

ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1 Forfeiture of Terrorist Cash

Part 5 Property earmarked as terrorist property

335. Paragraphs 11 to 16 say what “property earmarked as terrorist property” means. It covers:
- property obtained through terrorism, and
 - property which represents property obtained through terrorism.
336. Paragraph 11 defines when property is obtained through terrorism. A person will obtain property through terrorism if he obtains it:
- by or in return for acts of terrorism – for example by being paid to commit murder, or
 - by or in return for acts carried out for the purposes of terrorism – for example, stealing a car to perpetrate a terrorist act.
337. The purpose of *sub-paragraph (2)(a)* is to ensure that property counts as having been obtained through terrorism regardless of any investment in that terrorism. So if a person buys guns with honestly come by money, and sells them at a profit, the whole of the proceeds of the sale will count as having been obtained through terrorism, and not just the profit.
338. *Sub-paragraph 2(b)* provides that it is not necessary to show that property was obtained through a particular act of terrorism, so long as it can be shown to have been obtained through terrorism of one kind or another. So it will not matter, for example, if it cannot be established whether certain funds are attributable to gun smuggling, blackmail, extortion, or stealing from a bank, provided that it can be shown that they are attributable to an act of terrorism, or an act carried out for the purposes of terrorism.
339. Paragraph 12 explains that property may be earmarked as terrorist property even if it is not in the hands of the person who originally obtained it. That is to say, property obtained through terrorism may be followed.
340. Paragraphs 13 to 15 describe circumstances in which property is treated as representing property obtained through terrorism.
341. Paragraph 13 provides that, if property obtained through terrorism is disposed of, the proceeds of the disposal represent the property disposed of. In other words, property obtained through terrorism may be traced into other property. For example, if a person obtains a car in return for carrying out an act of terrorism, and then sells it, the cash that

he obtains in return will be property earmarked as terrorist property. The same principle will apply again when he spends the cash.

342. **Paragraph 14** provides that where property obtained through terrorism is mixed with other property, then the portion of the mixed property which is attributable the property obtained through terrorism will itself represent property obtained through terrorism. So, for example, if the car mentioned above is sold and the cash paid into a bank account which is in credit through deposits from honest sources, then a proportion of any cash withdrawn from that bank account will be property earmarked as terrorist property. Again, the same principle will apply if representative property is mixed with other property.
343. **Paragraph 15** provides that if profits accrue in respect of the property obtained through terrorism, or representative property, the profits are also to be treated as representative property. So, for example, if property obtained through terrorism is placed in a bank account and interest is credited to the account, any cash taken from the account may be seized.

General exceptions

344. **Paragraph 16** sets out exceptions as to when property that would by virtue of paragraphs 11 to 15 be earmarked as terrorist property is not to be treated as such. The effect of paragraph 12 is that where, for example, someone is given a car in return for action of a terrorist nature, and then sells the car to someone else, the car continues to be earmarked as terrorist property. This is qualified by *sub-paragraph (1)* which provides that if the purchaser paid full value for the car, and was unaware of its terrorist origins, the property is no longer earmarked. However, the money paid for the car continues to be earmarked by virtue of *sub-paragraph (7)*.
345. *Sub-paragraphs (2) to (6)* set out other circumstances in which terrorist property will cease to be earmarked: where a claimant obtains property from a defendant in civil proceedings which are based on the defendant's criminal conduct (as defined in paragraph 19), and the property would otherwise be earmarked; where a payment is made following a compensation or restitution order under the Powers of Criminal Courts (Sentencing) Act 2000, and the sum or property received would otherwise be earmarked; where an amount is paid in accordance with a restitution order made by the court under the Financial Services and Markets Act 2000 and the amount would otherwise be earmarked; and where restitution is required to be made by the Financial Services Authority under that Act paying an amount which would otherwise be earmarked.