

Draft Order laid before Parliament under section 459(6)(a) of the Proceeds of Crime Act 2002 (c.29), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

PROCEEDS OF CRIME

**The Proceeds of Crime Act 2002 (Cash
Searches: Code of Practice) Order 2018**

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

The Secretary of State makes this Order in exercise of the powers conferred by section 292(4) and (5) of the Proceeds of Crime Act 2002(1) (“the Act”).

The Secretary of State—

- (a) under section 292(5) of the Act, has revised the code of practice made under section 292(1) of the Act in connection with the exercise of the powers conferred by virtue of section 289 of the Act(2);
- (b) in accordance with section 292(2) of the Act, has published a draft of the revised code of practice, considered any representations made about the draft by the Scottish Ministers, the Department of Justice and any other person and modified the draft, as thought appropriate, in the light of such representations;
- (c) in accordance with section 292(2A) of the Act, has consulted with the Attorney General about the draft of the revised code of practice in its application to the exercise of powers by SFO officers and the Director of the Serious Fraud Office, and
- (d) in accordance with section 292(3) of the Act, has laid a draft of the revised code of practice before Parliament.

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

(1) 2002 c. 29. Section 292 was amended by paragraph 5 of Schedule 11 to the Serious Crime Act 2007 (c. 27), paragraph 5 of Schedule 48 to the Finance Act 2013 (c. 29), paragraphs 1 and 14 of Schedule 1 to the Criminal Finances Act 2017 (c. 22) and S.I. 2010/976.

(2) Section 289 was amended by paragraph 2 of Schedule 11 to the Serious Crime Act 2007, section 63 of the Policing and Crime Act 2009 (c. 26), paragraph 2 of Schedule 48 to the Finance Act 2013, section 14(1) and (2) and 18(1) and (4)(a) of, and paragraph 11 of Schedule 1 and paragraph 17 and 31 of Schedule 5 to, the Criminal Finances Act 2017 and S.I. 2010/976.

Citation and commencement

1. This Order may be cited as the Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018 and comes into force on 16th April 2018.

Revised code of practice

2. The revised code of practice entitled “Code of Practice issued under section 292 of the Proceeds of Crime Act 2002 Recovery of Cash: Search Powers” laid in draft before Parliament on 23rd October 2017 comes into operation on 16th April 2018.

Revocation

3. The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2016⁽³⁾ is revoked.

Date

Name
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into operation on 16th April 2018 a revised code of practice made under section 292 of the Proceeds of Crime Act 2002 (c. 29) (“the 2002 Act”) in connection with the exercise of the powers conferred by virtue of section 289 of the 2002 Act.

Section 289 of the 2002 Act permits officers of Revenue and Customs, constables, and accredited financial investigators to search persons, vehicles and premises for cash which is derived from, or intended for use in, unlawful conduct. These powers also apply to SFO officers, but these powers have not been commenced in Northern Ireland.

By virtue of section 24 of the UK Borders Act 2007 (c. 30), Chapter 3 of Part 5 of the 2002 Act (which includes both sections 289 and 292) applies to an immigration officer as it applies in relation to a constable subject to modifications made by that section. Immigration officers may exercise the powers in England and Wales, Scotland and Northern Ireland.

This Order revokes a previous order made under section 292 of the 2002 Act.

While this code of practice applies across the UK, distinctions are made in the code to recognise differences in the regime in Scotland and Northern Ireland, and in particular the fact that some statutory provisions amended by the Criminal Finances Act 2017 (c. 22) have not yet been commenced in Northern Ireland.

An impact assessment has not been produced for this instrument as it has no direct impact on business, charities or voluntary bodies. The code of practice provides guidance on the use of powers under POCA by bodies in the public sector, and incorporates existing best practice, but does not require any greater use of those powers which could result in an additional impact.