STATUTORY INSTRUMENTS

2017 No. 1295 (L. 25)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (Amendment) 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, 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(**2**).

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—

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

(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(**3**);"; and

(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—

4.—"(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 sub-paragraph (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)—

(**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).

(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 ";"; and

(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".