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

Consultation Document

This consultation begins on 11 August 2015 and closes on 2 November 2015
## Contents

1. Introduction

2. Background

3. The process

4. The draft codes of practice issued under the Proceeds of Crime Act 2002
   - Search, Seizure and Detention of Property (Northern Ireland)
   - Recovery of Cash: Search Powers (Northern Ireland)
   - Investigations (Northern Ireland)

5. Further information about the codes of practice

6. Equality, regulatory and financial impact

7. How to respond

8. Alternative formats

9. Confidentiality of responses

10. What will happen next?

11. Consultation Coordinator
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 draft codes of practice for Northern Ireland. They have been prepared to take account of legislative changes. Responses should be returned by 2 November 2015.

1.2 The draft codes of practice are:
- Search, Seizure and Detention of Property (Northern Ireland)
- Recovery of Cash: Search Powers (Northern Ireland)
- Investigations (Northern Ireland)

1.3 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.

1.4 The consultation is in respect of the guidance on the exercise of POCA powers contained in the draft codes of practice, rather than the actual powers themselves, which are already in law. We would ask those commenting to be aware of this distinction when sending in responses. The codes are intended to be self-explanatory and we would welcome views on any passages that are confusing, ambiguous or lacking in clarity, or if you believe there are gaps.

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 POCA has been amended since it was originally enacted.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 and, more recently, the Serious Crime Act 2015.

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 Since devolution the making and revising of codes of practice falls to the Department of Justice in Northern Ireland and this consultation is part of that process. Until the Northern Ireland codes come into force the use of certain POCA powers in Northern Ireland is covered by United Kingdom-wide codes of practice issued by the Secretary of State (the Home Secretary).

2.4 It is important to note that the Home Office is currently revising and consulting on four separate, but related, codes of practice, due to certain provisions in the Serious Crime Act 2015 and the full extension of POCA powers to Northern Ireland. The link to the Home Office consultation is: https://www.gov.uk/government/consultations/codes-of-practice-issued-under-the-proceeds-of-crime-act-2002-poca. These codes, made by the Secretary of State, govern the use of POCA powers in England and Wales and the exercise of certain [non-devolved] functions in Northern Ireland and in Scotland. Scottish Ministers are responsible for the relevant codes of practice for that jurisdiction.

3. The process

3.1 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 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.

4. The draft codes of practice for consultation

4.1 Draft Code of Practice 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. The Appointed Person provides independent oversight of the use of certain powers under POCA that can be exercised without prior judicial approval.

Issued under Section 293A of POCA. This code 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.

4.3 Draft Code of Practice issued under the Proceeds of Crime Act 2002 Investigations (Northern Ireland) – Annex C.
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. The code covers the transfer of jurisdiction from the High Court to the Crown Court in detained cash investigations.

5. Further information about the codes of practice
5.1 The draft Northern Ireland codes closely parallel the provisions in the equivalent draft codes under consultation by the Home Office, 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.

5.2 The persons operating under POCA and, therefore, those guided by the three Northern Ireland codes will be those with powers of a 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.

5.3 We are currently examining how the NCA will sit within both the Northern Ireland codes and the codes issued by the Secretary of State.

6. **Equality, regulatory and financial impact**

6.1 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.

6.2 The draft codes of practice being consulted on have been subjected to an Equality Impact Screening, as well as the Department’s shared future proofing. There have been no equality or shared future issues 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 at [www.dojni.gov.uk](http://www.dojni.gov.uk).

6.3 Training and awareness of the new powers and the codes would be required and the impact on equality would form part of the training delivered to the officers who will exercise the powers.

6.4 Investigators will carry out training on the codes under Continuous Professional Development activity. There will be some minor costs linked to the extension of the revised training package to Northern Ireland (estimated to be around £5000 by the Home Office) and some minor costs in designing and implementing new templates 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.

6.5 In addition 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.

7. **How to respond**

7.1 You are reminded that the codes of practice provide guidance on the exercise of the powers, and are not about the actual powers themselves. The codes are intended to be self-explanatory.

7.2 The Department of Justice is 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 are confusing, ambiguous or lacking in clarity or on any gaps.

7.3 Consultees are invited to submit any additional equality, regulatory and financial implications which may be relevant to the full extension of POCA powers to Northern Ireland.

7.4 The closing date for comments is 2 November 2015.

7.5 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.

**You can email us at:** OCTF.Queries@dojni.x.gsi.gov.uk

**Or you can write to us at:**

POCA Codes of Practice
Organised Crime Branch
Department of Justice Northern Ireland
Castle Buildings
Block B
Stormont Estate
Belfast
BT4 3SG
If you have any queries you can telephone Andrea Watson on (028) 90522957 or send an email to – OCTF.Queries@dojni.x.gsi.gov.uk.

8. Alternative formats

8.1 An electronic version of this consultation document is available to download from the Department's website www.dojni.gov.uk.

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

8.3 The text phone contact number is: (028) 90527668. 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.

9. Confidentiality of responses

9.1 Responses to this consultation will be shared with the Justice Committee. The Department will also publish a summary of responses following completion of the consultation process. Unless individual respondents specifically indicate that they wish their response to be treated in confidence, their name and the nature of their response may be included in any published summary of responses. Respondents should also be aware that the Department's obligations under the Freedom of Information Act may require that any responses not subject to specific exemptions under the Act, be disclosed to other parties on request.

10. What will happen next?

10.1 The Consultation period will end on 2 November 2015. We will consider the responses to this consultation and modify the draft codes if appropriate. We will then put the codes to the Justice Minister and Justice Committee before laying the codes in the Northern Ireland Assembly for approval, following which they will come into force.
11. **Consultation Coordinator**

11.1 If you have any comments specifically about the consultation process only, you should contact the Department's Consultation Coordinator:

Peter Grant  
Department of Justice  
Central Management Unit  
Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SG

Email: peter.grant@dojni.x.gsi.gov.uk.