EXPLANATORY MEMORANDUM TO

THE CROWN COURT (AMENDMENT) RULES 2017

2017 No. 1287 (L. 21)

1. Introduction

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

2. Purpose of the instrument

2.1 These Rules amend the Crown Court Rules 1982 (S.I. 1982/1109) ("CCR") which govern procedure for non-criminal business in the Crown Court in England and Wales. Part III of the CCR provides procedure relating to appeals to the Crown Court. The amendments made by these Rules make provision for appeals relating to forfeiture orders under new provisions inserted in The Proceeds of Crime Act 2002 (c. 29) ("POCA") and the Anti-terrorism, Crime and Security Act 2001 (c. 24) ("ATCSA"). In summary, the amendments make provision for notice of appeals under these new provisions to be given to certain individuals who have not been joined as a party to the relevant case.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 84 of the Senior Courts Act 1981 (c. 54) provides for rules regulating and prescribing the practice and procedure of the Crown Court, except in relation to any criminal cause or matter, to be made by the Lord Chief Justice and allowed by the Lord Chancellor. Since the new appeals with which these Rules are concerned are not criminal proceedings, these Rules are made under section 84.

4.2 Sections 15 and 16 of, and Schedules 3 and 4 to, the Criminal Finances Act 2017 (c. 22) insert new forfeiture powers into Part 5 of POCA and Schedule 1 to ATCSA (see below for a description of these powers). Hearings relating to forfeiture orders under these new powers are heard in the magistrates' court, and forfeiture orders are to be appealed to the Crown Court ("the new appeals").

4.3 These Rules amend the CCR to take account of some procedural aspects relating to giving notice of the new appeals. Specifically, they make amendments to rule 8 (entry of appeal and notice of hearing) and Part III of Schedule 3 (appeals in which the notice of appeal is to state the grounds of appeal).

4.4 Rule 8 of the CCR provides that the appropriate officer of the Crown Court shall enter the appeal and give notice of the time and place of the hearing to particular individuals for various types of hearing ("the relevant notice"). Rule 8(b) provides that any party to the appeal shall be given the relevant notice, but further provision is made in the specific context of certain types of appeals by the remaining provisions in Rule 8.

4.5 Rule 2 makes a minor amendment to Rule 8 of the CCR to insert "ATCSA" as a defined term in the CCR. Rule 3 of these Rules insert into Rule 8 of the CCR provisions relating to appeals against the forfeiture of listed terrorist assets (new Rule 8(ea)) and appeals against the forfeiture of terrorist funds in bank or building society accounts (new rule 8(eb)). These provisions require the appropriate officer of the court to enter the appeals and to give the relevant notice to the following persons (where they have not already been joined as a party to the appeal)-

- In the case of an appeal against the forfeiture of listed terrorist assets, any person who was given notice of an order for the further detention of terrorist property, and any person who has made an application under paragraph 10O of Schedule 1 to ATCSA (victims) for the release of the property;
- In the case of an appeal against the forfeiture of terrorist funds in a bank or building society account, any person to whom notice of an account freezing order was given, and any person who has made an application to discharge or vary an account freezing order under paragraph 10T(1)(b)of Schedule 1 to ATCSA.

4.6 Rules 4 and 5 make equivalent provision in respect of the new appeals under POCA.

4.7 Rule 6 amends Part III of Schedule 3 to the CCR. That Part sets out a list of appeals in which the Notice of Appeal is to state the grounds of appeal. Rule 6 amends this list to include the new appeals.

5. Extent and Territorial Application

5.1 The territorial extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is 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

What is being done and why

7.1 New forfeiture powers were created in the Criminal Finances Act 2017, based upon the existing cash seizure and forfeiture schedule in Chapter 3 of Part 5 of POCA and Schedule 1 to ATCSA, to enable the freezing and forfeiture of funds held in bank and building society accounts and make provision for the seizure and recovery of listed types of personal of moveable property ("listed assets") ("the new forfeiture powers").

Forfeiture of listed assets

7.2 "Listed assets" include precious metals, precious stones, watches, artistic works, face-value gift vouchers and postage stamps. Previously POCA and ATCSA only allowed

law enforcement to take forfeiture action in the magistrates' court in respect of seized cash. There is evidence that the types of property listed above are also being used by criminals to move illicit or terrorist wealth, both domestically and across international borders. The aim of these powers is to ensure that the such activity can be disrupted where it is a means of moving criminal assets or of storing illicit wealth, or terrorist property, and to create a procedure to allow the recovery of the assets via summary procedure in the magistrates' court. Accordingly, ATCSA and POCA have been amended to create new powers to search for, seize and forfeit listed assets. The powers in POCA do not apply where the value of the listed asset is below the minimum threshold of £1,000, but there is no minimum threshold in respect of terrorist funds in ATCSA. The relevant provisions can be found in sections 303B to 303Z of POCA, and paragraphs 10A to 10P of Schedule 1 of ATCSA.

7.3 Following seizure, a listed asset can be detained for an initial period of 48 hours. After that time, applications for an order for the further detention of the property can be made to the magistrates' court, to a maximum period of 2 years from the date of the first such order.

7.4 An application can be made to the magistrates' court for the forfeiture of the detained property. Under POCA, the court may order the forfeiture of the property if satisfied that it is a listed asset and that it derives from, or is intended for use in, unlawful conduct. Under ATCSA, forfeiture can be ordered if the property is intended for use in terrorism, consists of the resources of a proscribed organisation, or is "earmarked for terrorism" (see paragraphs 11 to 16 of Schedule 1 to ATCSA).

7.5 In cases where there is more than one owner of the property, provision is made for the severance of the asset. Where there is another owner in respect of whom the relevant suspicion under POCA or ATCSA does not arise, the law enforcement agency can come to an agreement with that person as to the division of the asset (see sections 303P and 303Q of POCA, and paragraphs 10H and 10I of Schedule 1 to ATCSA). Alternatively, where it is not possible to come to such an agreement, the court can make an order itself, or can transfer the case to the High Court for further consideration (see section 303R of POCA, and paragraph 10J of Schedule 1 to ATCSA).

7.6 Whilst the ATCSA provisions will come into force on 31st January 2018, the POCA provisions will not be commencing until 16th April 2018.

Forfeiture of funds in bank or building society accounts:

7.7 Sections 303Z1 to 303Z19 of POCA, and paragraphs 10Q to 10Z7 of Schedule 1 to ATCSA, introduce provisions allowing certain law enforcement officers to seek court orders in the magistrates' court to freeze the contents of accounts where there is a reasonable suspicion that the funds within them are criminal or terrorist funds. Specifically, the powers in POCA relate to funds which are reasonably suspected to derive from, or to be intended for use in unlawful conduct, and the powers in ATCSA relate to funds which are reasonably suspected to be intended for use in terrorism, to constitute the proceeds of a proscribed organisation, or to be "earmarked for terrorism" (see paragraphs 11 to 16 of Schedule 1 to ATCSA) ("criminal funds" and "terrorist funds" respectively). The powers in POCA do not apply where the funds are below the minimum threshold of £1,000, but there is no minimum threshold in respect of terrorist funds in ATCSA.

7.8 Prior to these amendments to POCA and ATCSA, the contents of bank or building society accounts could be recovered following a conviction, or where civil recovery powers can be used under POCA. This applies where the value is more than £10,000, and where the necessary test that the funds derived from, or were intended for use in, unlawful conduct could be met... Otherwise, there was no formal mechanism for seizing the funds. There are two major areas where this is a concern. Firstly, banks that identify accounts that they believe to contain illicit or terrorist funds can inform the National Crime Agency of this through a disclosure under the relevant money laundering provisions or terrorist financing provisions (see Part 7 of POCA and Part III of the Terrorism Act 2000 (c. 11) respectively). However, for many accounts, no action could be taken as there is no specific power for Law Enforcement Agencies to use to recover the funds. Secondly, law enforcement agencies may wish to take action on an account as part of their general operations, on the basis that the accounts contain funds which are suspected to be criminal property or terrorist funds, as described above.

7.9 As with the powers to forfeit listed items of property, these powers involve orders made by the magistrates' court, and are based on the existing procedures for cash forfeiture under POCA and ATCSA respectively. However, unlike cash forfeiture and the forfeiture of listed items, the funds in the accounts are not seized. Instead, law enforcement officers can apply to the court for an account freezing order under section 303Z1 of POCA or paragraph 10Q of ATCSA, which prevents each person by or for whom the account is operated from making withdrawals from the account.

7.10 An application for forfeiture by order of the magistrates' court can be made under section 303Z14 of POCA or paragraph 10S of Schedule 1 to ATCSA. The court will make such an order where it is satisfied that the funds are criminal property or terrorist funds, as described above.

Amendment of the CCR

7.11 To support the general operation of these provisions, magistrates' court rules will be introduced, again based on the existing cash forfeiture rules (The Magistrates' Court (Detention and Forfeiture of Cash) Rules 2002 (S.I. 2002/2998)). However, as with the cash forfeiture system, appeals under the new forfeiture powers will be heard in the Crown Court (see sections 303S(3) and 303Z16(1) of POCA, and paragraphs 10K and 10Z4 of Schedule 1 to ATCSA). The CCR provides the general procedure for all cases, including appeals, which are heard in the Crown Court, but the amendments in these Rules are needed to ensure that notice of appeals will be given to certain people who may not automatically be joined as parties to the cases. Equivalent provision is made in the CCR for appeals against the forfeiture of cash under section 299 of POCA or paragraph 7 of Schedule 1 to ATCSA.

7.12 The amendments will ensure that all parties with a potential interest in the property or funds will be given notice of the appeal. This includes those individuals who were given notice of previous orders for further detention of property, of previous account freezing orders and the varying of an account freezing order).

Consolidation

7.13 No consolidation of the rules is planned at present.

8. Consultation outcome

8.1 The Home Office consulted with relevant stakeholders on the provisions in the Criminal Finances Act 2017, inviting and reviewing suggestions and observations amongst the groups potentially affected by this legislative change. No consultation has been undertaken with regard to these rules specifically.

9. Guidance

9.1 The Home Office will issue a formal Circular to relevant stakeholders, offering policy guidance on the use of the new forfeiture powers described above. There is no guidance planned with regard to the use of these Rules specifically.

10. Impact

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

10.2 The impact on the public sector is minimal.

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

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Home Office will monitor the use of these powers. Any reports of the operation of these powers can be gathered by Her Majesty's Courts and Tribunal Service and reported to the Home Office. The National Crime Agency, which monitors the performance of financial investigators will also report issues to the Home Office.

13. Contact

13.1 Amrita Dhaliwal can answer any queries regarding this instrument (Telephone: 0203 334 6306 or email: amrita.dhaliwal@justice.gov.uk).