

EXPLANATORY MEMORANDUM TO
THE ADMINISTRATIVE FORFEITURE OF TERRORIST CASH AND TERRORIST
MONEY HELD IN BANK AND BUILDING SOCIETY ACCOUNTS (CASH AND
ACCOUNT FORFEITURE NOTICES) REGULATIONS 2017

2017 No. 1226

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument sets 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 (“the Act”). A cash forfeiture notice relates to cash seized because of a reasonable suspicion that it is terrorist cash, and gives notification of a senior officer’s intention to forfeit the cash. An account forfeiture notice relates to money held in a bank or building society account where there is a reasonable suspicion that the money derives from or is intended to be used for the purposes of terrorism, and gives notification of a senior officer’s intention to forfeit the money in the account. A more detailed description of the legislation is set out below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Paragraphs 5A-5F were inserted as new Part 2A of Schedule 1 to the Act by section 38(4) of the Criminal Finances Act 2017 (c. 22) (“the CFA”), and make provision for the administrative forfeiture of seized terrorist cash.
- 4.2 Paragraphs 10Q1 – 10Z7 were inserted as new Part 4B of Schedule 1 to the Act by section 40 of, and Schedule 4 to, the CFA. These paragraphs make provision for the freezing and forfeiture of bank and building society accounts where those accounts contain monies which are: intended to be used for terrorism, the resources of a proscribed organisation, or property earmarked as terrorist property.
- 4.3 Administrative forfeiture is a process that permits law enforcement agencies to forfeit these types of terrorist property by notifying affected persons of their intention to do so, and does not require an application to the court for a forfeiture order. A cash forfeiture notice (“CFN”) under paragraph 5A, or an account forfeiture notice

("AFN") under paragraph 10W, of Schedule 1 to the Act may be given by a senior officer (as defined in paragraph 5A(10) for CFNs and paragraph 10Q(7) for AFNs), if that senior officer is satisfied that either the cash (or any part of it) is terrorist cash or that the funds in the account (or any part of it) are terrorism-related funds. If an individual objects to the administrative forfeiture of the cash or the money, the forfeiture notice lapses, and the law enforcement agency concerned must determine whether to return the property, to seek an extension to the orders allowing the detention of the cash or the freezing of the account, or to proceed to make an application to the relevant court for the forfeiture of the property.

- 4.4 Paragraph 5A(6) in respect of CFNs and paragraph 10X(1) for AFNs of Schedule 1 to the Act, require the Secretary of State to make regulations which detail how such forfeiture notices are to be given. Regulation 2 states that the senior officer must give the CFN to any person any person to whom notice of a court order extending the period of detention of seized cash made under paragraph 3(2) of Schedule 1 to the Act has been given. For an AFN, regulation 3 states that the senior officer must give the AFN to any person to whom notice of an asset freezing order ("AFO") made under paragraph 10S(2) has been given, and any person who has been identified as being affected by such an order but who has not been given notice of the AFO. This ensures that the CFN or an AFN will be given to any person who may have an interest in the forfeiture of the cash or money in the account. Regulations 2(3) and 3(3) make provision about the giving of CFNs and AFNs to people outside the United Kingdom.
- 4.5 Regulation 4 states that the CFN or an AFN may be given by post or by electronic communication, where the recipient is known. Alternatively, regulation 4(2) provides that the CFN or an AFN may be published in the London Gazette, the Belfast Gazette and/or the Edinburgh Gazette, under certain circumstances. Those circumstances are that no person had previously been notified of an AFO in respect of the money or an order extending the detention of cash, or no person had subsequently been identified as being affected by the AFO or the cash detention order; or alternatively that a recipient had been identified but the notice could not be given by post or by electronic communication.
- 4.6 Regulations 5 and 6 set out the requirements for giving a CFN or an AFN by post or by electronic communication. Regulation 6(1) provides that a notice may only be given by means of electronic communication where the intended recipient has indicated in writing that they are willing to accept the CFN or AFN being given in that manner.
- 4.7 Where the intended recipient is a child or a protected person, the senior officer must additionally give the CFN or AFN to the appropriate person set out in regulation 7. In respect of a child, this means the child's parents, a guardian or an adult with whom the child resides. If the recipient is a protected person, regulation 7(2) provides that the CFN or AFN must additionally be given to a person with a relevant power of attorney, to a deputy appointed by the Court of Protection, or to an adult with whom the protected person resides, or in whose care the protected person is.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The CFA provides law enforcement agencies with new powers under the Act to freeze and forfeit suspected terrorist funds held in bank or building society accounts by means of an administrative procedure which does not involve going to court to obtain an order. The CFA has also introduced administrative forfeiture provisions in respect of detained terrorist cash. These changes have strengthened law enforcement agencies' ability to disrupt criminal use of the financial system and where funds are often moved rapidly through multiple bank accounts, the freezing prevents that movement, while allowing the law enforcement agency time to investigate the source of the funds.
- 7.2 New measures were needed as there was a gap in our ability to prevent the movement or transfer of funds intended for terrorism. The new forfeiture power allows law enforcement agencies to act quickly to seize and forfeit cash or money held in bank accounts where there are reasonable grounds for suspecting that the cash or money in accounts is intended for terrorism.
- 7.3 The measures are based on the cash seizure provisions that already exist within the Act. They will also allow law enforcement agencies to freeze accounts, on the basis of reasonable suspicion that they contain terrorist funds, to give law enforcement agencies the necessary time to investigate the provenance of those funds.

8. Consultation outcome

- 8.1 The Home Office consulted with relevant stakeholders on the provisions themselves, inviting and reviewing suggestions and observations amongst the groups potentially affected by this legislative change. No consultation has been undertaken with regard to this instrument specifically.

9. Guidance

- 9.1 The Code of Practice for officers acting under the Act provides guidance on how to exercise functions related to an AFN and a CFN.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that may be undertaken by small businesses.
- 11.2 This legislation applies to small businesses only in the sense that a small business might be given an administrative forfeiture notice, if it held property which was reasonably suspected of being terrorist property. This is because the underlying legislation does not distinguish between small businesses and other members of society. No specific provision is made in these Rules for giving an administrative

forfeiture notice to small businesses, as the standard procedure set out in these Rules is sufficient to meet the needs of small businesses in this respect.

12. Monitoring & review

- 12.1 These regulations will be reviewed whenever issues arise as a matter of their operation in practice, but also where amendments are made to the Act which requires a revised set of regulations.

13. Contact

- 13.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, telephone: 020 7035 4848.