POLICY NOTE

THE PROCEEDS OF CRIME ACT 2002 (CASH SEARCHES: CONSTABLES IN SCOTLAND: CODE OF PRACTICE) ORDER 2015

SSI 2015/220

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 the affirmative procedure.

Policy Objectives

2. The purpose of this instrument is to bring into force a revised code of practice for constables conducting cash searches under section 289 of POCA. Section 289 allows constables to search individuals and premises 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 £1000). These search powers are necessary to enable constables to fully exercise their power to seize cash which is the proceeds of unlawful conduct, or is intended for use in such conduct, under section 294 of POCA. However, they are subject to certain limits and conditions. Accordingly, section 293 of POCA requires the Scottish Ministers to make a code of practice in connection with the exercise of these powers by constables in Scotland.

3. 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 accessible. It defines the scope of the search powers and emphasises the need for reasonable grounds of suspicion. It also sets out (a) 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, (b) the steps a constable must take prior to a search and the scope of the powers to search individuals, premises and vehicles, and (c) the requirements for recording information relating to any search that has taken place.

4. This is the second revision of the code of practice. It replaces the code which was brought into operation in June 2009 ("the 2009 code"). The 2009 code requires updating to take account of certain changes being made to section 289 of POCA by section 63 of the Policing and Crime Act 2009. These changes come into force on 1 June 2015 (article 2 of SI 2015/983).

5. Section 63 of the Policing and Crime Act 2009 inserts new provisions into section 289 of POCA. In effect, these confer on constables a power to search vehicles for cash in certain circumstances. Section 289 currently permits constables to search for cash on premises, including any vehicle located on the premises, provided they have lawful authority to be there (e.g. by virtue of a search warrant, a statutory or common law power of entry, or the owner's consent). The new power, on the other hand, is exercisable where a vehicle appears to be under the control of a person (the suspect) who is in or in the vicinity of the vehicle, and the vehicle is in a public place. It allows a constable to require the suspect to permit entry to, and a search of, the vehicle (provided, of course, that the constable has reasonable grounds for

suspecting that there is cash (as defined in section 289) in the vehicle). The new power is also exercisable where a vehicle is within the environs of a dwelling, but only if the constable has reasonable grounds for believing that the suspect does not reside in the dwelling and that the vehicle is there without the permission of a person who resides there.

6. Copies of the revised code will be available at all police stations for consultation by the police and by 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 2009 (SSI 2009/246) which brought the 2009 code into operation.

Consultation

8. To comply with the requirements of section 293 of POCA, the Scottish Ministers published a draft of the revised code of practice and launched a public consultation paper in July 2013, entitled "Proceeds of Crime Act 2002: Revised Draft of Code of Practice for Constables". The consultation list included, in particular, the Police Service of Scotland, the Scottish Police Federation, the Association of Scottish Police Superintendents, the Crown Office and Procurator Fiscal Service, the Civil Recovery Unit, the Law Society of Scotland, the Faculty of Advocates and the Social Equality and Human Rights Commission. Following the consultation, the Scottish Ministers considered the few representations that were made to them (which were generally very positive) and modified the draft where appropriate.

Impact Assessment

9. There are no equality impact issues.

Financial Effects

10. 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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