STATUTORY INSTRUMENTS

2017 No. 1297 (L. 27)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017

Made - - - -	*11th December 2017*
Laid before Parliament	*18th December 2017*
Coming into force - -	*31st January 2018*

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 and commencement

1. These Rules may be cited as the Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017, and come into force on 31st January 2018.

Interpretation

2. In these Rules—

(a) "the Act" means the Proceeds of Crime Act 2002(**2**);

(b) "document" includes any notification required to be given under these Rules;

(c) "electronic communication" has the meaning given by section 15(1) of the Electronic Communications Act 2000(**3**);

(**1**) 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.

(**2**) 2002 c.29. Chapters 3A and 3B of Part 5 of the Proceeds of Crime Act were inserted by sections 15 and 16 of the Criminal Finances Act 2017 (c. 22).

(**3**) 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).

(d) words and expressions used otherwise have the same meaning as in Chapter 3A of Part 5 of the Act.

Application for account freezing order

3.—(1) An application under section 303Z1(2) of the Act for an order under paragraph 303Z3(2) of the Act for an account freezing order must be made in writing and may be sent to the court before which the applicant wishes to make the application.

(2) But where the reasonable grounds for suspicion which led to an application under section 303Z1(2) of the Act are connected to—

(a) the reasonable grounds for suspicion which led to the seizure of cash or property to which a previous order made under sections 295(2) or 303L(1) of the Act relates; or

(b) the reasonable grounds for suspicion which led to the making of a previous account freezing order under section 303Z1(2) of the Act,

then the application must specify the connection to any such previous order and the application may be sent to any court which made a previous order listed in sub-paragraph (a) or (b).

(3) A copy of the written application and notification of the hearing of the application must be given by the applicant to any person by or for whom the account which is the subject of the application is operated.

(4) But the applicant is not required to send copies of the written application and notification of the hearing to any person by or for whom the account is operated who cannot be identified.

(5) Where paragraph (4) applies, the court shall not decline to hear an application solely on the ground that it has not been proved that any person by or for whom the account which is the subject of the application is operated has received a copy of the written application and notification of the hearing.

(6) 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.

(7) The court must give—

(a) notice of the order; and

(b) a copy of the order,

to any person by or for whom the account which is the subject of the application is operated and to any other person known to be affected by the order, including the relevant bank or building society.

Application for the variation or setting aside of an account freezing order

4.—(1) An application under section 303Z4(1) of the Act to vary or set aside an account freezing order under section 303Z3 of the Act must be made in writing to the court before which the applicant wishes to make the application, and must specify the grounds on which it is made.

(2) But if the applicant has been given notice of an order under section 303Z3(2) of the Act in respect of the account which is the subject of the application, 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 every person to whom notice of a previous related order made under section 303Z3(2) or 303Z4(1) of the Act has been given.

(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) At the hearing of an application under section 303Z4(1) of the Act, the court may, if it thinks fit, order that the applicant be joined as a party to all the proceedings in relation to the account which is the subject of an order under section 303Z3(2) of the Act.

(6) The court must give a copy of the order to every person to whom notice of the previous related orders has been given.

(7) The court must also give—

(a) notice of the order; and

(b) a copy of the order,

to any person other than one referred to in paragraph (4) who is known to be affected by the order.

Application for forfeiture of frozen money

5.—(1) An application under section 303Z14(2) of the Act for the forfeiture of money held in a frozen account must be made in writing and may be sent to the court to which the application for the account freezing order under section 303Z3 of the Act has been sent.

(2) But where the reasonable grounds for suspicion which led to the application under section 303Z14(2) of the Act are connected to the reasonable grounds for suspicion which led to the seizure of other property to which a previous order made under sections 295(2) or 303L(1) of the Act relates—

(a) the application under section 303Z14(2) of the Act must specify the connection to any such previous order; and

(b) the application under section 303Z14(2) of the Act may be sent to any court which made such a previous order.

(3) The applicant must send a copy of the application to every person to whom notice of the account freezing order made under section 303Z3(2) of the Act in respect of the funds to which the application relates has been given and to any other person identified by the court as being affected by the application.

(4) The court must fix a date for a 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 (3).

(5) 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.

(6) If neither the persons by or for whom the frozen account is operated, nor any other person who is affected by the account freezing order, seeks to contest the application, the court may decide the application at the directions hearing.

(7) A copy of an order for the forfeiture of frozen funds under section 303Z14 of the Act shall be given by the court to every person to whom notice of the account freezing order made under section 303Z3(2) of the Act in respect of the frozen account and to any other person identified by the court as being affected by the application.

Application to set aside forfeiture

6.—(1) An application under section 303Z12(1) of the Act for the setting aside of forfeiture of cash forfeited in pursuance of a forfeiture notice must be made in writing and may be 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 section 303Z3(2) of the Act in respect of the account in which the money is held, 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—

(a) the Commissioners of Her Majesty's Revenue and Customs, if the money to which the application relates was subject to an account freezing order obtained by an officer of Revenue and Customs;

(b) the Director General of the National Crime Agency, if the money to which the application relates was subject to an account freezing order obtained by a National Crime Agency officer who is designated under section 10 of the Crime and Courts Act 2013(**4**);

(c) the chief officer of the police force to which the constable belongs, if the money to which the application relates was subject to an account freezing order obtained by a constable;

(d) the chief officer of the police force concerned, if the money to which the application relates was subject to an account freezing order obtained by an accredited financial investigator who is—

(i) a member of the civilian staff of a police force, including the metropolitan police force, (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011(**5**)); or

(ii) a member of staff of the City of London police force;

(e) the solicitor acting for the Secretary of State, if the money to which the application relates was subject to an account freezing order obtained by an immigration officer;

(f) the solicitor acting for a government department, if the money to which the application relates was subject to an account freezing order obtained by an accredited financial investigator who is a member of staff of that department of the government in the United Kingdom, but who is not an officer of Revenue and Customs, a constable or an immigration officer;

(g) the employer of an accredited financial investigator, if the money to which the application relates was subject to an account freezing order obtained by that accredited financial investigator, and the employer is not otherwise mentioned in this paragraph; and

(h) the Director of Public Prosecutions, where the Director has given notification under rule 7.

(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 (2).

(5) An order under section 303Z12(6)(a) of the Act must provide for the release of the money 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

7. Where the Director of Public Prosecutions has agreed under section 303Z19 of the Act to appear in proceedings under Chapter 3A of Part 5 of the Act for—

(a) a constable;

(b) an accredited financial investigator;

(c) the Commissioners for Her Majesty's Revenue and Customs;

(d) an officer of Revenue and Customs; or

(e) an immigration officer,

(**4**) 2013 c. 22.
(**5**) 2011 c. 13.

the Director must notify 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

8.—(1) An application under section 303Z18 of the Act for compensation must be made in writing and sent to the court before which the applicant wishes to make the application, and must specify the grounds on which it is made.

(2) But if the applicant has been given notice of an order under section 303Z3 of the Act in respect of the funds in the bank or building society account which are the subject of the application, then the application shall be sent to the court which sent the applicant that notice.

(3) The court must send a copy of the application to—

(a) the Commissioners for Her Majesty's Revenue and Customs, if the money which is the subject of the application was subject to an account freezing order obtained by an officer of Revenue and Customs;

(b) the police force to which the constable belongs, if the property which is the subject of the application was seized by a constable;

(c) the police force of which the counter-terrorism financial officer is a member of staff, if the property which is the subject of the application was seized by a counter-terrorism financial investigator;

(d) the Director of the Serious Fraud Office, if the property which is the subject of the application was seized by an officer of the Serious Fraud Office;

(e) the Secretary of State, if the property which is the subject of the application was seized by an immigration officer;

(f) the person identified under section 303W(9) of the Act, if the property which is the subject of the application was seized by an accredited financial investigator; and

(g) every person to whom notice of the order made under section 303L(1) of the Act has been given.

(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).

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 10;

(b) by means of electronic communication in accordance with rule 11; or

(c) by any method authorised by the court under rule 12.

(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

10.—(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.