STATUTORY INSTRUMENTS

# 2016 No. 70

# PROCEEDS OF CRIME, NORTHERN IRELAND

## The Administrative Forfeiture of Cash (Forfeiture Notices) (Northern Ireland) Regulations 2016

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| *Made - - - -* | *23rd January 2016* |
| *Laid before Parliament* | *27th January 2016* |
| *Coming into force - -* | *1st March 2016* |

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 297A(3) and (4) and 459(2)(a) of the Proceeds of Crime Act 2002(**a**).

### Citation, commencement and extent

**1.**—(1) These Regulations may be cited as the Administrative Forfeiture of Cash (Forfeiture Notices) (Northern Ireland) Regulations 2016, and come into force on 1st March 2016.

(2) These Regulations extend to Northern Ireland only.

### Interpretation

**2.** In these Regulations—

"the Act" means the Proceeds of Crime Act 2002; and

"electronic communication" has the meaning given by section 15(1) of the Electronic Communications Act 2000(**b**).

### Giving of a forfeiture notice

**3.**—(1) Subject to paragraph (2), a forfeiture notice(**c**) must be given by a senior officer(**d**) in accordance with regulation 4 to—

(a) any person to whom notice of the most recent order made under section 295(2) of the Act in respect of the cash has been given; and

(b) any other person who has been identified as being known to be affected by the most recent order made under section 295(2) of the Act in respect of the cash but who has not been given notice of the order.

(2) Where—

(a) there are no such persons as are mentioned in paragraph (1); or

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(**a**) 2002 c. 29. Section 297(A) was inserted by section 65 of the Policing and Crime Act 2009 (c. 26), and amended by the Crime and Courts Act 2013 (c. 22), section 55(14) and Schedule 21, Pt 1, paragraphs 14 and 28.

(**b**) 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(**c**) See section 297A(8) of the Act for the meaning of "forfeiture notice".

(**d**) See section 297A(6) of the Act for the meaning of "senior officer".

(b) it is not possible to give a notice in accordance with regulation 4(1) to such a person,

the forfeiture notice must be given by way of publication in accordance with regulation 4(2).

**Manner in which a forfeiture notice must be given**

**4.**—(1) A forfeiture notice which is given to a person must be given—

(a) by post in accordance with regulation 5; or

(b) by means of electronic communication in accordance with regulation 6.

(2) A forfeiture notice which is required to be given by way of publication must be published in the Belfast Gazette.

**Giving a forfeiture notice by post**

**5.**—(1) In order to give a forfeiture notice to a person by post, 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 a forfeiture notice under these Regulations.

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

| *Person to whom a forfeiture notice is to be given* | *Address* |
|---|---|
| 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(**a**)) | 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 |

(3) The forfeiture notice is to be treated as having been given at the time at which the notice would be delivered in the ordinary course of post.

**Giving a forfeiture notice by means of electronic communication**

**6.**—(1) A forfeiture notice may be given by means of fax, email or other means of electronic communication where the intended recipient has previously indicated in writing—

(a) that they are willing to accept the giving of a forfeiture notice by that means of electronic communication; and

(b) the fax number, e-mail address or other electronic identification to which the forfeiture notice must be sent.

(2) Where a senior officer intends to give a forfeiture notice by means of electronic communication (other than by fax), the senior officer must first ask the intended recipient whether there are any limitations to the intended recipient's 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).

(**a**) 2000 c. 12.

(3) Giving a forfeiture notice by means of electronic communication is effected by sending or transmitting the notice 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 forfeiture notice 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.

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

**Giving a forfeiture notice to a child or a protected person**

**7.**—(1) Where the intended recipient of a forfeiture notice is known to be a child who is not also a protected person, the forfeiture notice must be given to—

(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 forfeiture notice is known to be a protected person, the forfeiture notice must be given to—

(a) one of the following persons with authority in relation to the protected person as—

(i) the attorney under a registered enduring power of attorney;

(ii) the controller appointed by the Office of Care and Protection(**a**); or

(b) if there is no such person, an adult with whom the protected person resides or in whose care the protected person is.

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

(4) Where—

(a) there is no person falling within paragraph (1) to whom a forfeiture notice can be given on behalf of a child who is not also a protected person; or

(b) there is no person falling within paragraph (2) to whom a forfeiture notice can be given on behalf of a protected person,

a senior officer may not give a forfeiture notice to a person who is known to be a child in the case of paragraph (a), or to a protected person in the case of paragraph (b).

(5) In this regulation—

"child" means a person under 18 years; and

"protected person" means a person who is 16 years or over who lacks capacity to understand the nature of a forfeiture notice because of an impairment of, or a disturbance in the functioning of, the mind or brain.

Home Office
23rd January 2016

*John Hayes*
Minister of State

(**a**) see Order 109 of The Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. (NI) 1980 No 1841). The Rules of the Supreme Court (Northern Ireland) 1980 were renamed in accordance with paragraph 3 of schedule 11 to the Constitutional Reform Act 2005 (c. 4).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations set out how a senior officer may give a forfeiture notice under section 297A of the Proceeds of Crime Act 2002 (c. 29) ("the Act"). A forfeiture notice relates to cash, seized because of a reasonable suspicion that it is the proceeds of crime, or that it is intended to be used as such, and subsequently detained under a magistrates' court order under section 295(2) of the Act for the purposes of further investigation, or because criminal proceedings are being considered or have begun. A forfeiture notice informs the recipient of the senior officer's intention to forfeit cash without a hearing before a magistrates' court. If the recipient objects to forfeiture, there is a period during which objections can be made; if objections are made, forfeiture can only take place by way of proceedings before a magistrates' court.

Regulation 3 prescribes the persons to whom a forfeiture notice must be given, being persons known to be affected by detention and forfeiture of the cash. If there are no persons falling within the description, or it would not be possible to give such a person a notice in accordance with the requirements of the Regulations, then the notice must be given instead by publication.

Regulation 4 sets out the manner in which a forfeiture notice must be given. A notice being given to a person may be sent by post or by means of an electronic communication. A notice given by publication must be published in the Belfast Gazette.

Regulation 5 sets out the requirements for giving a forfeiture notice by post, and makes provision for when the notice is to be treated as having been given. Regulation 6 sets out the requirements for giving a forfeiture notice by means of electronic communication, and makes provision for when the notice is to be treated as having been given.

Regulation 7 concerns the giving of a forfeiture notice to a person known to be a child who is not a person lacking sufficient mental capacity (a "protected person"), or to a protected person. The notice must also be given to another person (as specified) on behalf of the child or protected person. If there is no such other person to whom a forfeiture notice can be given, then a forfeiture notice may not be given to the child or protected person.

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

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