a senior appropriate officer) – for the purpose of this Northern Ireland code an “appropriate officer” is a constable or an accredited financial investigator and a “senior appropriate officer” is a senior police officer

who is not below the rank of superintendent or an accredited financial investigator who falls within the description specified in an order made by the Secretary of State under section 453 of POCA.

Draft Code of Practice issued under the Proceeds of Crime Act 2002

Recovery of Listed Assets: Search Powers (Northern Ireland) – Appendix D.

3.7 This is a new code of practice issued under Section 303I of POCA. This code provides guidance on the exercise of the operation of the powers to search for listed assets. Listed assets include precious metals; precious stones; watches; artistic works; face-value vouchers; postage stamps. A listed asset is 'seizable' where there are reasonable grounds to suspect that all or part of it is recoverable property or is intended for use by any person in unlawful conduct.

4. Further information about the codes of practice

4.1 The draft Northern Ireland codes are similar in structure, language and style to the equivalent draft codes under consultation by the Home Office and by the Attorney General for England and Wales and the Advocate General for Northern Ireland, with appropriate amendment for this jurisdiction. This is to seek, as far as possible, to maintain consistency of approach in the operation of the powers.

4.2 The persons operating under POCA and, therefore those guided by the four Northern Ireland codes are constables, officers delegated with powers of a Northern Ireland constable, and accredited financial investigators (AFIs). An AFI is an investigator accredited under section 3 of POCA to have access to some or all of the powers of investigation. Training and accreditation of AFIs is managed by the Proceeds of Crime Centre in the National Crime Agency.

4.3 Where an officer fails to comply with any provision of the codes, they would not, by reason only of that failure, be liable to any criminal or civil proceedings. The codes are admissible as evidence in criminal or civil proceedings and are to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

5. Equality, regulatory and financial impact

5.1 Section 75 of the Northern Ireland Act 1998 requires all public authorities in Northern Ireland to have due regard to equality of opportunity between the nine equality categories and have regard to promote good relations between persons of different religious belief, political opinion or racial group. Public authorities are also required to meet legislative obligations under the Disability Discrimination (NI) Order 2006, particularly in the formation of public policy making. The Department of Justice is fully committed to meeting its obligations.

5.2 The draft codes of practice being consulted on have been subjected to an Equality Impact Screening and a Rural Impact Assessment. There have been no equality impacts identified and initial pre-policy screening has not identified any other Section 75 impacts at this stage. However, we would welcome views from respondents who might identify any area in which they feel the approach outlined in the draft codes could have adverse equality impacts. The completed equality screening document is available along with the consultation papers at:

<https://www.justice-ni.gov.uk/consultations/consultation-codes-practice-issued-under-proceeds-crime-act-2002>.

5.3 Investigators will carry out training on the codes under Continuous Professional Development activity. There will be some minor costs linked to training and in designing and implementing new court forms etc. to support the full extension of POCA powers to Northern Ireland. The Department does not anticipate that these costs would be significant and believe that any associated costs would be absorbed within existing budgets.

5.4 The codes do not impose any additional restriction on businesses, charities or voluntary bodies and consequently the need for a full Regulatory Impact Assessment has been screened out.

6. How to respond

6.1 You are reminded that the codes of practice provide guidance on the exercise of POCA powers, and that the consultation is seeking views on the content of the draft codes of practice, not on the powers themselves as enacted under POCA and amended or added to by other Acts² and by the commencement of the CFA 2017 in Northern Ireland.

6.2 The Department of Justice is asking for comments and suggestions (drafting and otherwise) on the draft codes of practice at Appendices A, B, C & D to this consultation document. The codes are intended to be self-explanatory and therefore we would welcome views on any passages that are confusing, ambiguous or lacking in clarity or on any gaps. Amendments to the three existing codes have been marked up in tracked changes or red font.

6.3 In particular we would welcome answers to the following questions:

Question 1

Do you have any comments about the proposed amendments to the Codes of Practice linked to the future commencement of the Criminal Finances Act 2017 in Northern Ireland?

Question 2

Will the proposed amendments to the Codes of Practice have an adverse impact on your organisation?

Question 3

Do you have any further comments about the Codes of Practice?

6.4 The consultation opens on 1 December 2020 and the closing date for comments is 1 February 2021.

² See paragraph 2.1.

6.5 There are a variety of ways in which you can provide us with your views. We welcome responses in whatever format respondents find most suitable:

Citizen Space:

<https://consultations.nidirect.gov.uk/doj-corporate-secretariat/codes-of-practice-for-northern-ireland-issued-unde/>

You can email us at:

OCB.enquiries@justice-ni.x.gsi.gov.uk. An acknowledgement email will be issued.

Or you can write to us at:

POCA Codes of Practice
Organised Crime Branch
Department of Justice Northern Ireland
Block B Castle Buildings
Stormont Estate
Belfast
BT4 3SG

If you have any queries you can telephone Andrea Watson on (028) 90522957 or send an email to – OCB.enquiries@justice-ni.x.gsi.gov.uk.

6.6 If we believe that your response relates to the codes of practice issued by the Home Office or by the Attorney General for England and Wales and the Advocate General for Northern Ireland, we will share your response with the relevant Department.

7. Alternative formats

7.1 An electronic version of this consultation document is available to download from the Department's website:

<https://www.justice-ni.gov.uk/consultations/consultation-codes-practice-issued-under-proceeds-crime-act-2002>

7.2 Hard copies and copies in other formats (including Braille, large font) can be made available on request.

7.3 If it would assist you to access the document in an alternative format or language other than English please let us know and we will do our best to accommodate this.

8. Confidentiality of responses and publication of responses

8.1 Responses to this consultation will be shared with the Justice Committee. The Department may also publish a summary of responses following completion of the consultation process. Any contact details or information that would identify a respondent as a private individual will be removed prior to publication. All information will be handled in accordance with the Data Protection Act 2018 (DPA).

8.2 Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000 (FOIA) may require that any responses not subject to specific exemptions under the Act be communicated to third parties on request.

9. Complaints

9.1 If you have any concerns about the way this consultation process has been handled, you should send them to the following address:

Standards Unit
Department of Justice
Knockview Buildings
Stormont Estate
Belfast
BT4 3SL

Email: Standardsunit@justice-ni.x.gsi.gov.uk

10. What will happen next?

10.1 The Consultation period will end on 1 February 2021. The Department will consider the responses to this consultation and modify the draft codes if appropriate. The codes will be cleared with the Justice Minister and the Justice Committee before they are laid at the Northern Ireland Assembly for approval under the draft affirmative procedure, following which they will come into operation. This will coincide with the laying of the Home Office and Attorney General for England and Wales and the Advocate General for Northern Ireland codes at Westminster. The coming into operation date will coincide with the commencement date of the relevant provisions in Northern Ireland.

**11. Appendices - Draft POCA codes of practice issued by the
Department of Justice**

Appendix A

**Draft Code of Practice issued under section 195T of the Proceeds of Crime Act
2002: *Search, Seizure and Detention of Property (Northern Ireland)***

Appendix B

**Draft Code of Practice issued under section 293A of the Proceeds of Crime Act
2002: *Recovery of Cash: Search Powers (Northern Ireland)***

Appendix C

**Draft Code of Practice issued under section 377ZA of the Proceeds of Crime Act
2002: *Investigations (Northern Ireland)***

Appendix D

**Draft Code of Practice issued under section 303I of the Proceeds of Crime Act
2002: *Recovery of Listed Assets: Search Powers (Northern Ireland)***