EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (CONVERSION OF TERRORIST CRYPTOASSETS) RULES 2024

2024 No. 1041 (L. 16)

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 underpin the operation of Part 4BD of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 ("ATCSA") (c.24), which makes provision for the conversion and subsequent release or forfeiture of converted "terrorist cryptoassets" (see paragraph 10Z7A of Schedule 1 to ATCSA).

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 other tangible property, largely due to their technological qualities. This has made terrorist financing cases involving cryptoassets particularly difficult to investigate and enforce using existing ATCSA powers.

5.2 The Economic Crime and Corporate Transparency Act 2023 ("ECCTA") (c.56) contains reforms to Schedule 1 to ATCSA to address this by providing additional

powers for law enforcement to be able to quickly and easily seize and recover cryptoassets which are terrorist cryptoassets. The measures also provide for their conversion into conventional currency in certain circumstances. New magistrates' court rules are needed to make clear the procedure for doing that.

What was the previous policy, how is this different?

5.3 These are new magistrates' court rules, which aim 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 Part 4BD of Schedule 1 of ATCSA, which are being introduced by amendments set out in Schedule 10 to the ECCTA.

5.4 Prior to their conversion, the cryptoassets will have been detained or frozen on the basis that there are reasonable grounds to suspect that they are terrorist cryptoassets.

5.5 These Rules prescribe the procedure to be followed for applications to the magistrates' court:

- for the conversion of detained or frozen cryptoassets (rules 3 and 4),
- for the detention and further detention of the proceeds of the conversion of detained cryptoassets (rules 5 and 6),
- for the detention and further detention of frozen converted cryptoassets (rules 7 and 8),
- for the release of detained converted cryptoassets (rule 9),
- for the forfeiture of detained converted cryptoassets (rule 10), and
- for compensation if converted cryptoassets are detained but no order for forfeiture is ultimately made (rule 11).

6. Legislative and Legal Context

How has the law changed?

6.1 The new provisions in Schedule 10 to the ECCTA build on the existing powers in Parts 1 to 4B of Schedule 1 to ATCSA to seize or freeze and recover cash, listed assets and funds in accounts that are suspected of being terrorist property or intended for the purposes of terrorism.

6.2 New Part 4BD of Schedule 1 of ATCSA provides for the conversion of detained or frozen cryptoassets to money 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 law enforcement agency bringing the case or the cryptoasset holder.

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

Why was this approach taken to change the law?

6.4 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 Guidance exists in the form of a Code of Practice for Officers acting under Schedule 1 to ATCSA on the use of these provisions. There is no guidance planned with regard to these Rules 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. This is because we have considered the overall impact of commencing the ECCTA, during its passage through Parliament 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 for the Home Office together with the Ministry of Justice, to both monitor implementation of these new Rules and ensure their effective operation.

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").