

DRAFT CODES OF PRACTICE ISSUED UNDER THE PROCEEDS OF CRIME ACT 2002 (NORTHERN IRELAND)

**Search, Seizure and Detention of Property;
Investigations; and Recovery of Cryptoassets:
Search Powers**

Consultation Document

15 February 2024

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Introduction

The Department of Justice ("the Department") is responsible for issuing new and revised codes of practice covering the operation of various powers under the Proceeds of Crime Act 2002 (POCA). This eight week period of consultation seeks views on three new codes of practice for Northern Ireland. The codes are due to new and amended powers in the primary legislation. Responses should be returned by Wednesday 10 April 2024.

The Codes of Practice are:

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

The consultation is open to everyone but is particularly relevant to anyone who is involved in or interested in the operation of the relevant POCA powers.

The consultation is in respect of the guidance provided in the codes of practice on the exercise of the powers, rather than the actual powers which are already passed in law. 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 you may consider confusing, ambiguous or lacking in clarity.

Background

POCA contains a comprehensive package of measures designed to make the recovery of unlawfully held assets more effective. POCA has been amended since it was made by, but 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, the Criminal Finances Act 2017 and, more recently, the Economic Crime and Corporate Transparency Act 2023.

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.

Home Office codes, which will be made by the Secretary of State, govern the use of POCA powers in England and Wales and in relation to the exercise of certain functions in Northern Ireland and in Scotland. Scottish Ministers are responsible for the relevant codes of practice for that jurisdiction.

The role of the Department

POCA provides that where the Department 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 thinks it appropriate, modify the draft in the light of any such representations. The Department must lay a draft of the code before the Northern Ireland Assembly. When the Department has laid a draft of the code before the Northern Ireland Assembly, it may bring it into operation by order.

Draft Northern Ireland codes of practice for consultation

The three draft Codes of Practices being consulted on are issued under the Proceeds of Crime Act 2002.

Search, Seizure and Detention of Property (Northern Ireland) – Annex A

Issued under section 195T of POCA. This code 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.

Investigations (Northern Ireland) – Annex B

Issued under Section 377ZA of POCA. This code provides guidance on the exercise of the investigation powers in POCA. It includes 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.

Recovery of Cryptoassets: search powers (Northern Ireland) Annex C

Issued under Section 303Z25 of POCA. This new code provides guidance on the exercise of powers to search for cryptoassets¹ or cryptoasset-related items².

Further information about the codes of practice

Those exercising the powers contained in the three Northern Ireland codes will be constables and accredited financial investigators (AFIs).³ 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 2021.

The new codes of practice closely parallel the provisions in existing and earlier versions of equivalent codes issued by the Secretary of State to ensure consistency of approach and language across jurisdictions. Officers operating the powers are therefore likely to be familiar with most of the procedures and safeguards. It is therefore considered that familiarisation with the text of the codes, in the financial investigation community, will not be an onerous exercise.

Associated with these codes is a code made by the Attorney General (for England and Wales) and the Advocate General for Northern Ireland for prosecutors under section 377A of POCA, which makes provisions for the investigative powers of prosecutors in England, Wales and Northern Ireland. This code is consulted upon

¹ Cryptoasset means a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically.

² A cryptoasset-related item means an item of property that is, or that contains or gives access to information that is, likely to assist in the seizure of cryptoassets that are recoverable property or intended for use in unlawful conduct.

³ An AFI is an investigator accredited (under section 3 of the Proceeds of Crime Act 2002) to have access to some or all of the powers of investigation.

separately and published by the Attorney General and the Advocate General for Northern Ireland.

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.

Awareness and understanding of the new powers and the codes will be required. There will also be a need to produce 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. A court may take account of any failure to comply with the provisions in the codes in determining any question in the proceedings.

Equality

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 is fully committed to fulfilling its Section 75 obligations on the promotion of equality of opportunity, good relations and meeting legislative requirements in Northern Ireland.

The codes of practice being consulted on have been subjected to an Equality Impact Screening. There have been no equality issues identified and the equality screening

has not identified any 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 at [Consultation on codes of practice issued under the Proceeds of Crime Act 2002 | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/consultation-on-codes-of-practice-issued-under-the-proceeds-of-crime-act-2002)

How to respond

It is important to note that the Codes of Practice provide guidance on the exercise of legal powers, rather than the actual powers which are already passed in law. Respondents should be aware of this distinction in making specific comments and suggestions.

The codes are intended to be self-explanatory. The Department is therefore asking for comments and suggestions (drafting and otherwise) on the guidance in the draft codes of practice at Annexes A, B, and C to this consultation document. We would welcome views on any passages that you may consider 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

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

The closing date for comments is Wednesday 10 April 2024.

We would ask that responses to the consultation are made through the Citizen Space Portal <https://consultations.nidirect.gov.uk/doj/proceeds-of-crime-act-2002-draft-codes-of-practice/>. You may also contact us as below.

You can email us at: OCB.enquiries@justice-ni.gov.uk

Or you can write to us at: Organised Crime Branch
Department of Justice
Castle Buildings
Block B
Stormont Estate
Belfast
BT4 3SG

If you have any queries you can telephone: (028) 9052 8680

Alternative formats

An electronic version of this consultation document is available to download from the Department's website – [Consultation on codes of practice issued under the Proceeds of Crime Act 2002 | Department of Justice \(justice-ni.gov.uk\)](#)

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

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 assist you.

Confidentiality of responses

We may publish all responses to this consultation, except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding

in a professional capacity will be published (removing email addresses and telephone numbers).

Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however, all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.

If you want the information that you provide to be treated as confidential, please explain to us why you regard the information you have provided as confidential, so that this may be considered should there be a request for the information to be provided under FOIA or EIR.

What will happen next?

The Consultation Period will end on Wednesday 10 April 2024. We will consider the responses to this consultation and modify the draft codes if appropriate. We will then lay the Codes in the Northern Ireland Assembly for approval, following which they will come into force. Ahead of this the codes will be published in draft until they are formally approved by the Assembly.

If you have any complaints or comments specifically about the consultation process only, you should contact:

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Department of Justice
Room B4.20
Castle Buildings
Stormont Estate
Belfast
BT4 3SG

Email: OCB.enquiries@justice-ni.gov.uk