
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015

Made - - - - *2015*

Coming into force in accordance with article 1(1)

The Scottish Ministers make the following Order in exercise of the powers conferred by section 293(4) of the Proceeds of Crime Act 2002(a) (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers have, in accordance with—

- (a) section 293(5) of the Act, revised the code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by virtue of section 289 of the Act (searches) (“the revised code of practice”)(b);
- (b) section 293(2) of the Act, published a draft of the revised code of practice, considered representations made to them about the draft and modified the draft in the light of the representations; and
- (c) section 293(3) of the Act, laid a draft of the revised code of practice before the Scottish Parliament.

In accordance with section 459(6)(b) of the Act(c), a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015 and comes into force on 1st June 2015 or, if this Order has not been made by 31st May 2015, on the day after the day on which it is made.

(2) This Order extends to Scotland only.

(a) 2002 c.29.
(b) The original code of practice, entitled “Code of Practice for Constables in Scotland under the Proceeds of Crime Act 2002”, was brought into operation on 30th December 2002 by S.S.I. 2002/569. It was subsequently replaced by a revised code of practice, entitled “Code of Practice for Constables in Scotland issued under section 293 of the Proceeds of Crime Act 2002”, which was brought into operation on 18th June 2009 by S.S.I. 2009/246.
(c) Section 459(6)(b) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Revised code of practice

2. The revised code of practice entitled “Code of Practice for Constables in Scotland issued under section 293 of the Proceeds of Crime Act 2002” and laid in draft before the Scottish Parliament on 20th April 2015 comes into operation on 1st June 2015 or, if this Order has not been made by 31st May 2015, on the day after the day on which it is made.

Revocation

3. The Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2009(a) is revoked.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(a) S.S.I. 2009/246.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made in exercise of the powers conferred by section 293(4) of the Proceeds of Crime Act 2002 (“the Act”) and extends to Scotland only.

The Order brings into operation a revised version of the code of practice which is required by section 293(1) of the Act for cash searches conducted by constables in relation to Scotland under section 289 of the Act (article 2). The revised code of practice replaces the code entitled “Code of Practice for Constables in Scotland issued under section 293 of the Proceeds of Crime Act 2002” which was brought into operation on 18th June 2009 (“the 2009 code”).

The Order revokes the Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2009, which brought the 2009 code into operation (article 3).

Section 289 of the Act allows constables to search for cash which is recoverable property (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). Section 289 only confers a search power where certain conditions are met. There are limits on the extent to which the powers under section 289 are exercisable. The revised code of practice takes account of amendments made to section 289 of the Act by section 63 of the Policing and Crime Act 2009 (c.26) in relation to the power to search vehicles. Those amendments come into force on 1st June 2015 by virtue of the Policing and Crime Act 2009 (Commencement No. 10, Transitional Provision and Savings) Order 2015 (S.I. 2015/983).

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