STATUTORY INSTRUMENTS

2017 No. 1291 (L. 23)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Detention and Forfeiture of 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' Court Act 1980(**1**).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Detention and Forfeiture of 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 Cash) Rules 2002(**2**).

Amendment of the Magistrates' Courts (Detention and Forfeiture of Cash) Rules 2002

2. The Magistrates' Courts (Detention and Forfeiture of Cash) Rules 2002 are amended in accordance with rules 3 to 13 of these Rules.

Interpretation

3. In rule 2—

(a) after paragraph (a) insert—

(**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. 2002/2998, which is amended by S.I. 2003/1236, S.I. 2005/617, S.I. 2006/594, S.I. 2012/1275 and S.I. 2013/2318.

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

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

(b) after paragraph (b) insert—

"(ba) "the solicitor acting for a government department" means the solicitor identified as acting for that department in civil proceedings in the list published under section 17 of the Crown Proceedings Act 1947(**4**);

(bb) "the solicitor acting for the Secretary of State" means the solicitor identified as acting for the Home Office in civil proceedings in the list published under section 17 of the Crown Proceedings Act 1947;".

First application for the continued detention of seized cash

4. In rule 4—

(a) in paragraph (1), omit "designated officer for the local justice area of the";

(b) for paragraph (2), substitute—

"(2) But where the reasonable grounds for suspicion which led to the seizure of cash to which an application under section 295(4) of the Act relates are connected to—

(a) 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; or

(b) the reasonable grounds for suspicion which led to the making of a previous account freezing order under section 303Z3(2) of the Act,

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).";

(c) after paragraph (7) insert—

"(7A) 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."; and

(d) in paragraph (9) for "designated officer" substitute "court".

Further applications for the continued detention of seized cash

5. In rule 5—

(a) in paragraph (1), for "designated officer to whom" substitute "court to which";

(b) in paragraph (3)—

(i) for "justices' clerk" substitute "court";

(ii) for "he directs" substitute "directed"; and

(iii) omit "the designated officer";

(c) after paragraph (3) insert—

"(3A) The applicant must inform the designated officer of any person known to be affected by the order, as soon as practicable after that person is so identified.";

(**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).
(**4**) 1947 c. 44.

(d) in paragraph (5), for "designated officer" substitute "court"; and

(e) in paragraph (6), for "designated officer" substitute "court".

Applications for the release of detained cash

6. In rule 6—

(a) in paragraph (1)—

(i) for "section 297(3)" substitute "sections 297(3), 297F(3)"; and

(ii) omit "designated officer for the local justice area of the";

(b) in paragraph (2), for "designated officer who" substitute "court which";

(c) for paragraph (3) substitute—

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

(a) the Commissioners of Her Majesty's Revenue and Customs, if the cash which is the subject of the application was seized by an officer of Revenue and Customs;

(b) the Director of the SFO if the cash which is the subject of the application was seized by a SFO officer;

(c) the Director General of the National Crime Agency, if the cash which is the subject of the application was seized by a National Crime Agency officer who is designated under section 10 of the Crime and Courts Act 2013(**5**);

(d) the chief officer of the police force to which the constable belongs, if the cash which is the subject of the application was seized by a constable;

(e) the chief officer of the police force concerned, if the cash which is the subject of the application was seized 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(**6**)), or

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

(f) the solicitor acting for the Secretary of State, if the cash which is the subject of the application was seized by an immigration officer;

(g) the solicitor acting for a government department, if the cash which is the subject of the application was seized by an accredited financial investigator who is a member of staff of that government department, but who is not an officer of Revenue and Customs, a constable or an immigration officer;

(h) the employer of an accredited financial investigator, if the cash which is the subject of the application was seized by that accredited financial investigator, and the employer is not otherwise mentioned in this paragraph;

(i) the Director of Public Prosecutions, where the Director has given notification under rule 8B; and

(j) every person to whom notice of the most recent order made under section 295(2) of the Act must be given.";

(d) in paragraph (4)—

(i) for "justices' clerk" substitute "court";

(**5**) 2013 c. 22.
(**6**) 2011 c. 13.

(ii) for "he directs" substitute "directed"; and

(iii) omit "the designated officer"; and

(e) in paragraph (7) after "section 297(2)" insert "or section 297F(2)".

Application for forfeiture of detained cash

7. In rule 7—

(a) in paragraph (1), for "designated officer to whom" substitute "court to which";

(b) for paragraph (2) substitute—

"(2) Where no applications in respect of the property have been made under section 303L(4) of the Act, the application shall 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 property to which an order made under section 295(2) or 303L(1) of the Act relates; or

(ii) the making of an account freezing order under section 303Z3(2) of the Act,

to the court which made the order listed in sub-paragraph (i) or (ii).";

(c) in paragraph (4)—

(i) for "justices' clerk" substitute "court";

(ii) for "he directs" substitute "directed"; and

(iii) omit "the designated officer"; and

(d) in paragraph (7)—

(i) for "An order for the forfeiture of detained cash under section 298(2) of the Act and a copy of the order" substitute "A copy of the order for the forfeiture of detained cash under section 298(2) of the Act"; and

(ii) for "designated officer" substitute "court".

Application for compensation

8. In rule 8—

(a) in paragraph (1), omit "designated officer for the local justice area of the";

(b) in paragraph (2), for "designated officer who" substitute "court which"; and

(c) for paragraph (3) substitute—

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

(a) the Commissioners of Her Majesty's Revenue and Customs, if the cash which is the subject of the application was seized by an officer of Revenue and Customs;

(b) the Director of the SFO if the cash which is the subject of the application was seized by a SFO officer;

(c) the Director General of the National Crime Agency, if the cash which is the subject of the application was seized by a National Crime Agency officer who is designated under section 10 of the Crime and Courts Act 2013(**7**);

(d) the chief officer of the police force to which the constable belongs, if the cash which is the subject of the application was seized by a constable;

(e) the chief officer of the police force concerned, if the cash which is the subject of the application was seized 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(**8**)), or

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

(f) the solicitor acting for the Secretary of State, if the cash which is the subject of the application was seized by an immigration officer;

(g) the solicitor acting for a government department, if the cash which is the subject of the application was seized by an accredited financial investigator who is a member of staff of that government department, but who is not an officer of Revenue and Customs, a constable or an immigration officer;

(h) the employer of an accredited financial investigator, if the cash which is the subject of the application was seized by that accredited financial investigator, and the employer is not otherwise mentioned in this paragraph;

(i) the Director of Public Prosecutions, where the Director has given notification under rule 8B; and

(j) every person to whom notice of the most recent order made under section 295(2) of the Act must be 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 applicant and any person to whom a copy of the application is required to be sent under paragraph (3).".

Application to set aside forfeiture

9. After rule 8 insert—

"**Application to set aside forfeiture**

8A.—(1) An application under section 297E(2) of the Act for the setting aside of forfeiture of cash forfeited in pursuance of a forfeiture notice must be made in writing and sent 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 295(2) of the Act 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—

(a) the Commissioners of Her Majesty's Revenue and Customs, if the cash which is the subject of the application was seized by an officer of Revenue and Customs;

(**7**) 2013 c. 22.
(**8**) 2011 c. 13.