

EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (ADMINISTRATIVE FORFEITURE
NOTICES) (ENGLAND AND WALES AND NORTHERN IRELAND)
REGULATIONS 2017

2017 No. 1223

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 The purpose of this instrument is to set out how a senior officer must give an account forfeiture notice under section 303Z9 of the Proceeds of Crime Act 2002 (“POCA”). An account forfeiture notice relates to the administrative forfeiture of funds held in bank and building society accounts, where those accounts contain the proceeds of unlawful conduct (i.e. criminality), or funds which are intended for use in unlawful conduct. Please see below for a more detailed description of the legislation.
- 2.2 This instrument also makes amendments to the Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015 (S.I. 2015/857) and the Administrative Forfeiture of Cash (Forfeiture Notices) (Northern Ireland) Regulations 2016 (S.I. 2016/70) (“the 2015 Regulations” and “the 2016 Regulations”, respectively; and together, the “existing Regulations”) relating to the giving of a cash forfeiture notice under section 297A of POCA. The existing Regulations set out how a senior officer must give a cash forfeiture notice similar to the provisions in this instrument relating to an account forfeiture notice. Parts 3 and 4 of this instrument amend the existing Regulations to provide for the manner in which a cash forfeiture notice is to be given to a person outside the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Fourteenth Report of Session 2015-16 by the Joint Committee on Statutory Instruments reported a previous instrument, the Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015, for defective drafting, in light of changes it made to the 2015 Regulations concerning the giving of cash forfeiture notices to people outside the UK. This instrument removes the relevant provision in the 2015 Regulations and replaces it with a new procedure that does not give rise to the same operational issues (see paragraph 4.4). The new procedure is also inserted into the 2016 Regulations and replicated in the new provisions in this instrument which set out how notification is to be given to people abroad when there is an intention to forfeit money in their bank or building society account. The new measure makes clear that the giving of notice outside the United Kingdom in a manner which would be contrary to any applicable law in the other country is neither authorised nor required by this instrument (nor by the amended 2015 Regulations nor the 2016 Regulations).

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Sections 303Z1 – 303Z19 were inserted as new Chapter 3B of Part 5 of POCA by section 16 of the Criminal Finances Act 2017 (c. 22) (“the CFA”), and make provision for the freezing and forfeiture of bank and building society accounts, where those accounts contain the proceeds of unlawful conduct (i.e. criminality), or funds which are intended for use in unlawful conduct.
- 4.2 Sections 303Z9 – 303Z13 set out a procedure under which funds in bank and building society accounts can be forfeited without court order (“administrative forfeiture”). This procedure is explained in further detail below, but in summary a senior officer, as defined in s303Z2(4), may give an account forfeiture notice under s303Z9(2). The account forfeiture notice informs the recipient that, unless the recipient objects, the money can be forfeited. If an objection is raised, administrative forfeiture cannot proceed and the senior officer must determine whether or not to pursue forfeiture in the magistrates’ court. This is based on the existing procedure for administrative forfeiture of cash, in sections 297A-297G of POCA.
- 4.3 Section 303Z10(1) requires that the Secretary of State make regulations as to how the forfeiture notice is given. By section 303Z10(3), the notice must be given, where possible, to every person to whom notice of the account freezing order (“AFO”) was given. This instrument is made under the section 303Z10(1) power, and also under the equivalent power in section 297A of POCA in respect of the giving of administrative forfeiture notices in the context of cash recovery.
- 4.4 Regulation 2(3) of this instrument makes provision for the giving of account forfeiture notices to people outside the UK. Part 3 of this instrument makes an amendment to the 2015 Regulations which mirrors the provision in regulation 2(3), so that the provisions concerning the giving of cash forfeiture notices to people outside the United Kingdom are the same as for the giving of account forfeiture notices in these circumstances. Part 4 makes an equivalent amendment to the 2016 Regulations so the position is the same in Northern Ireland and England and Wales.
- 4.5 As with the procedure for administrative forfeiture of cash, the administrative forfeiture procedure for bank and building society accounts does not apply in Scotland. Chapter 3B of POCA, which contains the powers to forfeit funds in bank and building society accounts, is not being commenced in Northern Ireland at this time.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is as follows:
- Part 1 extends to England and Wales and Northern Ireland;
 - Parts 2 and 3 extend to England and Wales;
 - Part 4 extends to Northern Ireland.
- 5.2 The application of this instrument is as follows:

- Part 1 applies in England and Wales and Northern Ireland;
- Parts 2 and 3 apply in England and Wales;
- Part 4 applies in Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

- 7.1 Under the amendments made to POCA by the CFA, funds held in bank and building society accounts can be forfeited where there is reasonable suspicion that the funds derive from, or are intended for use in, unlawful conduct.
- 7.2 The account forfeiture provisions are similar to the cash forfeiture procedure. This is because, whilst criminals continue to use cash in significant amounts, there is a distinct need to be able to take action against criminals transferring and retaining illicit wealth through other means. The account forfeiture powers are intended to provide a similar procedure to cash forfeiture, whereby a forfeiture order can be obtained via the magistrates' court, or alternatively forfeiture can occur without a court order if it is not contested (see further below).
- 7.3 Sections 297A to 297G of POCA provide a mechanism for the administrative forfeiture of cash. Under this procedure, a senior officer can give a forfeiture notice to the owner of the seized cash, stating that the cash is to be forfeited unless the owner objects. There is a similar procedure in sections 303Z9 to 303Z13 in respect of funds in bank or building society accounts, which involves the giving of an "account forfeiture notice" ("AFN").
- 7.4 The period for any objections must be at least 30 days and can be made by anyone in writing. If no objection is received, at the end of the period the amount of money stated in the account forfeiture notice will be forfeited, without court order. Any money forfeited under an AFN is paid into the Consolidated Fund.
- 7.5 If an objection is received, the cash or funds cannot be forfeited administratively, and the senior officer must determine whether to pursue forfeiture under the magistrates' court procedure. For this reason, these provisions do not prevent those wishing to contest the forfeiture from having the matter heard before the courts.
- 7.6 Under Section 303Z9 of POCA, an AFN can be made while an AFO is in place on funds held in a specified bank account. The AFO would have been made by a magistrates' court under section 303Z3 of POCA.
- 7.7 This instrument is made under section 303Z10 of POCA and Part 2 sets out how a senior officer, as defined in section 303Z2(4) of POCA, must give an AFN. The senior officer must be satisfied that the funds derive from or are intended to be used in unlawful conduct.
- 7.8 Regulation 2 states that the senior officer must give the AFN to any person who was given notice of the AFO, and to any person who has been identified as being affected by the AFO, but who was not given notice of the AFO. This ensures that the AFN

will be given to any person who may have an interest in the forfeiture of the money. Regulation 2(3) makes provision about the giving of AFNs to people outside the United Kingdom.

- 7.9 Regulation 3 states that the AFN may be given by post or by electronic communication, where the recipient is known. Alternatively, regulation 3(2) provides that the AFN may be published in the London Gazette, the Belfast Gazette and/or the Edinburgh Gazette, under certain circumstances. Those circumstances are that no person had previously been notified of an AFO in respect of the money, or no person had subsequently been identified as being affected by the AFO, or alternatively that a recipient had been identified but the notice could not be given by post or by electronic communication.
- 7.10 Regulations 4 and 5 set out the requirements for giving an AFN by post or by electronic communication. Regulation 5(1) provides that a notice may only be given by means of electronic communication where the intended recipient has indicated in writing that they are willing to accept the AFN being given in that manner.
- 7.11 Where the intended recipient is a child or a protected person, the senior officer must additionally give the AFN to the appropriate person set out in regulation 6. In respect of a child, this means the child's parents, a guardian or an adult with whom the child resides. If the recipient is a protected person, regulation 6(2) provides that the AFN must additionally be given to a person with a relevant power of attorney, to a deputy appointed by the Court of Protection, or to an adult with whom the protected person resides, or in whose care the protected person is.
- 7.12 Parts 3 and 4 of this instrument make amendments to the existing Regulations so as to include an equivalent to the procedure in regulation 2(3) (giving AFNs to people outside the United Kingdom) for giving an administrative forfeiture notice in the context of the cash recovery powers. In addition, Parts 3 and 4 make further amendments to the existing regulations to ensure that forfeiture notices can be given by publication, or given to a child or protected person, in any part of the United Kingdom.

8. Consultation outcome

- 8.1 The Home Office consulted with relevant stakeholders on the provisions themselves, inviting and reviewing suggestions and observations amongst the groups potentially affected by this legislative change. No consultation has been undertaken with regard to this instrument specifically.

9. Guidance

- 9.1 The Home Office will issue a formal Circular to relevant stakeholders, offering policy guidance on the use of these provisions. There is no guidance planned with regard to the use of this instrument specifically.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that may be undertaken by small businesses.

12. Monitoring & review

12.1 The Home Office together with the Proceeds of Crime Centre in the National Crime Agency will monitor the use of this power in its early stages.

13. Contact

13.1 Justin Millar at the Home Office can answer any queries regarding this instrument (Telephone: 0207 035 1578 or email: justin.millar@homeoffice.x.gsi.gov.uk).