

EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (FREEZING AND FORFEITURE OF TERRORIST MONEY IN BANK OR BUILDING SOCIETY ACCOUNTS) RULES 2017

2017 No. 1290 (L. 22)

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to create court rules to underpin the operation of paragraphs 10Q –10Z7 in Part 4B of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001 (“ATCSA”) which make provision for the freezing and forfeiture of bank or building society accounts, where those accounts contain funds which derive from or are intended to be used for the purposes of terrorism. 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 Section 144 of the Magistrates’ Courts Act 1980 (c. 43) provides for rules regulating and prescribing the practice and procedure of magistrates’ courts, except in relation to any criminal cause or matter, or family proceedings, to be made by the Lord Chief Justice with the concurrence of the Lord Chancellor. Since proceedings in relation to freezing and forfeiture of terrorist funds in bank and building society accounts are neither criminal nor family proceedings, these Rules are made under section 144.
- 4.2 Paragraphs 10Q – 10Z7 were inserted as new Part 4B of Schedule 1 to ATCSA by section 40 of and Schedule 4 to the Criminal Finances Act 2017 (c. 22), and 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 monies earmarked as terrorist property. The provisions build on and partly mirror existing powers in Parts 1-4 to recover “terrorist cash”.
- 4.3 Applications for orders under Part 4B of Schedule 1 to ATCSA will be heard in the magistrates’ court. Accordingly, these Rules are based on the existing procedure for applications in relation to terrorist cash in the magistrates’ court, and are intended to provide the procedure by which these powers will operate.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application is England and Wales.

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

What is being done and why

7.1 Prior to the amendments made by the Criminal Finances Act 2017, the contents of bank and building society accounts could be forfeited following a conviction under sections 15–18 Terrorism Act 2000 (TACT). In the absence of a conviction, there was no formal mechanism for seizing the funds. There exposed two major areas of concern. Firstly, banks that identify accounts that they believe to contain funds connected with terrorism can inform the police or NCA of this through a disclosure under Part 2 of TACT. However, for many accounts, no action can be taken as there is no specific power for law enforcement agencies to use. Secondly, law enforcement agencies may wish to take action on an account as part of their general operations, where there is reasonable suspicion that the funds derive from, or are intended for use in, terrorism.

7.2 The account forfeiture provisions are similar to the cash forfeiture procedure and similarly do not specify a minimum amount below which the powers are unavailable.

7.3 Unlike the cash forfeiture procedure, there are no detention powers. Accordingly, these Rules only make provision for the freezing and forfeiture of funds. The following provisions of ATCSA are addressed in these Rules.

Application for account freezing order and application to vary or set aside account freezing order

7.4 Paragraph 10S sets out the procedure for the court to follow when making an Account Freezing Order (“AFO”).

7.5 The court may make an AFO if it is satisfied that the funds in the account (whether all or in part) derive from or are intended to be used for the purposes of terrorism. The maximum overall period of an AFO is two years, whether that is the period specified by the court when the AFO is first made or whether it is varied to extend its length. Paragraph 10T provides that the court is also permitted to vary or set aside an account freezing order at any time, and can also do so upon application by any person affected by such an order.

7.6 Paragraph 10W enables a senior officer to issue an “account forfeiture notice” for the purpose of forfeiting funds in an account subject to an AFO (a frozen bank account) if satisfied that the funds derive from or are intended to be used for the purposes of terrorism. The period for objecting to the proposed forfeiture must be at least 30 days after the notice is given and the objection can be made by anyone in writing. If no objection is received, the money specified in the account forfeiture notice will be forfeited, without the need for a court order (“administrative forfeiture”). Any money

forfeited under an account forfeiture notice is paid into the Consolidated Fund per paragraph 10Z1.

- 7.7 Paragraph 10Z sets out the procedure for applying for an administrative forfeiture to be set aside. The court must consider whether the funds could be forfeited under the judicial forfeiture process under paragraph 10Z2 and, if satisfied that it could not be, the court must set aside the forfeiture and order the release of that money.

Application for account forfeiture order

- 7.8 Paragraph 10Z2 – 10Z6 sets out the procedure for the court to follow when making an Account Forfeiture Order (AFtO).
- 7.9 The court may make an AFtO in respect of the funds (or any part thereof) held in a frozen bank account if satisfied that the funds derive from or are intended to be used for the purposes of terrorism. However, where the funds are jointly owned, the AFtO shall not apply to any part of the funds which belongs to a joint owner who is an “excepted joint owner” i.e. someone whose share of the funds are not associated with terrorism. Where an application for an AFtO is made, the AFO will remain in place until the relevant bank or building society has transferred the funds into an interest-bearing account or the application for an AFtO is otherwise disposed of.
- 7.10 Paragraph 10Z3 provides that, pending an appeal against a decision by the court regarding an AFtO in respect of a frozen bank account, the person who applied for the AFtO may apply ex parte for an order that the AFO shall continue to have effect. Paragraph 10Z4 provides that any party to the proceedings for an AFtO may appeal against such an order or the decision not to make one. An appeal must be made within 30 days of the court making the order or decision (per paragraph 10Z5 there is an extended time to appeal in the cases where a deproscription order is made). The appellate court may make any order it thinks appropriate. If the appeal is upheld, the court may order the release of all or part of the funds, and any interest accrued whilst in the interest bearing account must be added to the released sum. Paragraph 10Z6 provides that any funds forfeited under an AFtO must be paid into the Consolidated Fund.

Application for compensation

- 7.11 Under paragraph 10Z7 an application to court for compensation can be made by the person by or for whom the account is operated, providing that an AFO is made and none of that money is forfeited. The court may order compensation if satisfied that the applicant has suffered loss as a result of the AFO and the circumstances are exceptional. The amount of compensation to be paid is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Notice

- 7.12 The Rules make provision as to how applications, notices and documents in connection with these court procedures are to be given.

Transfer of proceedings

- 7.13 Any person party to proceedings may make an application to the court requesting that they be transferred to a different local justice area. The court may grant the application if it is satisfied that it would be more convenient or fairer for proceedings to be transferred to a different local justice area.

Procedure at hearings

- 7.14 Section 10Z9 provides a power for prosecutors to appear in proceedings on behalf of: constables; CTFIs; the Commissioners for HMRC; Revenue and Customs officers and immigration officers, if requested to do so and if they consider it appropriate to do so.

Consolidation

- 7.15 No consolidation of the rules is planned at present.

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 these rules specifically, although they have been reviewed by persons experienced in magistrates' courts procedure in non-criminal matters (some technical amendments being made in response to comments received as part of that process).

9. Guidance

- 9.1 Guidance exists in the form of a Code of Practice for Officers acting under Schedule 1 to ATCSA on the use of these provisions. There is no guidance planned with regard to the use of these Rules specifically.

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 does not apply to activities that may be undertaken by small businesses.

12. Monitoring & review

- 12.1 The Home Office will monitor the use of these powers. Any reports of the operation of these powers can be gathered by Her Majesty's Courts and Tribunal Service and reported to the Home Office. .

13. Contact

- 13.1 Amrita Dhaliwal can answer any queries regarding this instrument (Telephone: 0203 334 6306 or email: amrita.dhaliwal@justice.gov.uk).