STATUTORY INSTRUMENTS

2017 No. 1296 (L. 26)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Detention and Forfeiture of Terrorist Assets) 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 sections 144 and 145(1)(a) of the Magistrates' Courts Act 1980(**1**):

Citation and Commencement

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

Interpretation

2. In these Rules—

(a) "the Act" means the Anti-terrorism, Crime and Security Act 2001(**2**), and "Schedule 1" means Schedule 1 to the Act;

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

(**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**) 2001 c. 24. Part 4A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 was inserted by Schedule 3 to the Criminal Finances Act 2017 (c. 22).

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

(d) words and expressions used otherwise have the same meaning as in Schedule 1 to the Act.

First application for the further detention of seized property

3.—(1) The first application under paragraph 10D(5) of Schedule 1 for an order under paragraph 10D(1) of Schedule 1 for the further detention of property seized under paragraph 10B of Schedule 1 must be made in writing and sent to the court before which the applicant wishes to make the application.

(2) But where the reasonable grounds for suspicion which led to the seizure of property to which an application under paragraph 10D(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 10B(2) 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 must specify the connection to any such previous order and may be sent to any court which made a previous order listed in sub-paragraph (a) or (b).

(3) Except where paragraph (4) or paragraph (7) applies, a copy of the written application and notification of the hearing of the application shall be given by the applicant to the person from whom the property was seized.

(4) Where seized property is found in a letter, parcel, container or other means of unattended dispatch, copies of the written application and notification of the hearing of the application shall be sent by the applicant to the sender and intended recipient of the letter, parcel, container or other means of unattended dispatch.

(5) But where paragraph (4) 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.

(6) Where paragraph (4) applies, the court shall not decline to hear an application solely on the ground that it has not been proved that the sender and intended recipient have been given a copy of the written application and notification of the hearing.

(7) Where unattended property is seized (other than where the property 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.

(8) 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.

(9) The court must give—

(a) notice of the order; and

(b) a copy of the order,

to the person from whom the property was seized and to any other person known to be affected by the order.

(**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).

Further applications for the continued detention of seized property

4.—(1) An application under paragraph 10D(5) of Schedule 1 for a further order under paragraph 10D(1) of Schedule 1 for the continued detention of property must be made in writing and may be sent to the court to which the first application under paragraph 10D(5) of Schedule 1 was sent.

(2) The applicant must send a copy of the application to every person to whom notice of previous related orders made under paragraph 10D(1) of Schedule 1 has been given.

(3) 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 every person to whom notice of the previous orders has been given.

(4) 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.

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

(6) 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.

Applications for the release of detained property

5.—(1) An application under paragraph 10F or 10O of Schedule 1 for the release of detained property 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 paragraph 10D(1) of Schedule 1 in respect of the detained property, 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 property and to every person to whom notice of the order made under paragraph 10D(1) of Schedule 1 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, the authorised officer who seized the property and 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 paragraph 10F or 10O of Schedule 1, the court may, if it thinks fit, order that the applicant be joined as a party to all the proceedings in relation to the detained property.

(6) A direction under paragraph 10F(2) of Schedule 1 must provide for the release of the property within seven days of the date of the making of the direction or such longer period as with the agreement of the applicant may be specified in the direction, except that property shall not be released whilst paragraph 10F(4) of Schedule 1 applies.

(7) An order under paragraph 10O(4) or (5) of Schedule 1 must provide for the release of the property 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, except that property shall not be released whilst paragraph 10G(7) or (8) of Schedule 1 applies.

Application for forfeiture of detained property

6.—(1) An application under paragraph 10G(1) of Schedule 1 for the forfeiture of detained property must be made in writing and may be sent to the court to which applications for the continued detention of the property under paragraph 10D(5) of Schedule 1 have been sent.

(2) Where no applications in respect of the property have been made under paragraph 10D(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 property to which the application for forfeiture relates are connected to the reasonable grounds for suspicion which led to—

(i) the seizure of cash or other property to which an order made under paragraph 3(2) or 10B(2) of Schedule 1 relates; or

(ii) the making of an account freezing order under paragraph 10S(2) of Schedule 1, to the court which made the order listed in sub-paragraph (i) or (ii).

(3) The applicant must send a copy of the application to every person to whom notice of an order made under paragraph 10B(2) of Schedule 1 in respect of the detained property 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 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 (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 person from whom the property 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.

(7) A copy of an order for the forfeiture of detained property under any of paragraphs 10G(2), 10I(1) and 10J(7) of Schedule 1 must be given by the court to every person to whom notice of an order made under paragraph 10B(2) of Schedule 1 in respect of the detained property has been given and to any other person known to be affected by the order.

Agreements about associated and joint property

7.—(1) Where paragraph 10I(1) of Schedule 1 applies (agreements about associated and joint property) and the parties agree, the court may order the person who holds the associated property or who is the excepted joint owner to make a payment to the person identified in the order.

(2) Prior to the making of an order under paragraph 10I(1) of Schedule 1, the court must request and the parties must provide—

(a) details of the proposed agreement between the parties as to the value of the forfeitable property;

(b) details of any agreed reduction in the amount payable;

(c) confirmation that the agreement is in writing; and

(d) a draft order for the court's consideration.

(3) Where paragraph 10I(1) of Schedule 1 applies but the court has not been notified that the parties agree that the court should make an order under paragraph 10I(1), the court may give directions as to the date by which the parties are to communicate the details in paragraph (2) to the court.

(4) A copy of an order under paragraph 10I(1) of Schedule 1 must be given by the court to every person to whom notice of an order made under paragraph 10D or an application under paragraph 10G of Schedule 1 in respect of the detained property has been given, and to any other person known to be affected by the order.

Application for compensation

8.—(1) An application under paragraph 10P of Schedule 1 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 paragraph 10D(1) of Schedule 1 in respect of the detained property which is 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 property which is the subject of the application was seized 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 Secretary of State, if the property which is the subject of the application was seized by an immigration officer; and

(e) every person to whom notice of the order made under paragraph 10D(1) of Schedule 1 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).

Director of Public Prosecutions appearing in proceedings

9. Where the Director of Public Prosecutions has agreed under paragraph 10Z9 of Schedule 1(**4**) 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 court which is dealing with the proceedings if the Director wants documents given under these Rules to be given also to the Director.

Giving of documents

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

(a) by post in accordance with rule 11;

(**4**) Paragraph 10Z9 was inserted by paragraph 16(15) of Schedule 5 to the Criminal Finances Act 2017 (c. 22).