

2017 No. 1291 (L. 23)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

**The Magistrates' Courts (Detention and Forfeiture of Cash)
(Amendment) Rules 2017**

<i>Made</i> - - - -	<i>11th December 2017</i>
<i>Laid before Parliament</i>	<i>18th December 2017</i>
<i>Coming into force</i> - -	<i>31st January 2018</i>

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(a).

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(b).

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—

“(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(c);”;

(b) after paragraph (b) insert—

(a) 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.

(b) 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.

(c) 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).

“(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^(a);

(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.”;

(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”;

(a) 1947 c. 44.

- (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(a);
 - (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(b)), 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”;
 - (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

(a) 2013 c. 22.
 (b) 2011 c. 13.

- (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(a);
 - (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(b)), 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;

(a) 2013 c. 22.
 (b) 2011 c. 13.

- (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;
- (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(a);
- (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(b)), 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;

(a) 2013 c. 22.
 (b) 2011 c. 13.

- (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 that date to the applicant and to every person to whom a copy of the application is required to be sent under paragraph (3).

(5) An order under section 297E(7)(a) of the Act must provide for the release of the cash within seven days of the date of the making of the order, or such longer period as, with the agreement of the applicant, may be specified.

Director of Public Prosecutions appearing in proceedings

8B. Where the Director of Public Prosecutions has agreed under section 302A of the Act to appear in proceedings under Chapter 3 of Part 5 of the Act for—

- (a) a constable,
- (b) an accredited financial investigator,
- (c) the Commissioners for Her Majesty’s Revenue and Customs, or
- (d) an officer of Revenue and Customs,

the Director must notify the court which is dealing with the proceedings if the Director wants documents given under these Rules to be given also to the Director.”.

Giving of documents

10. For rule 9 substitute—

“Giving of documents

9.—(1) Any document required to be given to any person under these Rules may be given—

- (a) by post in accordance with rule 9A;
- (b) by means of electronic communication in accordance with rule 9B; or
- (c) by any method authorised by the court under rule 9C.

(2) If any document is given to a person in accordance with paragraph (1), it is deemed to have been received by that person unless the contrary is shown.

Giving documents by post

9A.—(1) In order to give a document by post to a person (other than to the court), it must be sent by properly addressing, pre-paying and posting to an address which has been given by that person for the purpose of receipt of documents under these Rules.

(2) If no address has been given as is mentioned in paragraph (1), the document must be sent to an address which is shown in the following table.”

<i>Person to whom document is to be given</i>	<i>Address</i>
1. Individual	Last known residential address
2. Individual in their business capacity	Last known residential address of the individual; or principal or last known place of business
3. Individual in their capacity as a partner in a partnership	Last known residential address of the individual; or principal or last known place

4. Limited Liability Partnership (within the meaning of the Limited Liability Partnerships Act 2000 ⁽¹⁾)	of business of the partnership Principal office of the partnership; or any place of business of the partnership
5. Corporation (other than a company)	Principal office of the corporation; or any place where the corporation carries on its activities
6. 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).

“(3) Unless the contrary is shown, the document is to be deemed as having been given to the person on the second day after it was posted, provided that day is a business day; or if not, the next business day after that day.

Giving documents by means of electronic communication

9B.—(1) In order to give a document by fax, email or other means of electronic communication, the intended recipient of the document must previously have indicated in writing to the person giving the document—

- (a) that they are willing to accept service of documents for the purposes of these Rules by that means of electronic communication; and
- (b) the fax number, e-mail address or other electronic identification to which documents must be sent.

(2) Where a person intends to give a document by means of electronic communication (other than by fax), that person must first ask the intended recipient whether there are any limitations to their 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 a document by means of electronic communication is effected by sending or transmitting the document in accordance with the written indication given by the intended recipient under paragraph (1), having complied with any limitations specified by the intended recipient under paragraph (2).

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

(5) Where a document is given by electronic means, the person giving the document need not in addition send or deliver a hard copy.

Giving of documents by an alternative method or at an alternative place

9C.—(1) Where it appears to the court that there is a good reason to authorise the giving of a document by a method or at a place not otherwise permitted by these Rules, the court may make an order permitting the giving of a document by an alternative method or at an alternative place.

(2) On an application under this rule, the court may order that steps already taken to give the document to a person by an alternative method or at an alternative place constitute the giving of that document under these Rules.

(3) An application for an order under this rule—

- (a) must be supported by evidence; and
- (b) may be made without notice.

(4) An order under this rule must specify—

- (a) the method by which the document may be given, if it is not a method permitted by these Rules;
- (b) the place at which the document may be given, if it is not a place permitted by these Rules; and
- (b) the date on which the document is deemed to be given.

Giving a document to a child or a protected person

9D.—(1) Where the intended recipient of a document is known to be a child who is not also a protected person, the document must be given to the child and—

- (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 a document is known to be a protected person, the document 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 in relation to the protected person;
 - (ii) the donee of a lasting power of attorney in relation to the protected person;
 - (iii) the deputy appointed by the Court of Protection in relation to the protected person;
- (b) where the protected person is resident in Northern Ireland, to one of the following persons—
 - (i) the attorney under a registered power of attorney which 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 which relates to the protected person;
 - (ii) the welfare attorney under a welfare power of attorney which 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 protected person; or
- (d) if in any case under sub-paragraph (a), (b) or (c) there is no such person, to an adult with whom the protected person resides or in whose care the protected person is.

(3) Any reference in these Rules to a person to whom a document is to be given includes the person to be given documents on behalf of a child or protected person under paragraph (1) or (2).

(4) The court may make an order permitting a document to be given to a child or protected person, or to a person other than the person specified in paragraph (1) or (2), and an application for such an order may be made without notice.

(5) In this rule—

- (a) “child” means a person under 18 years; and
- (b) “protected person” means—
 - (i) in relation to England and Wales, a person who lacks capacity (within the meaning of the Mental Capacity Act 2005(a)) to understand the nature of forfeiture proceedings;
 - (ii) in relation to Northern Ireland, a person who is 16 years or over who lacks capacity to understand the nature of forfeiture proceedings because of an impairment of, or a disturbance in the functioning of, the mind or brain;
 - (iii) in relation to Scotland, a person who is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000(b), of understanding the nature of forfeiture proceedings.

Giving of documents to persons outside the United Kingdom

9E.—(1) If a document is to be given to a person who resides outside the United Kingdom, the document must be given in accordance with the terms of any relevant declaration.

(2) In this rule, “relevant declaration” means—

- (a) a declaration made in accordance with Article 31(2) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005(c) that judicial documents may not be sent directly to persons abroad by postal channels; or
- (b) a declaration made in accordance with Article 21(2) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990(d) that judicial documents may not be sent directly to persons abroad by postal channels.”.

Transfer of proceedings

11. In rule 10—

- (a) in paragraph (1), for “local justice area” substitute “magistrates’ court”;
- (b) in paragraph (2), for “designated officer for the local justice area” substitute “court”;
- (c) in paragraph (4)—
 - (i) for “justices’ clerk” substitute “court”;
 - (ii) for “he directs” substitute “directed”; and
 - (iii) omit “the designated officer”;
- (d) in paragraph (5), for “local justice area” substitute “court”; and
- (e) in paragraph (6)—
 - (i) in sub-paragraph (a), for “designated officer” substitute “court”;
 - (ii) in sub-paragraph (b)—
 - (aa) for “the designated officer” substitute “the court”; and
 - (bb) for “designated officer for the local justice area” substitute “court”;
 - (cc) in sub-paragraph (c), for “local justice area” substitute “court”; and
 - (iii) in sub-paragraph (d)—
 - (aa) for “a designated officer” substitute “a court”; and

(a) 2005 c. 9.

(b) 2000 asp 4.

(c) Council of Europe Treaty Series 198.

(d) European Treaty Series 141.

- (bb) for “designated officer for the local justice area” substitute “court”.

Procedure at hearings

- 12.** In rule 11(2)—
- (a) for “designated officer” substitute “court”; and
 - (b) after “8(4)” insert “, 8A(4)”.

Forms

- 13.—**(1) In Form A in the Schedule—
- (a) for “(official address and position of applicant)” substitute “(official address, position of applicant and description of category of appropriate officer)”; and
 - (b) omit “Constable/Customs Officer **”.
- (2) In Form G in the Schedule—
- (a) for ““(official address and position of applicant)” substitute “(official address, position of applicant and description of category of appropriate officer)”; and
 - (b) omit “Constable/Customs Officer**”.

8th December 2017

Ian Burnett
Lord Chief Justice

I concur

11th December 2017

Dominic Raab
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates’ Courts (Detention and Forfeiture of Cash) Rules 2002 (“the 2002 Rules”), which prescribe the procedure to be followed for applications to a magistrates’ court for the detention, further detention, forfeiture or release of cash seized under Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 (c. 29) (“POCA”).

The amendments made by these Rules update the procedure in the 2002 Rules to take account of the amendments to Chapter 3 of Part 5 of POCA made by the Policing and Crime Act 2009 (c. 26), expand the list of persons to whom certain documents must be served under the 2002 Rules, and make further provision about the service of documents generally.

© Crown copyright 2017

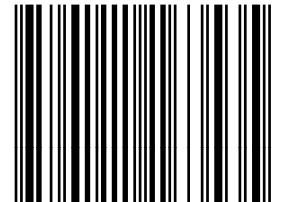
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.00

UK201712131037 12/2017 19585

<http://www.legislation.gov.uk/id/uksi/2017/1291>

ISBN 978-0-11-116353-5



9 780111 163535