

2017 No. 1295 (L. 25)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (Amendment) Rules 2017

<i>Made</i> - - - -	<i>11th December 2017</i>
<i>Laid before Parliament</i>	<i>18th December 2017</i>
<i>Coming into force</i> - -	<i>31st January 2018</i>

The Lord Chief Justice, with the concurrence of the Lord Chancellor, makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(a):

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (Amendment) Rules 2017, and come into force on 31st January 2018.

(2) In these Rules, a rule referred to by number alone means the rule so numbered in the Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (No 2) Rules 2001(b).

Amendments to the Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (No 2) Rules 2001

2. The Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (No 2) Rules 2001 are amended in accordance with rules 3 to 13 of these Rules.

Interpretation

3. In rule 3—

(a) after paragraph (a) insert—

“(aa) “document” includes any notification required to be given under these Rules; and

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

(a) 1980 c. 43. Section 144 has been amended by section 109(1) and paragraphs 245(1), (2), (5) of Schedule 8 and Schedule 10 to the Courts Act 2003; section 15(1) and paragraphs 99, 102(1), (2), (3)(a), (3)(b), (4) and (6) of Schedule 4 to the Constitutional Reform Act 2005; section 208(1) and paragraphs 42, 43(b) of Schedule 21 to the Legal Services Act 2007; Article 3(2) and paragraphs 1(1), (2) – (6) of Schedule 2 to SI 2012/2398 and section 17(6) and paragraphs 39, 52 and 99 of Schedule 10 to the Crime and Courts Act 2013.

(b) S.I. 2001/4013, which is amended by S.I. 2003/1236 and S.I. 2005/617

(c) 2000 c. 7. Section 15(1) is amended by section 406 of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c. 21).

- (b) omit paragraph (d).

First application for the continued detention of seized cash

4. In rule 4—

- (a) in paragraph (1)—
 - (i) for “may be made in Form A and may be” substitute “must be in writing and must be”; and
 - (ii) for “justices’ clerk for the local justice area in which the cash was seized” substitute “court before which the applicant wishes to make the application”;
- (b) after paragraph (1) insert—

“(1A) But where the reasonable grounds for suspicion which led to the seizure of cash to which an application under paragraph 3(5) of Schedule 1 relates are connected to—

 - (a) the reasonable grounds for suspicion which led to the seizure of other cash or property to which a previous order made under paragraph 3(2) or 10D(1) of Schedule 1 relates; or
 - (b) the reasonable grounds for suspicion which led to the making of a previous account freezing order under paragraph 10S(2) of Schedule 1,

then the application may be sent to any court which made a previous order listed in subparagraph (a) or (b).”;
- (c) in paragraph (2), for “A copy” substitute “Except where paragraph (3) or (4A) applies, a copy”;
- (d) after paragraph (3) insert—

“(3A) But where paragraph (3) applies the applicant is not required to send copies of the written application and notification of the hearing to a sender or intended recipient who cannot be identified.”;
- (e) after rule 4(4) insert—

“(4A) Where unattended cash is seized (other than where the cash is found in a means of unattended dispatch) the applicant need not give a copy of the written application and notification of the hearing to any person.

(4B) The applicant must inform the court of any person known to be affected by the order, as soon as practicable after that person is so identified.”;
- (f) in paragraph (6), for “justices’ clerk” substitute “court”.

Further application for the continued detention of seized cash

5. In rule 5—

- (a) in paragraph (1)—
 - (i) for “Form A” substitute “writing”; and
 - (ii) for “justices’ clerk referred to in rule 4(1)” substitute “court to which the first application under paragraph 3(5) of Schedule 1 was sent”;
- (b) in paragraph (2)—
 - (i) for “shall” substitute “must”; and
 - (ii) after “previous” insert “related”;
- (c) in paragraph (3)—
 - (i) for “justices’ clerk shall” substitute “court must”;
 - (ii) for “he directs” substitute “directed”; and
 - (iii) for “he shall notify” substitute “must notify”;

- (d) after paragraph (3) insert—
 - “(3A) The applicant must inform the court of any person known to be affected by the order, as soon as practicable after that person is so identified.”;
- (e) in paragraph (5)—
 - (i) for “justices’ clerk shall” substitute “court must”; and
 - (ii) after “previous” insert “related”; and
- (f) in paragraph (6), for “justices’ clerk shall” substitute “court must”.

Application for the release of detained cash

6. In rule 6—

- (a) in paragraph (1)—
 - (i) for “paragraph 5(2)” substitute “paragraph 5(2), 5E(2)”;
 - (ii) for “shall” in both places where it appears substitute “must”; and
 - (iii) for “the justices’ clerk referred to in rule 4(1)” substitute “the court before which the applicant wishes to make the application”;
- (b) after paragraph (1) insert—
 - “(1A) But if the applicant has been given notice of an order under paragraph 3(2) of Schedule 1 in respect of the detained cash, then the application must be sent to the court which sent the applicant that notice.”;
- (c) in paragraph (2), for “justices’ clerk” substitute “court”;
- (d) in paragraph (3)—
 - (i) for “justices’ clerk shall” substitute “court must”;
 - (ii) for “he directs” substitute “directed”; and
 - (iii) for “shall notify” substitute “must notify”.
- (e) in paragraph (5)—
 - (i) after “paragraph 5(2)” insert “or 5E(3)”, and
 - (ii) for “paragraph 5(4)” substitute “paragraph 9A”; and
- (f) in paragraph (6)—
 - (i) after “paragraph 9(3)” insert “or 9(4)”, and
 - (ii) after “specified in the order” insert “, except that the cash shall not be released whilst paragraph 9A of Schedule 1 applies”.

Application for forfeiture of detained cash

7. In rule 7—

- (a) in paragraph (1)—
 - (i) for “may be in Form F and shall be” substitute “must be in writing and may be”; and
 - (ii) for “the justices’ clerk referred to in rule 4(1)” substitute “the court before which the applicant wishes to make the application”;
- (b) after paragraph (1) insert—
 - “(1A) Where no applications in respect of the cash have been made under paragraph 3(5) of Schedule 1 of the Act, the application must be sent to—
 - (a) the court before which the applicant wishes to make the application; or
 - (b) where the reasonable grounds for suspicion which led to the seizure of cash to which the application for forfeiture relates are connected to the reasonable grounds for suspicion which led to—

- (i) the seizure of other cash or property to which an order made under paragraph 3(2) or 10D(1) of Schedule 1 relates; or
 - (ii) the making of an account freezing order under paragraph 10S(2) of Schedule 1,
the court which made the order listed in sub-paragraph (i) or (ii).”;
- (c) in paragraph (2),—
 - (i) for “shall” substitute “must”; and
 - (ii) after “has been given” insert “and to any other person identified by the court as being affected by the application”;
- (d) for paragraph (3) substitute—

“(3) The court must fix a date for a directions hearing, which unless directed otherwise shall not be earlier than seven days from the date on which it is fixed, and must notify that date to the applicant and every person to whom a copy of the application is required to be sent under paragraph (2).

(3A) At the directions hearing, the court may give directions relating to the management of the proceedings, including directions as to the date for the hearing of the application.

(3B) If neither the person from whom the cash was seized, nor any other person who is affected by the detention of the property, seeks to contest the application, the court may decide the application at the directions hearing.”;
- (e) In paragraph (4) for “An order for the forfeiture of detained cash under paragraph 6(2) of Schedule 1 and a copy of the order shall be given by the justices’ clerk” substitute “A copy of the order for the forfeiture of detained cash under paragraph 6(2) of Schedule 1 must be given by the court”.

Application to set aside forfeiture

8. After rule 7 insert—

“Application to set aside forfeiture

7A.—(1) An application under paragraph 5D(1) of Schedule 1 for the setting aside of forfeiture of cash forfeited in pursuance of a forfeiture notice must be made in writing and made to the court before which the applicant wishes to make the application.

(2) But if the applicant has been given notice of an order under paragraph 3(2) of Schedule 1 in respect of the cash, then the application must be sent to the court which sent the applicant that notice.

(3) The court must send a copy of the application to the authorised officer who seized the cash, to every person to whom notice of an order made under paragraph 3(2) of Schedule 1 has been given and to the Director of Public Prosecutions, where the Director has given notification under rule 7B.

(4) The court must fix a date for the hearing of the application, which, unless directed otherwise, shall not be earlier than seven days from the date on which it is fixed, and must notify that date to the applicant and to every person to whom a copy of the application is required to be sent under paragraph (3).

(5) An order under paragraph 5D(6)(a) of Schedule 1 must provide for the release of the cash within seven days of the date of the making of the order, or such longer period as, with the agreement of the applicant, may be specified.

Director of Public Prosecutions appearing in proceedings

7B. Where the Director of Public Prosecutions has agreed under paragraph 10Z9 of Schedule 1 to appear in proceedings under Schedule 1 for—

- (a) a constable;
- (b) a counter-terrorism financial investigator;
- (c) the Commissioners for Her Majesty's Revenue and Customs;
- (d) an officer of Revenue and Customs; or
- (e) an immigration officer,

the Director must notify the designated officer for the court which is dealing with the proceedings if the Director wants documents given under these Rules to be given also to the Director.”.

Application for compensation

9. In rule 8—

- (a) in paragraph (1), for “the justices’ clerk referred to in rule 4(1)” substitute “the court before which the applicant wishes to make the application”;
- (b) in paragraph (2)—
 - (i) for “justices’ clerk” substitute “court”;
 - (ii) after sub-paragraph (b) insert—
 - “(bb) the police force of which the counter-terrorism financial officer is a member of staff, if the cash which is the subject of the application was seized by a counter-terrorism financial investigator;”;
 - (iii) in sub-paragraph (c), at the end replace “.” with “;”;
 - (iv) after sub-paragraph (c) insert—
 - “(d) the Director of Public Prosecutions, where the Director has given notification under rule 7B.”;
- (c) in paragraph (3)—
 - (i) for “justices’ clerk shall” substitute “court must”; and
 - (ii) for “he directs” substitute “directed”.

Giving of documents

10. For rule 9 substitute—

“Giving of documents

9.—(1) Any document required to be given to any person under these Rules may be given—

- (a) by post in accordance with rule 9A;
- (b) by means of electronic communication in accordance with rule 9B; or
- (c) by any method authorised by the court under rule 9C.

(2) If any document is given to a person in accordance with paragraph (1), it is deemed to have been received by that person unless the contrary is shown.

Giving documents by post

9A.—(1) In order to give a document by post to a person (other than to the court), it must be sent by properly addressing, pre-paying and posting to an address which has been given by that person for the purpose of receipt of documents under these Rules.

(2) If no address has been given as is mentioned in paragraph (1), the document must be sent to an address which is shown in the following table.”

<i>Person to whom document is to be given</i>	<i>Address</i>
1. Individual	Last known residential address
2. Individual in their business capacity	Last known residential address of the individual; or principal or last known place of business
3. Individual in their capacity as a partner in a partnership	Last known residential address of the individual; or principal or last known place of business of the partnership
4. 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
5. Corporation (other than a company)	Principal office of the corporation; or any place where the corporation carries on its activities
6. 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).

“(3) Unless the contrary is shown, the document is to be deemed as having been given to the person on the second day after it was posted, provided that day is a business day; or if not, the next business day after that day.

Giving documents by means of electronic communication

9B.—(1) In order to give a document by fax, email or other means of electronic communication, the intended recipient of the document must previously have indicated in writing to the person giving the document—

- (a) that they are willing to accept service of documents for the purposes of these Rules by that means of electronic communication; and
- (b) the fax number, e-mail address or other electronic identification to which documents must be sent.

(2) Where a person intends to give a document by means of electronic communication (other than by fax), that person must first ask the intended recipient whether there are any limitations to their 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 document by means of electronic communication is effected by sending or transmitting the document in accordance with the written indication given by the intended recipient under paragraph (1), having complied with any limitations specified by the intended recipient under paragraph (2).

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

(5) Where a document is given by electronic means, the person giving the document need not in addition send or deliver a hard copy.

Giving of documents by an alternative method or at an alternative place

9C.—(1) Where it appears to the court that there is a good reason to authorise the giving of a document by a method or at a place not otherwise permitted by these Rules, the court may make an order permitting the giving of a document by an alternative method or at an alternative place.

(2) On an application under this rule, the court may order that steps already taken to give the document to a person by an alternative method or at an alternative place constitute the giving of that document under these Rules.

(3) An application for an order under this rule—

- (a) must be supported by evidence; and
- (b) may be made without notice.

(4) An order under this rule must specify—

- (a) the method by which the document may be given, if it is not a method permitted by these Rules;
- (b) the place at which the document may be given, if it is not a place permitted by these Rules; and
- (b) the date on which the document is deemed to be given.

Giving a document to a child or a protected person

9D.—(1) Where the intended recipient of a document is known to be a child who is not also a protected person, the document must be given to the child and—

- (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 document is known to be a protected person, the document 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 in relation to the protected person;
 - (ii) the donee of a lasting power of attorney in relation to the protected person;
 - (iii) the deputy appointed by the Court of Protection in relation to the protected person;
- (b) where the protected person is resident in Northern Ireland, to one of the following persons—
 - (i) the attorney under a registered power of attorney which 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 which relates to the protected person;
 - (ii) the welfare attorney under a welfare power of attorney which 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 protected person; or

- (d) if in any case under sub-paragraph (a), (b) or (c) there is no such person, to an adult with whom the protected person resides or in whose care the protected person is.

(3) Any reference in these Rules to a person to whom a document is to be given includes the person to be given documents on behalf of a child or protected person under paragraph (1) or (2).

(4) The court may make an order permitting a document to be given to a child or protected person, or to a person other than the person specified in paragraph (1) or (2), and an application for such an order may be made without notice.

(5) In this rule—

- (a) “child” means a person under 18 years; and
- (b) “protected person” means—
 - (i) in relation to England and Wales, a person who lacks capacity (within the meaning of the Mental Capacity Act 2005^(a)) to understand the nature of forfeiture proceedings;
 - (ii) in relation to Northern Ireland, a person who is 16 years or over who lacks capacity to understand the nature of forfeiture proceedings because of an impairment of, or a disturbance in the functioning of, the mind or brain;
 - (iii) in relation to Scotland, a person who is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000^(b), of understanding the nature of forfeiture proceedings.

Giving of documents to persons outside the United Kingdom

9E.—(1) If a document is to be given to a person who resides outside the United Kingdom, the document must be given in accordance with the terms of any relevant declaration.

(2) In this rule, “relevant declaration” means—

- (a) a declaration made in accordance with Article 31(2) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism agreed at Warsaw on 16th May 2005^(c) that judicial documents may not be sent directly to persons abroad by postal channels; or
- (b) a declaration made in accordance with Article 21(2) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime agreed at Strasbourg on 8th November 1990^(d) that judicial documents may not be sent directly to persons abroad by postal channels.”

Transfer of proceedings

11. After rule 9E as inserted by rule 10 of these Rules, insert—

“Transfer of proceedings

9F.—(1) Any person who is a party to, or affected by, proceedings to which these Rules apply may, at any time, make an application to the court dealing with the matter for the proceedings to be transferred to a different magistrates’ court.

(a) 2005 c. 9.
(b) 2000 asp 4.
(c) Council of Europe Treaty Series 198.
(d) European Treaty Series 141.

(2) Any such application must be made in writing and sent to the court in which the proceedings are being dealt with and must specify the grounds on which it is made.

(3) The court must send a copy of the application to the parties to the proceedings and any other person affected by the proceedings.

(4) The court must fix a date for the hearing of the application, which, unless directed otherwise, shall not be earlier than seven days from the date on which it is fixed, and must notify the date to the applicant and every person to whom a copy of the application is required to be sent under paragraph (3).

(5) 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 court.

(6) If the application is granted—

- (a) the court must give a copy of the order to the parties to the proceedings and any other person affected by the proceedings;
- (b) the court must send all relevant papers to the designated officer for the court to which proceedings are transferred;
- (c) any further proceedings to which these Rules apply in respect of the property to which the proceedings relate must be dealt with in the court to which proceedings are transferred;
- (d) any requirement under these Rules to make or send an application to a court shall be read as a requirement to make or send an application to the court to which proceedings are transferred.”

Procedure at hearings

12. In rule 10(2)—

- (a) for “justices’ clerk” substitute “court”; and
- (b) for “or 8(3)” substitute “, 7A(3), 8(3) or 9F(4)”.

Forms

13. In the Schedule, omit Forms A and F.

8th December 2017

Ian Burnett
Lord Chief Justice

I concur

11th December 2017

Dominic Raab
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend Magistrates’ Courts (Detention and Forfeiture of Terrorist Cash) (No 2) Rules 2001 (“the 2001 Rules”), which prescribe the procedure to be followed for applications to a magistrates’ court for the detention, further detention, forfeiture or release of cash seized under Parts 1-4 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (“ATCSA”).

The amendments made by these Rules update the procedure in the 2001 Rules to take account of the amendments to Schedule 1 to ATCSA made by the Criminal Finances Act 2017 (c. 22).

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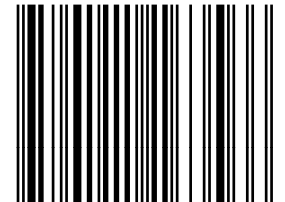
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