

2019 No. 1368 (L. 10)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5A, and Miscellaneous Amendments) Rules 2019

<i>Made</i> - - - -	<i>21st October 2019</i>
<i>Laid before Parliament</i>	<i>22nd October 2019</i>
<i>Coming into force</i> - -	<i>12th November 2019</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 Magistrate's Courts Act 1980 c.43 (a):

Citation, commencement and introduction

1.—(1) These Rules may be cited as the Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5A, and Miscellaneous Amendments) Rules 2019, and come into force on 12th November 2019.

(2) Rules 2 to 16 make provision in relation to proceedings under Part 5A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005.

(3) Rule 17 makes provision for miscellaneous amendments to other rules.

Interpretation

2. In these Rules—

- (a) “the Order” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(b);
- (b) “document” includes any notification required to be given under these Rules;
- (c) “electronic communication” has the meaning given by section 15(1) of the Electronic Communications Act 2000(c);
- (d) words and expressions used otherwise have the same meaning as in Part 5A of the Order.

(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. No. 2005/3181, to which relevant amendments were made by S.I. 2018/1078.

(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).

Prior approval of searches for property

3.—(1) An application to a justice of the peace under article 213E of the Order for prior approval of a search for property under article 213C of the Order may be made without notice.

(2) A justice of the peace may grant such an application without a hearing and may conduct any hearing in private.

Applications for the release of detained property

4.—(1) An application under article 213K or 213S of the Order for the release of detained property must be made in writing and sent to the court before which the applicant wishes to make the application, and must specify the grounds on which it is made.

(2) The court must send a copy of the application to—

- (a) the Commissioners for Her Majesty's Revenue and Customs, if the property to which the application relates was seized by an officer of Revenue and Customs;
- (b) the Director General of the National Crime Agency, if the property to which the application relates was seized by a National Crime Agency officer who is designated under section 10 of the Crime and Courts Act 2013;
- (c) the chief officer of the police force to which the constable belongs, if the property to which the application relates was seized by a constable;
- (d) the Director of the Serious Fraud Office, if the property to which the application relates was seized by an officer of the Serious Fraud Office;
- (e) the Director of Public Prosecutions, where the Director has given notification under rule 10; and
- (f) any other person known to be affected by the application.

(3) 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 (2).

(4) At the hearing of an application under article 213S(1) of the Order, the court may, if it thinks fit, order that the applicant be joined as a party to all the proceedings in relation to the detained property.

(5) A direction under article 213K(2) of the Order must provide for the release of the property within seven days of the date of the making of the direction or such longer period as with the agreement of the applicant may be specified in the direction, except that property shall not be released whilst article 213L(11) or (12) of the Order applies.

(6) An order under article 213S(4) or (5) of the Order must provide for the release of the property within seven days of the date of the making of the order or direction, or such longer period as, with the agreement of the applicant, may be specified, except that property shall not be released whilst article 213L(11) or (12) of the Order applies.

Application for forfeiture of detained property

5.—(1) An application under article 213L(1) of the Order for the forfeiture of detained property must be made in writing and sent to the office of a magistrates' court, and may specify a preference for the application to be made before a court specified in the application.

(2) The court to which the application was sent shall determine before which court the application is to be heard, having regard to any preference expressed by the applicant, and shall send the application to that court.

(3) The court must give notice of the application and a copy of the application to the person from whom the property was seized and to any other person known to be affected by the application.

(4) The court must fix a date for a directions hearing, which, unless directed otherwise, shall not be earlier than 60 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) At the directions hearing, the court may give directions relating to the management of the proceedings, including directions as to the date for the hearing of the application.

(6) If neither the person from whom the property was seized, nor any other person who is affected by the detention of the property, seeks to contest the application, the court may decide the application at the directions hearing.

(7) A copy of an order for the forfeiture of detained property under any of articles 213L(5) or 213O(7) of the Order must be given by the court to the person from whom the property was seized and to any other person known to be affected by the order.

Agreements about associated and joint property

6.—(1) Where article 213N(1) of the Order applies (agreements about associated and joint property) and the parties agree, the court may order the person who holds the associated property or who is the excepted joint owner to make a payment to the person identified in the order.

(2) Prior to the making of an order under paragraph (1), the court must request and the parties must provide—

- (a) details of the proposed agreement between the parties as to the value of the forfeitable property;
- (b) details of any agreed reduction in the amount payable;
- (c) confirmation that the agreement is in writing; and
- (d) a draft order for the court's consideration.

(3) Where article 213N(1) of the Order applies but the court has not been notified that the parties agree that the court should make an order under article 213N(1) of the Order, the court may give directions as to the date by which the parties are to communicate the details in paragraph (2) to the court.

(4) A copy of an order under article 213N(1) of the Order must be given by the court to every person to whom notice of an application under article 213L in respect of the detained property has been given, and to any other person known to be affected by the order.

Application for compensation

7.—(1) An application under article 213T(1) of the Order for compensation must be made in writing and sent to the court before which the applicant wishes to make the application.

(2) The court must send a copy of the application to—

- (a) the Commissioners for Her Majesty's Revenue and Customs, if the property which is the subject of the application was seized by a customs officer;
- (b) the Director General of the National Crime Agency, if the property 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);
- (c) the chief officer of the police force to which the constable belongs, if the property which is the subject of the application was seized by a constable;
- (d) the Director of the Serious Fraud Office, if the property which is the subject of the application was seized by an officer of the Serious Fraud Office; and
- (e) any other person known to be affected by the application.

(3) The court must fix a date for the hearing of the application, which, unless directed otherwise, shall not be earlier than 28 days from the date on which it is fixed, and must notify the date to the

(a) 2013 c. 22.

applicant and every person to whom a copy of the application is required to be sent under paragraph (2).

Director of Public Prosecutions appearing in proceedings

8. Where the Director of Public Prosecutions has agreed under article 213U of the Order to appear in proceedings under Part 5A of the Order for—

- (a) a constable;
- (b) the Commissioners for Her Majesty’s Revenue and Customs; or
- (c) 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

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

- (a) by post in accordance with rule 10;
- (b) by means of electronic communication in accordance with rule 11; or
- (c) by any method authorised by the court under rule 12.

(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

10.—(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 of business of the partnership
4. 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
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

11.—(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 4.30 p.m.. If the electronic communication is sent or transmitted after 4.30 p.m., 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

12.—(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
- (c) the date on which the document is deemed to be given.

Giving a document to a child or a protected person

13.—(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 which relates to the protected person;
 - (ii) the donee of a lasting power of attorney which relates to the protected person; or
 - (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 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

14.—(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) 2005 c. 9.
 (b) 2000 asp 4.

- (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 agreed at Warsaw on 16th May 2005^(a) 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 agreed at Strasbourg on 8th November 1990^(b) that judicial documents may not be sent directly to persons abroad by postal channels.

Transfer of proceedings

15.—(1) Any person who is a party to, or affected by, proceedings under Part 5A of the Order may, at any time, make an application to the court dealing with the matter for the proceedings to be transferred to a different magistrates' court.

(2) Any such application must be made in writing and sent to the court in which the proceedings are being dealt with and must specify the grounds on which it is made.

(3) The court must send a copy of the application to the parties to the proceedings and any other person affected by the proceedings.

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

(5) The court may grant the application if it is satisfied that it would be more convenient or fairer for proceedings to be transferred to a different magistrates' court.

(6) If the application is granted—

- (a) the court must give a copy of the order to the parties to the proceedings and any other person affected by the proceedings;
- (b) the court must send all relevant papers to the magistrates' court to which proceedings are transferred;
- (c) any further proceedings under Part 5A of the Order in respect of the property to which the proceedings relate shall be dealt with in the magistrates' court to which proceedings are transferred;
- (d) any requirement under these Rules to make or send an application to a court shall be read as a requirement to make or send an application to the court to which proceedings are transferred.

(7) Where the proceedings are to be transferred to the High Court under article 213O(1) of the Order, notice must be given by the court to every person to whom notice of an order made under article 213L(1) of the Order in respect of the detained property has been given, and to any other person known to be affected by the order.

Procedure at hearings

16.—(1) At the hearing of an application under Part 5A of the Order, any person to whom notice of the application has been given may attend and be heard on the question of whether the application should be granted, but the fact that any such person does not attend shall not prevent the court from hearing the application.

(2) Subject to the foregoing provisions of these Rules, proceedings on such an application shall be regulated in the same manner as proceedings on a complaint, and accordingly for the purposes of these Rules, the application shall be deemed to be a complaint, the applicant a complainant, the respondents to be defendants and any notice given under rules 4(3), 5(4), 7(3) or 15(4) to be a

(a) Council of Europe Treaty Series 198.

(b) European Treaty Series 141.

summons: but nothing in this rule shall be construed as enabling a warrant of arrest to be issued for failure to appear in answer to any such notice.

(3) At the hearing of an application under Part 5A of the Order, the court must require the matters contained in the application to be sworn by the applicant under oath, may require the applicant to answer any questions under oath and may require any response from the respondent to the application to be made under oath.

(4) The court must record or cause to be recorded the substance of any statements made under oath which are not already recorded in the written application.

Miscellaneous amendments

17.—(1) In the Magistrates’ Courts (detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001(a)—

- (a) in rule 7B, omit “designated officer for the”; and
- (b) in rule 9F(6)(b), omit “designated officer for the”.

(2) In the Magistrates’ Courts (Detention and Forfeiture of Cash) Rules 2002(b), in rule 5(3A), for “designated officer” substitute “court”.

(3) In the Magistrates’ Courts (Freezing and Forfeiture of Terrorist Money in bank and Building Society Accounts) Rules 2017(c)—

- (a) in rule 5(4), for “designated officer” substitute “court”; and
- (b) in rule 7, omit “designated officer for the”.

(4) In the Magistrates’ Courts (Detention and Forfeiture of Listed Assets) Rules 2017(d), in rule 17(6)(b), omit “designated officer for the magistrates”.

(5) In the Magistrates’ Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017(e)—

- (a) in rule 2(d), for “Chapter 3A” substitute “Chapter 3B”; and
- (b) in rule 7, for “Chapter 3A” substitute “Chapter 3B”.

Ian Burnett

Lord Chief Justice

17th October 2019

I concur

Chris Philp

Parliamentary Under Secretary of State
Ministry of Justice

21st October 2019

(a) S.I. 2001/4013. Rules 7B and 9F were inserted by S.I. 2017/1295, rules 8 and 11.
(b) S.I. 2002/2998. Rule 5(3A) was inserted by S.I. 2017/1291, rule 5(c).
(c) S.I. 2017/1290.
(d) S.I. 2017/1293.
(e) S.I. 2017/1297.

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules prescribe the procedure to be followed for applications to a magistrates' court for giving effect in England and Wales to external orders under Part 5A of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 ("the Order"). Part 5A of the Order was inserted by article 30 of the Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018(a). Part 5A of the Order mirrors in large part the provisions of Chapter 3A of Part 5 of the Proceeds of Crime Act 2002 ("POCA"), which was inserted by section 15 of the Criminal Finances Act 2017 (c.22) and makes provision for the forfeiture of certain listed items of personal or moveable property, where the listed property derives from, or is intended for use in, unlawful conduct. The property to which the forfeiture powers apply is listed in article 213B of the Order. These Rules similarly mirror in large part the rules relating to proceedings under Chapter 3A of Part 5 of POCA (the Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017(b)) and provide the relevant procedure for:

- Prior approval for searches (see article 213E of the Order, mirroring section 303E of POCA);
- Applications for release of detained property (see articles 213K and 213S of the Order, mirroring sections 303N and 303V of POCA);
- Applications for forfeiture of detained property (see articles 213L and 213O of the Order, mirroring sections 303O and 303R of POCA);
- Agreements about associated and joint property (see articles 213M and 213N of the Order, mirroring sections 303P and 303Q of POCA);
- Applications for compensation (see article 213T of the Order, mirroring section 303W of POCA).

In addition, the Rules make provision for the manner in which documents are to be given in proceedings under Part 5A of the Order, for the transfer of hearings and for procedure at hearings.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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(a) S.I. 2018/1078.

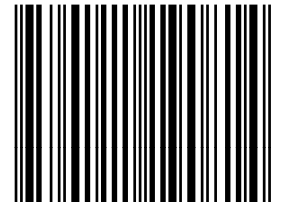
(b) S.I. 2017/1293.

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