EXECUTIVE NOTE

Draft SSI: THE PROCEEDS OF CRIME ACT 2002 (CASH SEARCHES: CONSTABLES IN SCOTLAND: CODE OF PRACTICE) ORDER 2009

Introduction

1. The above instrument was made in exercise of the powers conferred by section 293 (4) of the Proceeds of Crime Act 2002 (POCA). The instrument is subject to affirmative resolution procedure.

Policy Objectives

2. The purpose of this instrument is to bring into force a new Code of Practice for constables conducting cash searches under section 289 of the POCA. Section 289 allows constables to search for cash which is recoverable property or is intended by any person for use in unlawful conduct and which is not less than the minimum amount (currently £1000).

3. In particular, the Code of Practice is intended to ensure that the responsibilities of constables undertaking searches for cash under section 289 of POCA are clearly set out and are accessible. It defines the scope of the search powers and emphasises the need for reasonable grounds of suspicion. It also sets out the requirements for constables to obtain appropriate authority for a search and to make a report to the "Appointed Person" where it was not practicable to obtain prior judicial or senior officer authority. The code sets out the steps a constable must take prior to a search and the scope of the powers to search both persons and premises. It set out the requirements for recording information relating to any search that has taken place.

4. This is the first revision of the code of practice. The original code came into force in December 2002. The code requires updating to take account of some changes that had been made to legislation since POCA was implemented. For example, the minimum amount that can be searched for and seized was originally set at £10,000 and has since been reduced to £1000.

5. Rather than simply updating to reflect recent legislative changes the Scottish Government in conjunction with Crown Office colleagues felt that the code would benefit from editing to make it a more useful and easily understood aid to practitioners, rather than simply replicating the terms of the legislation. Therefore a small working group involving officials from Scottish Government, Crown Office and the police service was formed to consider redrafting the code to make it more user friendly.

6. Copies of the Code will be available at all police stations for consultation by the police and members of the public if they so wish.

7. This instrument also revokes The Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2002 (SSI 2002/569) which brought into force the previous Code of Practice for Constables exercising powers under section 289 of POCA.

Consultation

8. Under the terms of POCA the Scottish Ministers are required to publish a draft code of practice and consider any representations made to them about it and if appropriate modify to take account of any representations. The Scottish Government has consulted accordingly. The consultation list included the Scottish Law Commission, Law Society of Scotland, the Faculty of Advocates, ACPOS, Scottish Police Federation etc. It was also sent to the Clerk of the Justice Committee and to SPICE.

9. Following the consultation the Scottish Government received and considered a small number of comments and amended the Code where appropriate.

Financial Effects

10. The instrument has no financial effects on the Scottish Government, local government or any other public body and places no additional burden on business.

Scottish Government Police Division
May 2009