

EXPLANATORY MEMORANDUM TO

THE POLICE, CRIME, SENTENCING AND COURTS ACT 2022 (EXTRACTION OF INFORMATION: CODE OF PRACTICE) REGULATIONS 2022

2022 No. 1054

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument is made under the Police, Crime, Sentencing and Courts Act 2022 (c. 32) (“PCSC Act”). It brings into force a code of practice for the extraction of information from electronic devices, as required by section 42 of the PCSC Act. The code of practice contains guidance about the exercise of the powers provided for in sections 37(1) and 41(1) of the PCSC Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 Section 42 (1) of the PCSC Act requires that the Secretary of State prepares a code of practice on the use of the powers under sections 37 and 41 of the PCSC Act on the extraction of information from electronic devices.
- 6.2 Through the PCSC Act the Government has created a clear statutory basis for police and other authorities to extract information from electronic devices. In order to lawfully use the powers under section 37 and section 41, all authorised persons must have due regard to the code of practice.

7. Policy background

What is being done and why?

- 7.1 The approach taken to the extraction of information from digital devices by the police and other authorities has been heavily criticised as being unnecessarily intrusive,

resulting in privacy and victims' groups opposing this practice, particularly in cases where the device belongs to a victim or witness.

- 7.2 The provisions in the Act directly address these concerns and the inconsistencies in the approach to the extraction of information from digital devices, as well as the complex legal framework which governs this practice, which has been identified in various reports, including the Information Commissioner's Office's 2020 report into mobile phone data extraction.
- 7.3 This instrument brings into force the code of practice that provides detailed guidance on the use of the powers and includes information about the considerations they should make when interacting with victims and witnesses of a crime, especially vulnerable victims of serious offences, such as rape and other sexual offences, to outline that a greater level of sensitivity should be applied.
- 7.4 The statutory code of practice provides clear and detailed guidance to enable authorised persons to lawfully use the powers in the PCSC Act. These powers and code ensure that complainants are only ever asked for their devices where necessary, proportionate and as part of a reasonable line of enquiry. The powers and the code will result in greater consideration of the privacy impact on complainants of requests for information from digital devices and ensure that authorities are balancing the right to fair trial with the right to privacy. In particular, where someone has been the victim of crime such as rape and sexual assault, fear of intrusive searches of private information can prevent victims from reporting crimes or from continuing with prosecutions. The code will ensure that victims and complainants needs are prioritised and will lead to greater confidence in the criminal justice system.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 There is no consolidation of legislation as a result of this instrument.

10. Consultation outcome

- 10.1 The Home Office conducted a public consultation on the draft code of practice between 17 May 2022 and 19 July 2022. The consultation is available at [Extraction of information from electronic devices: code of practice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/extraction-of-information-from-electronic-devices-code-of-practice)A total of 83 responses were received, of which 52 were submitted via the online survey and 31 were received by email.
- 10.2 Responses came from specialist investigators and forensic practitioners in police forces and other authorities, from interested persons such as the Biometrics Commissioner for Scotland and from those representing the views of victims and survivors and those concerned with privacy and fair trials. In addition, section 44(3) of the PCSC Act names persons who the Secretary of State is required to consult when preparing the code of practice. This includes the Scottish Ministers and the Department of Justice in Northern Ireland. The Home Office has engaged with officials in Scotland and Northern Ireland extensively in both development of the primary legislation and in the production of the draft code. Officials in Scotland and Northern Ireland have responded to the public consultation to confirm only minor

descriptive amendments that ensure the code is consistent with position in law for Scotland and Northern Ireland.

- 10.3 The Government response to the consultation was published on 17 October 2022.
- 10.4 The public consultation followed an earlier period of informal consultation with the above-mentioned persons and others including authorised persons named in Schedule 3 of the PCSC Act, The Information Commissioners Office and the Victims Commissioner for England and Wales. The Home Office also sought feedback from civil society organisations representing victims and survivors and those with a focus on privacy.
- 10.5 Feedback from informal consultation was used to inform the two draft codes of practice published to aid parliamentarians in scrutinising the clauses during the passage of the PCSC Act. The first of these drafts was published in July 2021 and the second updated version published in December 2021.

11. Guidance

- 11.1 A Home Office circular will be published on the date that the code is laid in Parliament, and other publicity material produced, to alert police forces, Police Crime Commissioners and heads of other bodies that are able to exercise the powers under s.37 and s.41 that the legislation and the code of practice are about to come into force and how this affects them.
- 11.2 This follows a previous Home Office circular 005/2022 issued when the PCSC Act achieved Royal Assent that gave an indicative timeline for commencement of these provisions. This can be found here [Circular 005/2022: Police, Crime, Sentencing and Courts Act 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/circulars/2022/05/circular-005-2022-police-crime-sentencing-and-courts-act-2022)
- 11.3 Existing related guidance such as the College of Policing Authorised Professional Practice for the Extraction of material from digital devices¹ will be updated to ensure consistency with this code of practice.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is expected to be favourable, in that the code of practice will provide clarity on use of the powers and encourage a consistent approach, which should give greater confidence when digital extraction is required.
- 12.3 A full Impact Assessment has not been prepared for this instrument. The economic impact of the PCSC Act was assessed and published alongside the equality impact assessment.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The PCSC Act provides the Secretary of State with the power to revise the code of practice. The codes will be reviewed as and when issues arise as a matter of their

¹ [Extraction of material from digital devices | College of Policing](#)

operation in practice, and also if amendments are made to the PCSC Act which require a revised or new code of practice to be produced.

15. Contact

- 15.1 PCSCExtractioncode@homeoffice.gov.uk or Jessica Swan at the Home Office email: jessica.swan2@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alex MacDonald, Deputy Director for Identity Policy, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Crime and Policing, Jeremy Quin MP can confirm that this Explanatory Memorandum meets the required standard.