STATUTORY INSTRUMENTS

2017 No. 1223

PROCEEDS OF CRIME, ENGLAND AND WALES
PROCEEDS OF CRIME, NORTHERN IRELAND

The Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) Regulations 2017

Made - - - -	*6th December 2017*
Laid before Parliament	*11th December 2017*
Coming into force - -	*31st January 2018*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 297A(3), 303Z10(1) and 459(2)(a) of the Proceeds of Crime Act 2002 [F1].

F1 2002 c. 29. Section 297A was inserted by section 65(1) of the Policing and Crime Act 2009 (c. 26); amended by paragraphs 14 and 28 of Part 1 of Schedule 21 to the Crime and Courts Act 2013 (c. 22); and amended by section 34(1) and (7) and paragraphs 1 and 19 of Schedule 1 to the Criminal Finances Act 2017 (c.22). Sections 303Z1 to 303Z19 were inserted by section 16 of the Criminal Finances Act 2017.

PART 1

Introduction

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) Regulations 2017, and come into force on 31st January 2018.

(2) The extent of these Regulations is as follows—

(a) **[**[F2]Parts 1 and 2 extend**]** to England and Wales and Northern Ireland;

(b) **[**[F3]Part 3 extends**]** to England and Wales;

(c) Part 4 extends to Northern Ireland.

(3) In these Regulations—

"the Act" means the Proceeds of Crime Act 2002;

"child" means a person under 18 years;

"electronic communication" has the meaning given by section 15(1) of the Electronic Communications Act 2000 [F4];

"protected person" means—

(a) in England and Wales, a person who lacks capacity within the meaning of the Mental Capacity Act 2005 [F5] in relation to an account forfeiture notice;

(b) in Northern Ireland, means a person who is 16 years or over who lacks capacity to understand the nature of an account forfeiture notice because of an impairment of, or a disturbance in the functioning of, the mind or brain;

(c) in Scotland, an adult who is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000 [F6], of understanding the nature of an account forfeiture notice.

F2 Words in reg. 1(2)(a) substituted (28.6.2021) by The Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) (Amendment) Regulations 2021 (S.I. 2021/639), regs. 1(2), **2(2)(a)**

F3 Words in reg. 1(2)(b) substituted (28.6.2021) by The Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) (Amendment) Regulations 2021 (S.I. 2021/639), regs. 1(2), **2(2)(b)**

F4 2000 c. 7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

F5 2005 c. 9.

F6 2000 asp 4.

PART 2

Account Forfeiture Notices – Forfeiture of Money Held in [F7Certain] Accounts

F7 Word in Pt. 2 heading substituted (28.6.2021) by The Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) (Amendment) Regulations 2021 (S.I. 2021/639), regs. 1(2), **2(3)**

Giving of an account forfeiture notice

2.—(1) Subject to paragraph (2), an account forfeiture notice must be given by a senior officer to—

(a) any person to whom notice of an order made under section 303Z3(2) of the Act has been given, and

(b) any person who has been identified as being affected by such an order but who has not been given notice of the order.

(2) Where—

(a) there is no person who falls within paragraph (1), or

(b) it is not possible to give a notice in accordance with regulation 3(1) to any such person,

the account forfeiture notice must be given by way of publication in accordance with regulation 3(2).

(3) Where an account forfeiture notice is to be given to a person outside the United Kingdom—

(a) nothing in these Regulations authorises or requires any person to do anything which is contrary to the law of the country where the account forfeiture notice is to be given, and

(b) the duty for the account forfeiture notice to be given by way of publication under paragraph (2)(b) does not apply.

(4) Regulation 6 makes further provision for cases where an individual to whom an account forfeiture notice is to be given is a child or protected person.

Manner in which an account forfeiture notice must be given

3.—(1) An account forfeiture notice which is given to a person must be given—

(a) by post in accordance with regulation 4, or

(b) by means of electronic communication in accordance with regulation 5.

(2) An account forfeiture notice which is required to be given by way of publication must be published—

(a) in the London Gazette, if the senior officer believes any affected person may be in England or Wales;

(b) in the Belfast Gazette, if the senior officer believes any affected person may be in Northern Ireland;

(c) in the Edinburgh Gazette, if senior officer believes any affected person may be in Scotland.

Giving an account forfeiture notice by post

4.—(1) In order to give an account forfeiture notice to a person by post, it must be sent by posting it to an address which has been given by that person for the purpose of receipt of an account forfeiture notice under these Regulations.

(2) If no such address has been given, the account forfeiture notice must be sent to an address which is shown in the following table (or where it is possible to post the notice to more than one of the addresses in the table, to any such address).

Person to whom an account forfeiture notice is to be given	***Address***
Individual	Last known residential address
Individual in their business capacity	Last known residential address or principal or last known place of business
Individual in their capacity as a partner in a partnership	Last known residential address or principal or last known place of business of the partnership
Limited liability partnership (within the meaning of the Limited Liability Partnerships Act 2000)[1]	Principal office of the partnership or any place of business of the partnership
Corporation (other than a company)	Principal office of the corporation or any place where the corporation carries on its activities
Company	Principal office of the company or any place of business of the company

[1] 2000 c. 12. "Limited liability partnership" is defined in section 1(2) of that Act.

(3) The account forfeiture notice is to be treated as having been given at the time at which the notice would be delivered in the ordinary course of post.

Giving an account forfeiture notice by means of electronic communication

5.—(1) An account forfeiture notice may be given by means of fax, email or other means of electronic communication where the intended recipient has previously indicated in writing—

(a) that they are willing to accept the giving of an account forfeiture notice by that means of electronic communication, and

(b) the fax number, email address or other electronic identification to which the account forfeiture notice must be sent.

(2) Where a senior officer intends to give an account forfeiture notice by means of electronic communication (other than by fax), the senior officer must first ask the intended recipient whether there are any limitations to the intended recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

(3) Giving an account forfeiture notice by means of electronic communication is effected by sending or transmitting the notice in accordance with the written indication given by the intended recipient under paragraph (1), having complied with any reasonable limitations specified by the intended recipient in response to a request under paragraph (2).

(4) The account forfeiture notice is to be treated as having been given on the day on which it is sent or transmitted if the electronic communication containing it is sent or transmitted at or before 4.30pm.

(5) If the electronic communication is sent or transmitted after 4.30pm, the notice is to be treated as having been given the following day.

Giving an account forfeiture notice to a child or a protected person

6.—(1) Where the intended recipient of an account forfeiture notice is known to be a child who is not also a protected person, the account forfeiture notice must be given to the child and to—

(a) one of the child's parents or guardians, or

(b) if there is no parent or guardian, an adult with whom the child resides or in whose care the child is.

(2) Where the intended recipient of an account forfeiture notice is known to be a protected person, the account forfeiture notice must be given to the protected person and—

(a) where the protected person is resident in England and Wales, to one of the following persons—

(i) the attorney under a registered enduring power of attorney that relates to the protected person;

(ii) the donee of a lasting power of attorney that relates to the protected person;

(iii) the deputy appointed in relation to the protected person by the Court of Protection;

(b) where the protected person is resident in Northern Ireland, to one of the following persons—

(i) the attorney under a registered enduring power of attorney that relates to the protected person;

(ii) the controller appointed in relation to the protected person by the Office of Care and Protection;

(c) where the protected person is resident in Scotland, to one of the following persons—

(i) the continuing attorney under a continuing power of attorney that relates to the protected person;

(ii) the welfare attorney under a welfare power of attorney that relates to the protected person;

(iii) the person authorised under an intervention order in respect of the protected person;

(iv) the person authorised under a guardianship order in respect of the protected person;

(v) the person authorised under a withdrawal certificate in respect of the funds of the protected person.

(3) If there is no person falling within a description in paragraph (2)(a), (b) or (c), as applicable, the account forfeiture notice must be given to an adult with whom the protected person resides or in whose care the protected person is (as well as to the protected person).

(4) Any reference in these Regulations to a person to whom an account forfeiture notice is to be given includes the person to be given the account forfeiture notice in addition to a child or protected person under paragraphs (1) to (3).

PART 3

Amendment of the Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015

7.—(1) The Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015 [F8] are amended as follows.

(2) In regulation 3 (giving of a forfeiture notice) after paragraph (2) insert—

"(3) Where a forfeiture notice is to be given outside the United Kingdom—

(a) nothing in these Regulations authorises or requires any person to do anything which is contrary to the law of the country where the account forfeiture notice is to be given, and

(b) the duty for the account forfeiture notice to be given by way of publication under paragraph (2)(b) does not apply.".

(3) In regulation 4 (manner in which a forfeiture notice must be given)—

(a) in paragraph (1), for "Subject to paragraph (3), a forfeiture notice" substitute " A forfeiture notice ";

(b) for paragraph (2) substitute—

"(2) An account forfeiture notice which is required to be given by way of publication must be published—

(a) in the London Gazette, if the senior officer believes any affected person may be in England or Wales;

(b) in the Belfast Gazette, if the senior officer believes any affected person may be in Northern Ireland;

(c) in the Edinburgh Gazette, if senior officer believes any affected person may be in Scotland.".

(c) omit paragraph (3).

(4) In regulation 7—