STATUTORY INSTRUMENTS

2018 No. 66 (L. 1)

MAGISTRATES' COURTS, ENGLAND AND WALES

The Magistrates' Courts (Immigration Act 2014) (Freezing Orders) Rules 2018

Made - - - - 19th January 2018

Laid before Parliament 22nd January 2018

Coming into force in accordance with rule 1

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(**1**).

Citation, commencement, extent and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Immigration Act 2014) (Freezing Orders) Rules 2018, and come into force on the 21st day after the day on which they are laid before Parliament.

(2) In these Rules—

(a) "the 2014 Act" means the Immigration Act 2014(**2**);

(b) "disqualified person" has the meaning given by section 40D(9) of the 2014 Act;

(c) "document" includes any notice required to be given under these Rules;

(d) "freezing order" means a freezing order under section 40D of the 2014 Act;

(e) references to an account being operated by or for a person have the meaning given by section 40A(5) of the 2014 Act;

(f) "respondent" means the disqualified person by or for whom the account in respect of which a freezing order is sought is operated.

(**1**) 1980 c.43. Section 144 has been amended by the Access to Justice Act 1999 (c.22), Schedule 11, paragraphs 26 and 29; the Courts Act 2003 (c.39), Schedule 8, paragraph 245 and Schedule 10; the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 99 and 102; the Legal Services Act 2007, Schedule 21, paragraphs 42 and 43; the Crime and Courts Act 2013 (c.22), Schedule 10, paragraphs 39, 52 and 99; and by S.I. 2012/2398, article 3(2) and Schedule 2, paragraph 1.

(**2**) 2014 c.22. Sections 40A to 40H of the 2014 Act were inserted by the Immigration Act 2016 (c.19), section 45 and Schedule 7, paragraph 2.

Form of application

2. An application for a freezing order, or an application to vary or discharge a freezing order, must be made in writing.

Application for a freezing order

3.—(1) An application for a freezing order under section 40D of the 2014 Act must—

(a) state the name, date of birth and address of the respondent;

(b) explain why the respondent has been determined to be a disqualified person;

(c) specify the account in respect of which the freezing order is sought;

(d) explain the connection of the respondent to the specified account;

(e) identify any other persons by or for whom the specified account is operated and explain the connection of any person so identified to the specified account;

(f) state whether the Secretary of State considers that the order sought should, if made, be made subject to any exceptions, and if so, specify those exceptions.

(2) If the application is made without notice pursuant to section 40D(5) of the 2014 Act, the application must also state the reasons why it is necessary for the application to be made without notice having been given.

(3) If the application is made on notice—

(a) a copy must be given by the Secretary of State to the respondent and to any persons within paragraph (1)(e);

(b) the Secretary of State must confirm in writing to the court that this has been done and provide to the court details of the address or addresses of each person to whom a copy of the application has been given; and

(c) notice of the date of the hearing must be given by the court to the Secretary of State and to each person to whom a copy of the application has been given.

(4) Notice of any order made, and a copy of the order, must be given by the Secretary of State, as soon as reasonably practicable after the making of the order, to the respondent and any person within paragraph (1)(e).

Application to vary or discharge a freezing order

4.—(1) An application to vary or discharge a freezing order must specify—

(a) the reason why the person applying for variation or discharge believes the court should vary or discharge the order; and

(b) if the application is to vary the order, the variation which is sought.

(2) A copy of the application must be given by the court to every person, other than the person making the application, to whom notice was given under rule 3(3)(c).

(3) Notice of the date of any hearing must be given by the court to every person to whom notice was given under rule 3(3)(c).

(4) If the order is varied or discharged—

(a) notice of the variation and a copy of the order; or

(b) notice of the discharge of the order,

as the case may be, must be given by the court to every person to whom notice was given under rule 3(3)(c).

Procedure at hearings

5.—(1) At the hearing of any application for a freezing order, or of any application to vary or discharge a freezing order, any person to whom notice of the application has been given may attend and be heard on the question of whether the application should be granted, but the fact that any such person does not attend shall not prevent the court from hearing the application.

(2) Subject to the foregoing provisions of these Rules, proceedings on such an application shall be regulated in the same manner as proceedings on a complaint, and accordingly for the purposes of these Rules—

(a) the application is deemed to be a complaint;

(b) the Secretary of State (or, if the application is to vary or discharge a freezing order and is made by a person other than the Secretary of State, that person) is deemed to be a complainant;

(c) the respondent (or the Secretary of State, if the application is to vary or discharge a freezing order and is made by a person other than the Secretary of State) is deemed to be a defendant; and

(d) any notice of hearing given under rule 3(3)(c) or 4(3) is deemed to be a summons, but nothing in this rule shall be construed as enabling a warrant of arrest to issue for failure to appear in response to any such notice.

Giving of documents

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

(a) by post in accordance with rule 7;

(b) by means of electronic communication in accordance with rule 8; or

(c) by any method authorised by the court under rule 9.

(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

7.—(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 the person's last known residential address.

(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 communications

8.—(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.