EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (CONVERSION OF CRYPTOASSETS) RULES 2024

2024 No. 1040 (L. 15)

1. Introduction

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

2. Declaration

2.1 Heidi Alexander MP, 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 & Law Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amrita Dhaliwal at the Ministry of Justice email: amrita.dhaliwal@justice.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 The purpose of this instrument is to introduce new magistrates' courts rules to support non-conviction-based proceedings for the conversion of cryptoassets into money and for the detention, freezing and forfeiture of converted cryptoassets in proceeds of crime cases.

Where does the legislation extend to, and apply?

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

4.3 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 Cryptoassets present a novel challenge to law enforcement in that they do not neatly operate like cash or property, largely due to their technological qualities. This has made cryptoassets cases particularly difficult to investigate and enforce using existing Proceeds of Crime Act 2002 (c.29) ("POCA 2002") powers.

5.2 The Economic Crime and Corporate Transparency Act 2023 (c.56) ("ECCT Act 2023") contains reforms to Part 5 of POCA 2002 to address this by providing additional powers for law enforcement to be able to quickly and easily seize and

recover cryptoassets which are the proceeds of crime or are associated with illicit activity such as money laundering, fraud, and ransomware attacks. The measures also provide for their conversion into fiat currency in certain circumstances. New magistrates' courts rules are needed to make clear the procedure for doing that.

What was the previous policy, how is this different?

5.3 These magistrates' courts rules are entirely new and are required to support the new non-conviction-based proceedings for the conversion of cryptoassets (such as Bitcoin), into money and for the detention, freezing and forfeiture of converted cryptoassets. Such cases will take place under powers in new Chapters 3F of Part 5 (civil recovery) of POCA 2002, which are being introduced by amendments set out in Schedule 9 to the ECCT Act 2023.

5.4 Prior to their conversion, these cryptoassets will have been detained or frozen on the basis that there are reasonable grounds to suspect that they are either property that can be recovered or intended for use in unlawful conduct.

6. Legislative and Legal Context

How has the law changed?

6.1 The new provisions in the ECCT Act 2023 build on existing powers in Chapters 3, 3A and 3B of POCA, to seize and recover cash, listed assets and funds in accounts that are the proceeds of unlawful conduct or intended for use in such conduct.

6.2 New Chapter 3F of Part 5 of POCA 2002 provides for the conversion of detained or frozen cryptoassets to cash before an application for forfeiture is heard by the court. This is novel and intended to mitigate concerns regarding peculiar volatility of detained or frozen cryptoassets. The conversion may be applied for by either the agency bringing the case or the cryptoasset holder.

6.3 The Rules also establish procedures for the giving of documents in proceeds of crime proceedings through various means.

6.4 Under the new Rules it is the applicant rather than the court who must provide for the notice and orders to other parties.

6.5 Under the new Rules it is the authorised officer/enforcement officer rather than the court who is largely responsible for providing notices and copies of orders to other parties.

6.6 These new Rules are required to support the implementation of these new powers.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 As the changes are essentially consequential and technical no public consultation was carried out.

8. Applicable Guidance

8.1 There is no guidance planned with regard to this instrument specifically.

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 we have considered the overall impact of commencing the 2023 Act during Bill passage rather than preparing separate assessments for each statutory instrument in this package. See the following link for the impact assessment: https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-impact-assessments.

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 this legislation is the Home Office together with the Ministry of Justice will monitor the implementation of these new Rules to ascertain whether they are operating effectively.

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 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").