

Draft Order laid before the Scottish Parliament under section 459(6)(b) of the Proceeds of Crime Act 2002 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (Searches under Part 5: Constables in Scotland: Code of Practice) Order 2018

Made - - - - 2018
Coming into force - - 16th April 2018

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 293(4) and 303H(4) of the Proceeds of Crime Act 2002(1) (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers have—

- (a) in accordance with sections 293(5) and 303H(1) of the Act, respectively 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 for cash)(2) and made a code of practice in connection with the exercise by constables in relation to Scotland of the powers conferred by section 303C of the Act (searches for listed assets)(3) (“the combined code of practice”);
- (b) in accordance with sections 293(2) and 303H(2) of the Act, published a draft of the combined code of practice, considered representations made to them about the draft and modified the draft in the light of the representations; and
- (c) in accordance with sections 293(3) and 303H(3) of the Act, laid a draft of the combined code of practice before the Scottish Parliament.

In accordance with section 459(6)(b) of the Act(4), a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(1) 2002 c.29. Section 303H was inserted by section 15 of the Criminal Finances Act 2017 (c.22) (“the 2017 Act”).

(2) Section 289 was relevantly amended by section 63(2) and (3) of the Policing and Crime Act 2009 (c.26) and section 14 of the 2017 Act. 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. This was replaced by a further revised code of practice of the same title, which was brought into operation on 1st June 2015 by S.S.I. 2015/220.

(3) Section 303C was inserted by section 15 of the 2017 Act.

(4) Section 459(6)(b) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), and was amended by paragraph 87(5) of schedule 5 of the 2017 Act.

Citation, commencement and extent

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Searches under Part 5: Constables in Scotland: Code of Practice) Order 2018 and comes into force on 16th April 2018.

(2) This Order extends to Scotland only.

The day on which the combined code of practice comes into operation

2.—(1) The combined code of practice comes into operation on 16th April 2018.

(2) In paragraph (1), “the combined code of practice” means the code of practice 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” which was laid in draft before the Scottish Parliament on 25th January 2018.

Revocation

3. The Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015(5) is revoked.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into operation a new code of practice for the purposes of sections 293(4) and 303H(4) of the Proceeds of Crime Act 2002 (“POCA”), regarding the civil recovery of the proceeds etc. of unlawful conduct (article 2). It extends to Scotland only.

The new code of practice combines a revised version of the code of practice required by section 293(1) of POCA with the code of practice required by section 303H(1) of POCA. The combined code of practice regulates searches conducted by constables in relation to Scotland under sections 289 and 303C of POCA.

Sections 289 and 303C of POCA allow constables to search for cash and certain personal (or moveable) property 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 or value (currently £1000). Sections 289 and 303C only confer search powers where certain conditions are met, and there are limits on the extent to which they are exercisable. The combined code of practice takes account of amendments made by sections 14 and 15 of the Criminal Finances Act 2017 (c.22). These respectively amend the definition of “cash” in section 289 of POCA, and insert new sections 303B to 303Z into POCA which extend the civil forfeiture regime to include certain “listed assets” (defined in section 303B). The amendments come (fully) into force on 16th April 2018 by virtue of the Criminal Finances Act 2017 (Commencement No. 4) Regulations 2018 (S.I. 2018/78).

The combined 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 1st June 2015 (“the 2015 code”). The Order therefore revokes the Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015, which brought the 2015 code into operation (article 3).