

Code of Practice on the Exercise by Proper Persons of Powers Conferred by Chapter 3 of Part 8 of the Proceeds of Crime Act 2002

Consultation

March 2019



Scottish Government
Riaghaltas na h-Alba
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Introduction

The Proceeds of Crime Act 2002 (“POCA”) contains a comprehensive package of measures to recover the proceeds of crime. This includes powers to require individuals and organisations to provide information that is of significant value to an investigation, or to search for such information under Part 8 of POCA.

The revised Code, issued under section 410 of POCA, provides guidance on the exercise by Proper Persons, as defined at section 412, of functions conferred by Chapter 3 of Part 8 of POCA – i.e. the powers to execute investigatory orders and warrants, namely:

- Production orders (section 380);
- Orders to grant entry (section 382);
- Search warrants (section 387);
- Customer information orders (section 397); and
- Account monitoring orders (section 404).

These functions are necessary to enable the proper person to fully exercise their powers under Part 3 of Chapter 8 of POCA. However, they are subject to certain limits and conditions and accordingly, section 410(1) requires that the Scottish Ministers make a code of practice in connection with the exercise of these powers by proper persons in Scotland.

The code of practice is intended to ensure that the responsibilities of proper persons are clearly set out and accessible.

Consultation requirement

Section 410(1) of POCA requires the Scottish Ministers to publish and consult on a draft of any new or revised Code of Practice. Accordingly, they seek views on this revised Code which is further described below. A period of twelve weeks is available for responses. The Code will then be subject to Parliamentary approval before coming into effect.

Given that this Code builds on earlier versions, and/or reflects the provisions of similar Codes, proper persons, as defined at section 412 of POCA, will already be reasonably familiar with the procedures and safeguards set out.

Any failure to comply with a provision of the Code will not, by reason of that failure alone, give rise to any criminal or civil liability for the proper person concerned. However, the Code is admissible as evidence in any criminal or civil proceedings.

How to Respond

The consultation is in respect of the Code providing guidance on the exercise of the functions, rather than the powers conferring the functions. Respondents should be aware of this distinction in making specific comments and suggestions. The Code is 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 Code will affect how proper persons in Scotland exercise their functions under Chapter 3 of Part 8 of POCA. Do you have any comments to make in relation to the practical guidance contained within the Code?

Question 2

Do you feel that the draft Code could have an adverse impact on you or your organisation?

Question 3

Do you feel that the draft Code provides adequate guidance to a proper person on how to discharge their functions?

Question 4

Is there anything missing from the draft Code that should be added? (If so, please specify below.)

Question 5

Is there anything in the draft Code that should be deleted or changed? (If so, please specify below.)

Responding to this Consultation

We are inviting responses to this consultation by 3 June 2019

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/justice/code-of-practice-proceeds-of-crime-act-2002>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 3 June 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send it to:

POCA Code of Practice (s410)
Organised Crime Unit
Area 1 WR, St. Andrew's House
2 Regent Road
EDINBURGH
EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to alastair.crerar@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



The Proceeds of Crime Act 2002 – Section 410 Code of Practice A Consultation

RESPONDENT INFORMATION FORM

Please note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



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