EXPLANATORY MEMORANDUM TO

THE ADMINISTRATIVE FORFEITURE OF CASH (FORFEITURE NOTICES) (ENGLAND AND WALES) REGULATIONS 2015

2015 No. 857

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of these instruments

2.1 This instrument supports the provisions in section 297A to 297G of the Proceeds of Crime Act 2002 (c. 29) ("POCA") relating to the forfeiture of detained cash. Those provisions provide that a senior officer can give a "forfeiture notice" to persons with an interest in cash that has been seized and detained, informing them of the intention to forfeit that cash without a hearing before a magistrates' court. The Administrative Forfeiture of Cash (Forfeiture Notices) (England and Wales) Regulations 2015 sets out to whom and how this "forfeiture notice" is to be given and what it must contain.

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

3.1 None.

4. Legislative Context

4.1 Chapter 3 of Part 5 of POCA makes provision for the recovery of cash in summary proceedings before the magistrates' court. The cash must be the proceeds of crime or intended for use in unlawful conduct. The legal proceedings are civil in nature, and are against the cash not a person ("in rem" proceedings). Therefore proceedings do not require the criminal conviction of a person.

4.2 Sections 289 to 293 of POCA make provision for search powers and related safeguards necessary to support the powers to seize cash under section 294. Sections 295 and 296 make provision relating to the detention of cash and section 298 provides the magistrates' courts with the power to order forfeiture of the cash if it is satisfied that the cash is the proceeds of, or intended for use in, crime.

4.3 Sections 297A to 297G of POCA make provision for the administrative forfeiture of cash without a hearing before the magistrates' court. The cash must have been seized and detained by order of the magistrates' court under section 295. A senior officer (as defined in section 297A(6) and (7)) in the agency that seized the cash can give a "forfeiture notice" for the purposes of forfeiting the cash.

4.4 Section 297A(3) of POCA requires that the Secretary of State make regulations as to how the forfeiture notice is to be given. By section 297A(5), the notice must be given, where possible, to every person who was given notice of a previous order made by the magistrates' cash to detain the cash. Under section 297A(4), the regulations can make provision for various matters. This is the first exercise of the enabling power in section 297A(4), and is being exercised in relation to England and Wales only.

4.5 Sections 297A to 297G of POCA are inserted by section 65 of the Policing and Crime Act 2009 (c. 26), which is being commenced in relation to giving forfeiture notices in England and Wales only on 1st June 2015.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

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

7.1 Chapter 3 of Part 5 of POCA makes provision for the summary recovery of criminal cash in civil proceedings before the magistrates' courts. Many of these cases are uncontested and so the expense and time of court hearings to decide on the matter of forfeiture is nugatory. In not contesting these cases, those with an interest have implicitly admitted to the criminal taint of the relevant cash. It is usual for a magistrates' court to order the forfeiture of the cash in these uncontested cases.

7.2 Section 65 of the Policing and Crime Act 2009 inserted sections 297A to 297G into POCA to allow for the administrative forfeiture of cash in uncontested cases. These provisions build in safeguards to ensure that those with any interest in the cash have their rights protected. These include, as set out in these regulations, express detailed rules on how notice of the intention to forfeit the cash is given. Section 297B sets out what a forfeiture notice must contain.

7.3 The forfeiture notice must provide a period of at least 30 days for objections to the forfeiture to be made. If there is an objection made by anyone (regardless of whether they were a recipient of a forfeiture notice or not) and the law enforcement agency wishes to continue with forfeiture, the matter must go forward to be heard before a magistrates' court. The legislation also provides for an aggrieved person to be able to apply to set aside the forfeiture (section 297E).

7.4 These provisions and the regulations will not remove the right for those wishing to contest cases from having the matter heard before the courts. It is also not the policy intention of these provisions to encourage persons not to contest these cases.

7.5 In the simple nature of summary recovery of cash, the ability for law enforcement agencies to process these cases quickly makes their utility and availability more effective in addressing the recovery of the proceeds of crime and criminal finance more generally. The provisions contain numerous safeguards to ensure proportionate use, and to protect the rights of persons with an interest in the cash.

7.6 The Regulations provide for a forfeiture notice to be given by way of post or by means of electronic communication, where the notice is being given to a person. In some cases, it may not be possible to give a notice to a person. For example, if cash has been seized when unattended, no person may have been identified as having an interest in it. Or, perhaps only a person's name is known but it has not been possible to find that person's address, so a notice cannot be given by post. In those cases, the notice may be given by way of publication in the London Gazette.

7.7 Where the person to whom a forfeiture notice must be given is a child or a person lacking sufficient mental capacity to understand the nature of a forfeiture notice, then a notice must be given to a person falling within regulation 7 on their behalf. If there is no such person, then administrative forfeiture cannot be used. Forfeiture will have to be sought by way of a court order instead. This protects the interests of children and those who lack mental capacity, and does not affect the ability of the law enforcement agency to forfeit cash by way of court proceedings, as they can do now.

8. Consultation outcome

8.1 No formal public consultation has been carried out.

9. Guidance

9.1 No guidance will be issued in relation to this instrument; however it will form part of a package of learning issued by the Proceeds of Crime Centre in the National Crime Agency. They have responsibility for the training and monitoring of all financial investigators.

10. Impact

10.1 Chapter 3 of Part 5 already applies to business, charities and voluntary bodies, these provisions will not add to the impact.

10.2 The impact on the public sector is nil. The possible saving on court time and other resources could result in a saving.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 Chapter 3 of Part 5 already applies to small business, these provisions will not add to the impact.

12. Monitoring & review

12.1 The Home Office together with the Proceeds of Crime Centre in the National Crime Agency will monitor these cases in their initial stages.

13. Contact

Stephen Goadby at the Home Office Tel: 020 7035 1559 or email: stephen.goadby@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.