POLICY NOTE

THE PROCEEDS OF CRIME ACT 2002 (SEARCHES UNDER PART 5: CONSTABLES IN SCOTLAND: CODE OF PRACTICE) ORDER 2018

SSI 2018/XXX

Introduction

1. The above instrument was made in exercise of the powers conferred by sections 293(4) and 303H(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 operation, on 16 April 2018, a new code of practice for constables conducting searches under Part 5 of POCA in relation to the civil recovery of the proceeds of crime. This is in consequence of amendments made to Part 5 by sections 14 and 15 of the Criminal Finances Act 2017 ("the 2017 Act"), which come into force on 16 April 2018.

3. The new code combines a revised code of practice for constables conducting cash searches under section 289 of POCA (as amended by section 14 of the 2017 Act) with a new code of practice for constables conducting searches for "listed assets" under section 303C of POCA (as inserted by section 15 of the 2017 Act). These search powers are necessary to enable constables to fully exercise their power to seize cash and/or "listed assets" for the purposes of civil forfeiture under Part 5 of POCA.

4. Section 289 allows constables to search individuals, premises and vehicles for cash which is recoverable property (obtained through unlawful conduct), or is intended by any person for use in unlawful conduct, and which is not less than the minimum amount (currently £1,000 as per S.I. 2006/1699). Section 14 of the 2017 Act expands the definition of "cash" in section 289(6) to include gaming vouchers, fixed-value casino tokens and betting receipts.

5. Section 15 of the 2017 Act inserts new sections 303B to 303Z into Part 5 of POCA so as to extend the civil forfeiture regime to include certain personal (or moveable) property, referred to as "listed assets". These are defined in section 303B as: precious metals, precious stones, watches, artistic works, face-value vouchers and postage stamps. Similar to section 289, section 303C allows constables to search individuals, premises and vehicles for a listed asset which is recoverable property (obtained through unlawful conduct), or is intended by any person for use in unlawful conduct, and which is not less than the minimum value (£1,000 as per section 303Y).

6. The search powers under sections 289 and 303C are subject to certain conditions and limits. Accordingly, sections 293 and 303H of POCA require the Scottish Ministers to make a code of practice in connection with the exercise of these powers by constables in Scotland. As the powers are essentially the same, it was considered appropriate to regulate their use by virtue of a single (combined) code of practice. It was also considered appropriate to align it with the Code of Practice on the Exercise by

Constables of Powers of Stop and Search of the Person in Scotland, which was subject to extensive public consultation and revision prior to its being laid before the Scottish Parliament on 11 January 2017 and coming into effect on 11 May 2017. Additionally, though, the code includes guidance specifically relevant to the POCA powers and in this respect it aligns with the equivalent codes issued by the Home Office (which apply to officers of Revenue and Customs and immigration officers operating in Scotland). By providing greater familiarity, clarity and simplicity, this will help ensure compliance and consistency of practice.

7. The combined code of practice is intended to ensure that the responsibilities of constables undertaking searches for cash under section 289, and for listed assets under section 303C, are clearly set out and accessible. It explains the scope of the search powers and emphasises the need to have reasonable grounds for suspicion to conduct a search. It also sets out: (a) the process for obtaining prior approval for a search and for submitting a report to the "Appointed Person" where it was not practicable to obtain judicial approval before conducting a search; (b) the steps a constable must take prior to, and during, a search of individuals, premises and vehicles, and (c) the information to be recorded in relation to any search that has taken place.

8. So far as the combined code relates to cash searches, it constitutes the third revision of the code of practice issued under section 293 of POCA and replaces the code which was brought into operation on 1 June 2015 ("the 2015 code"). This instrument therefore revokes the Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015 (SSI 2015/220), which brought the 2015 code into operation.

9. The code will be available to view on the Scottish Government website (http://www.gov.scot/Publications/Recent) and at all police stations in Scotland, including those at ports where the powers are (or are likely to be) used.

Consultation

10. The Scottish Ministers published a draft of the combined code of practice and launched a public consultation paper in November 2017, entitled "Code of Practice on the Exercise by Constables in Scotland of Search Powers Conferred by Sections 289 and 303C of the Proceeds of Crime Act 2002". It was brought to the attention of consultees with a particular interest or expertise in these matters, including the Police Service of Scotland, the Crown Office and Procurator Fiscal Service, the Law Society of Scotland, the Scottish Human Rights Commission and the Equality and Human Rights Commission. Following the consultation, the Scottish Ministers considered the few representations that were made to them and modified the draft where appropriate.

Impact Assessments

11. The UK Government undertook Impact Assessments in relation to the Bill for the 2017 Act. These can be found at: https://services.parliament.uk/bills/2016-17/criminalfinances/documents.html. Also, equalities and children's rights and welfare issues had already been carefully considered and addressed in developing the 2017 code of practice for Stop and Search of the Person, on which the combined code of practice under Part 5 of POCA is largely based. Scottish Government human rights and equalities officials were closely involved in the development of the draft Code and their suggestions

and recommendations are fully reflected in the final draft Code. In addition, the Equality and Human Rights Commission, Scotland's Commissioner for Children and Young People and the Transgender Alliance were included in the list of named consultees for the public consultation. No additional equalities or children's welfare issues, or wider impacts, were identified.

Financial Effects

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

Scottish Government
Directorate for Safer Communities
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