POLICY NOTE

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS: CODE OF PRACTICE) (SCOTLAND) ORDER 2019

SSI 2019/XXX

Introduction

1. The above instrument was made in exercise of the powers conferred by section 410(4) of the Proceeds of Crime Act 2002 ("POCA"). The instrument is subject to the affirmative procedure.

Policy Objectives

2. The purpose of this instrument is to bring into force a revised code of practice for proper persons, as defined at section 412 of POCA[1], to execute investigative 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).

3. These orders and warrants allow the proper person to require an individual or company to provide information that is of significant value to an investigation, or to search for such information.

4. These powers are necessary to enable the proper person to fully exercise their functions in Chapter 3 of Part 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.

5. Copies of the revised code will be available on the Scottish Government website and at all police stations, for consultation by the police and by members of the public if they so wish.

6. The code of practice is intended to provide clear guidance to proper persons as to how functions are operated and ensure that the responsibilities of proper persons are clearly set out and accessible. This revised code replaces one which was brought into operation in on 18th June 2009 ("the 2009 code"). This instrument also revokes the Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2009 (SSI 2009/245) which brought the 2009 code into operation.

Consultation

7. To comply with the requirements of section 410(2) of POCA, the Scottish Ministers published a draft of the revised code of practice and a public consultation paper on 11 March 2019, entitled "Proceeds of Crime Act 2002: Revised Draft Code of Practice for Proper Persons."

8. Following the consultation, the Scottish Ministers considered the two representations that were made to them and modified the draft where appropriate.

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[1] A proper person is defined as a) a constable, officer of HM Revenue & Customs or an immigration officer, in relation to a confiscation or money laundering investigation, or b) the Scottish Ministers or a person named by them in relation to a civil recovery, detained cash, detained property or frozen fund investigation.

Impact Assessment

9. No business or equality assessment is required for this Order. The purpose of the Order is to bring into force a code of practice for proper persons to exercise investigative orders and warrants that apply consistently across all groups.

Financial Effects

10. The Cabinet Secretary for Justice has confirmed that no BRIA is necessary, as the instrument has no financial impacts on the Scottish Government, local government or on business.

Privacy

11. The draft code does not require the Scottish Government to collect, use or disclose any personal information. Application of the code will require Police Scotland to collect personal data, however this is consistent with the existing requirements under POCA and does not constitute a need to collect or disclose a larger volume of personal or sensitive data than in the past. The Scottish Government therefore does not consider that a Privacy Impact Assessment is required in connection with the draft code.

Scottish Government
DSCR: Organised Crime Unit
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