EXECUTIVE NOTE

Draft SSI: THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS: CODE OF PRACTICE) (SCOTLAND) ORDER 2009

Introduction

1. The above instrument is to be made in exercise of the powers conferred by section 410 (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 Investigations Code of Practice for the exercise by "proper persons" of the investigatory powers under Chapter 3 of Part 8 of POCA in relation to criminal confiscation, money laundering, detained cash and civil recovery investigations. A "proper person" is a constable (includes a revenue and customs officer) in relation to a criminal confiscation investigation or a money laundering investigation or Scottish Ministers or a person named by them in relation to a civil recovery or detained cash investigation. The instrument also revokes the Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003 which brought into force the previous Code of Practice issued under section 410 of the Proceeds of Crime Act 2002.

3. Chapter 3 of Part 8 of POCA allows for various investigative orders to be applied for and executed. These orders provide powerful tools which assist in the pursuit of the proceeds of crime. As a safeguard to ensure that proper and appropriate use is made of the orders, section 410 of the Proceeds of Crime Act 2002, requires Scottish Ministers to prepare a code of practice as to the exercise by proper persons of the various investigative orders.

4. The Code of Practice is intended to ensure that the responsibilities of proper persons conducting investigations is clearly set out and provides guidance as to how the various investigative orders are to be applied for and executed in Scotland.

5. This is the first revision of the code of practice. The original one came into force in February 2003. The code needed to be updated to take account of some changes that had been made to legislation since POCA was implemented. An example is the provision, section 387(4A), to allow the use of reasonable force when executing a search warrant under POCA which was introduced by the Serious Crime Act 2007 and the extension by that Act of the use of production orders for detained cash investigations.

6. Rather than simply updating the code to reflect recent legislative changes the Scottish Government took the view in conjunction with Crown Office colleagues that the code would benefit from editing to make it a more useful and easily understood aid to practioners. A small working group involving officials from Scottish Government, Crown Office and members of the police service was formed to consider redrafting the code to make it more user friendly.

7. If a proper person fails to comply with any provision in the code of practice they are not by reason of that failure liable in any criminal or civil proceedings, but the code is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any questions in the proceedings.

8. A copy of the Investigations Code will be made available on the Scottish Government website.

Consultation

9. Under the terms of POCA (section 410(2)) The Scottish Ministers are required to publish a draft Code of Practice, consider any representations made to them about it and if appropriate modify the Code 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, HMRC, Scottish Police Federation etc. It was also sent to the Clerk of the Justice Committee and to SPICE.

10. Following the consultation the Scottish Government received and took account of a small number of comments and amended the draft Code as appropriate.

Financial Effects

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

Scottish Government Police Division
May 2009