

2017 No. 1226

PREVENTION AND SUPPRESSION OF TERRORISM

The Administrative Forfeiture of Terrorist Cash and Terrorist Money Held in Bank and Building Society Accounts (Cash and Account Forfeiture Notices) Regulations 2017

<i>Made</i> - - - -	<i>6th December 2017</i>
<i>Laid before Parliament</i>	<i>11th December 2017</i>
<i>Coming into force</i> - -	<i>31st January 2018</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by paragraphs 5A(6) and 10X(1) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Administrative Forfeiture of Terrorist Cash and Terrorist Money Held in Bank and Building Society Accounts (Cash and Account Forfeiture Notices) Regulations 2017, and come into force on 31st January 2018.

(2) In these Regulations—

“the Act” means the Anti-terrorism, Crime and Security Act 2001;

“child” means a person under 18 years;

“electronic communication” has the meaning given by section 15(1) of the Electronic Communications Act 2000(b);

“protected person” means—

- (a) in England and Wales, a person who lacks capacity within the meaning of the Mental Capacity Act 2005(c) in relation to a cash forfeiture notice or an account forfeiture notice;
- (b) in Northern Ireland, means a person who is 16 years or over who lacks capacity to understand the nature of a cash forfeiture notice or an account forfeiture notice because of an impairment of, or a disturbance in the functioning of, the mind or brain;
- (c) in Scotland, an adult who is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000(d), of understanding the nature of a cash forfeiture notice or an account forfeiture notice.

“senior officer” has the meaning given by—

- (a) in relation to a cash forfeiture notice, paragraph 5A(10) of Schedule 1 to the Act;

(a) 2001 c. 24. Paragraph 5A(6) is inserted by section 38(4) of the Criminal Finances Act 2017 (c. 22) and paragraph 10X(1) is inserted by paragraph 2 of Schedule 4 to that Act.

(b) 2000 c. 7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(c) 2005 c. 9.

(d) 2000 asp 4.

- (b) in relation to an account forfeiture notice, paragraph 10Q(7) of that Schedule.

Giving of a cash forfeiture notice

- 2.**—(1) Subject to paragraph (2), a cash forfeiture notice must be given by a senior officer to—
- (a) any person to whom notice of the most recent order made under paragraph 3(2) of Schedule 1 to the Act has been given, and
 - (b) any person who has been identified as being affected by such an order but who has not been given notice of the order.
- (2) Where—
- (a) there are no such persons as are mentioned in paragraph (1), or
 - (b) it is not possible to give a notice in accordance with regulation 4(1) to any such person,
- the cash forfeiture notice must be given by way of publication in accordance with regulation 4(2).
- (3) Where a cash forfeiture notice is to be given to a person outside the United Kingdom—
- (a) nothing in these Regulations authorises or requires any person to do anything which is contrary to the law of the country where the cash forfeiture notice is to be given, and
 - (b) the duty for the cash forfeiture notice to be given by way of publication under paragraph (2)(b) does not apply.
- (4) Regulation 7 makes further provision for cases where an individual to whom a cash forfeiture notice is to be given is a child or protected person.

Giving of an account forfeiture notice

- 3.**—(1) Subject to paragraph (2), an account forfeiture notice must be given by a senior officer to—
- (a) any person to whom notice of an order made under paragraph 10S(2) of Schedule 1 to the Act has been given, and
 - (b) any person who has been identified as being affected by such an order but who has not been given notice of the order.
- (2) Where—
- (a) there is no person who falls within paragraph (1), or
 - (b) it is not possible to give a notice in accordance with regulation 4(1) to any such person,
- the account forfeiture notice must be given by way of publication in accordance with regulation 4(2).
- (3) Where an account forfeiture notice is to be given to a person outside the United Kingdom—
- (a) nothing in these Regulations authorises or requires any person to do anything which is contrary to the law of the country where the account forfeiture notice is to be given, and
 - (b) the duty for the account forfeiture notice to be given by way of publication under paragraph (2)(b) does not apply.
- (4) Regulation 7 makes further provision for cases where an individual to whom an account forfeiture notice is to be given is a child or protected person.

Manner in which a cash forfeiture notice or an account forfeiture notice must be given

- 4.**—(1) A cash forfeiture notice or an account forfeiture notice which is given to a person must be given—
- (a) by post in accordance with regulation 5, or
 - (b) by means of electronic communication in accordance with regulation 6.
- (2) A cash forfeiture notice or an account forfeiture notice which is required to be given by way of publication must be published—

- (a) in the London Gazette, if the senior officer believes any affected person may be in England or Wales;
- (b) in the Belfast Gazette, if the senior officer believes any affected person may be in Northern Ireland;
- (c) in the Edinburgh Gazette, if senior officer believes any affected person may be in Scotland.

Giving a cash forfeiture notice or an account forfeiture notice by post

5.—(1) In order to give a cash forfeiture notice or an account forfeiture notice to a person by post, it must be sent by posting it to an address which has been given by that person for the purpose of receipt of such a notice under these Regulations.

(2) If no such address has been given, the cash forfeiture notice or account forfeiture notice must be sent to an address which is shown in the following table (or where it is possible to post the notice to more than one of the addresses in the table, to any such address).

<i>Person to whom a cash forfeiture notice or an account forfeiture notice is to be given</i>	<i>Address</i>
Individual	Last known residential address
Individual in their business capacity	Last known residential address or principal or last known place of business
Individual in their capacity as a partner in a partnership	Last known residential address or principal or last known place of business of the partnership
Limited liability partnership (within the meaning of the Limited Liability Partnerships Act 2000) ⁽¹⁾	Principal office of the partnership or any place of business of the partnership
Corporation (other than a company)	Principal office of the corporation or any place where the corporation carries on its activities
Company	Principal office of the company or any place of business of the company

⁽¹⁾ 2000 c. 12. “Limited liability partnership” is defined in section 1(2) of that Act.

(3) The cash forfeiture notice or account forfeiture notice is to be treated as having been given at the time at which the notice would be delivered in the ordinary course of post.

Giving a cash forfeiture notice or an account forfeiture notice by means of electronic communication

6.—(1) A cash forfeiture notice or an account forfeiture notice may be given by means of fax, email or other means of electronic communication where the intended recipient has previously indicated in writing—

- (a) that they are willing to accept the giving of such a notice by that means of electronic communication, and
- (b) the fax number, email address or other electronic identification to which such a notice must be sent.

(2) Where a senior officer intends to give a cash forfeiture notice or an account forfeiture notice by means of electronic communication (other than by fax), the senior officer must first ask the intended recipient whether there are any limitations to the intended recipient’s agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

(3) Giving a cash forfeiture notice or an account forfeiture notice by means of electronic communication is effected by sending or transmitting the notice in accordance with the written indication given by the intended recipient under paragraph (1), having complied with any

reasonable limitations specified by the intended recipient in response to a request under paragraph (2).

(4) The cash forfeiture notice or account forfeiture notice is to be treated as having been given on the day on which it is sent or transmitted if the electronic communication containing it is sent or transmitted at or before 4.30pm.

(5) If the electronic communication is sent or transmitted after 4.30pm, the notice is to be treated as having been given the following day.

Giving a cash forfeiture notice or an account forfeiture notice to a child or a protected person

7.—(1) Where the intended recipient of a cash forfeiture notice or an account forfeiture notice is known to be a child who is not also a protected person, the cash forfeiture notice or account forfeiture notice must be given to the child and to—

- (a) one of the child's parents or guardians, or
- (b) if there is no parent or guardian, an adult with whom the child resides or in whose care the child is.

(2) Where the intended recipient of a cash forfeiture notice or an account forfeiture notice is known to be a protected person, the cash forfeiture notice or account forfeiture notice must be given to the protected person and—

- (a) where the protected person is resident in England and Wales, to one of the following persons—
 - (i) the attorney under a registered enduring power of attorney that relates to the protected person;
 - (ii) the donee of a lasting power of attorney that relates to the protected person;
 - (iii) the deputy appointed in relation to the protected person by the Court of Protection;
- (b) where the protected person is resident in Northern Ireland, to one of the following persons—
 - (i) the attorney under a registered enduring power of attorney that relates to the protected person;
 - (ii) the controller appointed in relation to the protected person by the Office of Care and Protection;
- (c) where the protected person is resident in Scotland, to one of the following persons—
 - (i) the continuing attorney under a continuing power of attorney that relates to the protected person;
 - (ii) the welfare attorney under a welfare power of attorney that relates to the protected person;
 - (iii) the person authorised under an intervention order in respect of the protected person;
 - (iv) the person authorised under a guardianship order in respect of the protected person;
 - (v) the person authorised under a withdrawal certificate in respect of the funds of the protected person.

(3) If there is no person falling within a description in paragraph (2)(a), (b) or (c), as applicable, the cash forfeiture notice or account forfeiture notice must be given to an adult with whom the protected person resides or in whose care the protected person is (as well as to the protected person).

(4) Any reference in these Regulations to a person to whom a cash forfeiture notice or an account forfeiture notice is to be given includes the person to be given the cash forfeiture notice or account forfeiture notice in addition to a child or protected person under paragraphs (1) to (3).

6th December 2017

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations set out how a senior officer must give a cash forfeiture notice under paragraph 5A(6), or an account forfeiture notice under paragraph 10W(2), of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (c. 29) (“the 2001 Act”).

A cash forfeiture notice relates to cash seized because of a reasonable suspicion that the cash is intended to be used for terrorism; consists of the resources of a proscribed organisation; or is property earmarked as terrorist property, and has been detained under a magistrates’ court (or in Scotland, sheriff’s) order under paragraph 3(2) of Schedule 1 to the 2001 Act for the purposes of further investigation, or because criminal proceedings are being considered or have begun. An account forfeiture notice relates to money held in a bank or building society account in relation to which the same suspicions apply as for terrorist cash, and in respect of which an account freezing order under paragraph 10S(2) of Schedule 1 to the 2001 Act has been made.

Both cash forfeiture notices and account forfeiture notices inform the recipient of the senior officer’s intention to forfeit money without a hearing before a magistrates’ court (or before the sheriff in Scotland).

Regulation 2 provides that a cash forfeiture notice must be given to persons known to be affected by an order extending the period of detention of seized cash. Regulation 3 provides that an account forfeiture notice must be given to persons known to be affected by an order freezing the money in the account. In either case, if there are no persons falling within the description, or it would not be possible to give such a person a notice in accordance with the requirements of the Regulations, then the notice must be given instead by publication (unless the affected persons are outside the United Kingdom).

Regulation 4 sets out the manner in which a cash forfeiture notice or an account forfeiture notice must be given. A notice being given to a person may be sent by post or by means of an electronic communication. A notice given by publication must be published in the London Gazette, the Belfast Gazette and/or the Edinburgh Gazette, as applicable.

Regulation 5 sets out the requirements for giving a cash forfeiture notice or an account forfeiture notice by post, and makes provision for when the notice is to be treated as having been given. Regulation 6 sets out the requirements for giving a cash forfeiture notice or an account forfeiture notice by means of electronic communication, and makes provision for when the notice is to be treated as having been given.

Regulation 7 concerns the giving of a cash forfeiture notice or an account forfeiture notice to a person known to be a child who is not a person lacking sufficient mental capacity (a “protected person”), or to a protected person.

An impact assessment has not been produced for this instrument as no impact is foreseen on the private, voluntary or public sectors.

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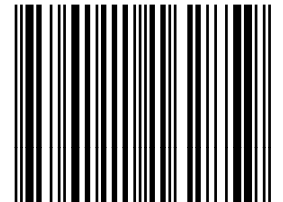
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