

EXPLANATORY MEMORANDUM TO
THE TERRORISM ACT 2000 (CODE OF PRACTICE FOR AUTHORISED
OFFICERS) ORDER 2018

2018 No. 81

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order is made under paragraph 7(3) and (4) of Schedule 14 to the Terrorism Act 2000 (c. 11) (“TACT”) and brings into force a revised code of practice providing guidance and operational requirements for authorised officers in relation to the exercise of certain functions relating to the terrorist property provisions in Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (c. 25) (“ATCSA”). The Order, and the revised code of practice, come into force on 31st January 2018. The revised code is required as a result of amendments to ATCSA and TACT made by the Criminal Finances Act 2017 (c.22) (“CFA”). These amendments to ATCSA and TACT amend and extend certain existing functions, and also create new functions. The commencement date of the Order is the same date that the amendments to ATCSA and TACT will be brought into force.
- 2.2 This instrument revokes a previous order made under paragraph 7 of Schedule 14 to TACT, and the previous code of practice to which it relates.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 4.1 TACT and ATCSA provide the core legislative framework on counter-terrorism and terrorist financing. Paragraph 6(1) of Schedule 14 to TACT requires the Secretary of State to issue a code of practice in relation to the exercise of powers conferred on officers by the “terrorist property” provisions in Schedule 1 to ATCSA. The existing code of practice (Code of Practice for Authorised Officers under Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001) came into force on 19 February 2001 (see S.I. 2001/425). Under paragraph 6(4) of Schedule 14 to TACT, the Secretary of State may revise the code and issue the revised code.
- 4.2 TACT, which provides various powers and offences relating to terrorist property and finance, was amended by the CFA (see section 41) to include a provision creating the role of counter-terrorism financial investigators. ATCSA, which provides various powers and offences relating to the civil recovery of terrorist property, was amended

by the CFA to inter alia: expand the definition of terrorist cash to include betting receipts, gaming vouchers and casino tokens (see section 38(2) of the CFA), introduce powers to administratively forfeit terrorist cash (see section 38(4) of the CFA), introduce powers to forfeit listed terrorist assets (see section 39 of, and Schedule 3 to the CFA) and introduce powers to freeze and forfeit money held in bank and building society accounts (see section 40 of, and Schedule 4 to, the CFA). This Order introduces a revised code of practice to address all of the amendments made to TACT and ATCSA by the CFA.

4.3 The revised code of practice applies to officers who are authorised to exercise functions under the terrorist property provisions (meaning the provisions in Schedule 1 to ATCSA). An “officer” for these purposes is defined in paragraph 1(a) of Schedule 14 to TACT as an authorised officer under Schedule 1 to ATCSA (including when referred to in those provisions as “an enforcement officer” or “a senior officer”). Paragraph 19 of Schedule 1 to ATCSA (as amended by the CFA) provides the following definitions:

- an “authorised officer” means a constable, a counter-terrorist financial investigator (CTFI), a customs officer or an immigration officer;
- an “enforcement officer” for the purposes of Part 4B of Schedule 1 to ATCSA (forfeiture of terrorist money held in bank and building society accounts) is defined in paragraph 10Q(7) of that Schedule as a constable or a CTFI;
- a “senior officer” for the purposes of Part 2A of Schedule 1 to ATCSA is defined in paragraph 5A(10) of that Schedule as meaning:
 - a senior police officer (of at least the rank of superintendent),
 - an officer of Revenue and Customs of a rank designated by the Commissioners for HMRC as equivalent to that of a senior police officer, or
 - an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.
- a “senior officer” for the purposes of Part 4B of Schedule 1 to ATCSA is defined in paragraph 10Q(7) of that Schedule as a police officer of at least the rank of superintendent.

4.4 Schedule 1 to ATCSA provides a number of powers that can be exercised by officers;

- Parts 1 and 2 of Schedule 1 to the Act provide a definition of terrorist cash and also provide powers to seize and detain terrorist cash found at any place in the United Kingdom where there are reasonable grounds for suspecting that the cash: is intended to be used for the purposes of terrorism, consists of resources of a proscribed organisation, or is earmarked as terrorist property. Property is “earmarked as terrorist property” when it is obtained through terrorism (see Part 5 of Schedule 1 to ATCSA).
- Parts 2A, Parts 4A and 4B of Schedule 1 to the Act were introduced by the CFA (see sections 39 and 40 of the CFA). Part 2A provides for the administrative forfeiture of terrorist cash, Part 4A contains provisions for the seizure and forfeiture of certain listed assets (“terrorist assets”), and Part 4B provides for freezing bank and building society accounts and for forfeiture of the money held in them (“terrorism-related funds”).

- These new provisions apply to property or money which: is intended to be used for the purposes of terrorism, consists of resources of a proscribed organisation, or is earmarked as terrorist property. As a result, the provisions of Schedule 1 to ATCSA now allow for the forfeiture of “terrorist property” which includes terrorist cash, terrorist assets and terrorism-related funds in bank or building society accounts. The provisions of Schedule 1 to ATCSA are defined in paragraph 1 of Schedule 14 to TACT as “the terrorist property provisions”.
- Terrorist cash or terrorist assets may be detained for an initial period of 48 hours after seizure (see paragraphs 3(1) and 10C(1) of Schedule 1 to ATCSA). Where further detention is justified, the authorised officer or the Commissioners for Customs and Excise (in relation to cash) or HMRC (in relation to assets) can apply to the relevant court under paragraph 3(2) or paragraph 10D of that Schedule for an order to extend the period of detention of, respectively, the cash or assets (these should be separate orders). In Scotland, the Procurator Fiscal is responsible for making such an application to the Sheriff’s court.
- Paragraph 10Q allows an enforcement officer who is, or is authorised by, a senior officer to apply to the relevant court – namely, the magistrates’ court or, in Scotland the Sheriff’s court - for an account freezing order that permits freezing of funds held in a bank or building society account which are suspected of being terrorist property. Under paragraph 10S the relevant court may make the order if satisfied that the money is intended to be used for the purposes of terrorism, consists of resources of a proscribed organisation, or is earmarked as terrorist property. An account freezing order prohibits each person by or for whom the account is operated from making withdrawals or payments from the account, for a period to be specified by the court (see paragraph 10S).
- Parts 2A and 4B of Schedule 1 to ATCSA contain powers to forfeit terrorist cash and terrorism-related funds in bank or building society accounts administratively. Administrative forfeiture is a process that permits law enforcement agencies to forfeit these types of terrorist property by notifying affected persons of their intention to do so, and does not require an application to the court for a forfeiture order. A cash forfeiture notice under paragraph 5A, or an account forfeiture notice under paragraph 10W, of Schedule 1 may be given by a senior officer, if that senior officer is satisfied that either the cash (or any part of it) is terrorist cash or that the funds in the account (or any part of it) are terrorism-related funds. If an individual objects to the administrative forfeiture of the cash or the funds, the forfeiture notice lapses and the law enforcement agency concerned must determine whether to: return the cash or funds, seek an extension to the order allowing for the detention of the cash or the freezing of the account, or proceed to make an application to the relevant court for the forfeiture of the cash or funds.
- Parts 3, 4A and 4B allow for applications to be made to the relevant court for forfeiture of terrorist property. Where administrative forfeiture has either lapsed or is not applied for, an authorised officer or the Commissioners of Customs & Excise may apply to the magistrates’ court for a forfeiture order in respect of terrorist cash, whilst an authorised officer or the Commissioners for

HMRC can apply for a forfeiture order in respect of assets. An enforcement officer may apply to the magistrates' court for a forfeiture order in respect of terrorism-related funds. In Scotland, applications for forfeiture of terrorist cash, assets or terrorism-related funds may be made by Scottish Ministers to the Sheriff.

- Where there is associated or joint ownership of property (i.e. property of the respondent that is either held jointly with other joint tenants or a recognised associated joint owner), an authorised officer has the power under paragraph 10I of Schedule 1 to ATCSA to reach an agreement with the excepted joint owner or the person who holds the associated property that the relevant court may order the latter to make a payment to a person identified in the order, instead of making a forfeiture order under paragraph 10G(2). Such an order may include provision for vesting, creating or extinguishing any interest in the property.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 5.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Minister of State for the Home Department, Ben Wallace, has made the following statement regarding Human Rights:
- “In my view, the provisions of the Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2018 are compatible with the Convention rights”.

7. Policy background

What is being done and why

- 7.1 The purpose of this Order is to bring into force a revised code of practice which will enable officers properly to discharge their functions under Schedule 1 to ACTSA. The existing code of practice is effectively being re-written to include guidance and operational requirements for officers on the exercise of the various new seizure, detention and forfeiture powers which have been created by the Criminal Finances Act. The existing code is limited in scope and has not been updated since 2001.
- 7.2 Specifically, the code has been updated to reflect the amendments made to TACT and to Schedule 1 to the ATCSA by Part 2 of and Schedules 3 and 4 to the CFA, including the introduction in Schedule 1 to ATCSA of a new power for the administrative forfeiture of terrorist cash in new Part 2A and new civil recovery powers in new Parts 4A and 4B to seize, detain and forfeit terrorist assets and terrorism-related funds held in bank and building society accounts, as set out above.

8. Consultation outcome

- 8.1 A four-week Government consultation was conducted for this Order during August 2017, to consider any representations made and amendments to the draft were made accordingly. No comments were received.

9. Guidance

- 9.1 The code of practice being brought into operation by this Order constitutes guidance and operational requirements as to the use of the powers to which it relates.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal. The National Terrorist Financial Investigations Unit will devise a training programme to cover all amendments to TACT and ATCSA. The code of practice will be one component of that programme.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The code will be reviewed whenever issues arise as a matter of its operation in practice, but also where amendments are made to TACT or ATCSA which require a revised or new code of practice to be produced.

13. Contact

- 13.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, telephone: 020 7035 4848.