

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).