EXPLANATORY MEMORANDUM TO

THE CROWN COURT (AMENDMENT NO. 2) RULES 2024

2024 No. 1131 (L. 19)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Heidi Alexander, Minister of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Steven Jarman, Deputy Director for Civil Justice and Law, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amelia Smith at the Home Office (Amelia.smith37@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Rules amend the Crown Court Rules 1982 (S.I. 1982/1109) to ensure that the necessary procedural frameworks are in place to underpin appeals in the Crown Court in relation to the asset forfeiture regimes that deal with criminal property and terrorist property. This is to take account of amendments made by the Economic Crime and Corporate Transparency Act 2023 (ECCT Act) that introduced a regime for the forfeiture of cryptoassets (a form of digital asset such as bitcoin).

4.2 The ECCT Act inserts into the Proceeds of Crime Act 2002 (POCA) measures to allow law enforcement to freeze and seize cryptoassets which derive from, or are intended for use in, unlawful conduct. This is replicated in the Anti-Terrorism, Crime and Security Act 2001 (ATSCA) where cryptoassets are linked to terrorist financing. A magistrates' court can then order their forfeiture.

4.3 Certain orders made in the magistrates' court in relation to these powers can be appealed to the Crown Court in various circumstances. The Crown Court Rules that govern appeals must be updated to reflect the new provisions.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Part 5 of POCA and Schedule 1 to ATCSA make provision for the forfeiture of cryptoassets associated with criminal conduct or terrorist activity. These are new powers that can be appealed to the Crown Court. For instance, a person opposed to a forfeiture order can appeal to the Crown Court.

5.2 Amendments are required to the Crown Court Rules that establish the procedure for appeals, including making provision to notify other parties where an appeal has been made.

What was the previous policy, how is this different?

5.3 The Crown Court Rules 1982 did not deal with the new powers to forfeit criminal or terrorist cryptoassets introduced by the ECCT Act. The revision of these Rules is necessary to reflect the provisions inserted by that Act. In addition, the amendments provide for notice of appeal to be given generally by the appellant rather than by the court in cases under POCA and ATCSA.

6. Legislative and Legal Context

How has the law changed?

6.1 The evolution of digital technologies has required a bespoke regime to be developed for the forfeiture of cryptoassets. The new powers are modelled on the existing procedure for the forfeiture of cash, listed assets and funds in accounts but legislate for the unique technological qualities of cryptoassets.

6.2 The exercise of some of the new powers can be appealed to the Crown Court and these Rules make provision for appeals in cases concerning the use of asset recovery powers in POCA and ATCSA.

6.3 Section 303Z47 of POCA provides for an appeal to the Crown Court by any party to proceedings in which an order is made by a magistrates' court for the forfeiture of cryptoassets. Section 303Z61 allows parties aggrieved by an order for the forfeiture of cryptoassets under section 303Z60 the opportunity to appeal such a decision.

6.4 Paragraph 10Z7CG of Schedule 1 to ATCSA provides for an appeal to the Crown Court by any party to proceedings in which an order is made by a magistrates' court for the forfeiture of cryptoassets. Paragraph 10Z7DH allows parties aggrieved by an order for the forfeiture of converted cryptoassets under paragraph 10Z7DG the opportunity to appeal such a decision.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 These rules relate to powers in the Economic Crime and Corporate Transparency Act 2023 that was scrutinised by Parliament before receiving Royal Assent in October 2023. No public consultation was undertaken on the rules themselves but members of the Magistrates' Courts Rule Consultative Sub-Committee provided comments on a technical basis which were taken into account in the development of the rules.

8. Applicable Guidance

8.1 Enforcement agencies have codes of practice that guide officers in relation to the exercise of certain powers.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the Home Office have considered the overall impact of commencing the ECCT Act rather than preparing separate assessments for each statutory instrument in this package.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is that the rules are reviewed whenever issues arise as a matter of their operation in practice, but also where amendments are made to POCA or ATCSA which require an amendment or new rules to be produced.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").