EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (DETENTION AND FORFEITURE OF TERRORIST CASH) (AMENDMENT) RULES 2017

2017 No. 1295 (L. 25)

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 Her Majesty.

2. Purpose of the instrument

2.1 These Rules amend the Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001 ("the 2001 Rules") to underpin amendments to Parts 1-4 of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001 ("ATCSA") made by the Criminal Finances Act 2017 (c.22) ("CFA"). In addition, these Rules amend the 2001 Rules to include further provision as to how documents are to be given under the 2001 Rules, and make certain further technical amendments to the 2001 Rules, including provision for the transfer of proceedings to another magistrates' court, to align the 2001 Rules with Rules being made in relation to new powers under the CFA. A more detailed description of the legislation and the amendments is set out below.

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 144 of the Magistrates' Courts Act 1980 (c. 43) provides for rules regulating and prescribing the practice and procedure of magistrates' courts, except in relation to any criminal cause or matter, or family proceedings, to be made by the Lord Chief Justice with the concurrence of the Lord Chancellor. Since proceedings in relation to terrorist cash are neither criminal nor family proceedings, these Rules are made under section 144.

4.2 Under Parts 1-4 of Schedule 1 to ATCSA, authorised officers may seize, detain and forfeit cash where there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism; consists of resources of a proscribed organisation; or is earmarked as terrorist property (meaning that the cash was obtained through terrorism – see paragraphs 11 and 12 of Schedule 1 to ATCSA).

4.3 Cash may be seized for an initial period of 48 hours, after which the continued detention of such cash requires the approval of a magistrates' court under paragraph

3(2) of Schedule 1 to ATCSA. An application for the release of detained terrorist cash may be made to a magistrates' court under paragraph 5 of Schedule 1 to ATCSA.

4.4 Under Part 3 of Schedule 1 to ATCSA, the authority by whose officers the cash was seized may obtain an order from a magistrates' court for its forfeiture, if that authority can satisfy the court that the cash is terrorist cash (as described in paragraph 4.2 above).

4.5 The 2001 Rules prescribe the procedure to be followed for applications to a magistrates' court for the further detention, forfeiture or release of cash seized under Parts 1-4 of Schedule 1 to ATCSA.

4.6 Parts 1-4 of Schedule 1 to ATCSA were amended by the CFA, including some amendments which relate to matters covered by the 2001 Rules. These are set out in more detail below.

5. Extent and Territorial Application

5.1 The 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 The CFA made various amendments to Parts 1-4 which mean that it is necessary to update the 2001 Rules. Specifically, section 38(4) of the CFA inserted a new Part 2A into Schedule 1 of ATCSA, which allows for the forfeiture of terrorist cash without court order ("administrative forfeiture"). This procedure applies where cash has been seized on the grounds of suspicion set out in paragraph 4.2 above, and a senior officer gives a notice explaining that the cash will be forfeited unless an objection is made within a specified period. If an objection is made, the cash can then only be forfeited by court order under the existing procedure. Where cash is forfeited using the administrative forfeiture, an application can be made to the magistrates' court to set aside the forfeiture (see paragraph 5D of Schedule 1 to ATCSA).

7.2 The CFA also amended paragraph 3 of Schedule 1 to ATCSA to extend the length of time that the magistrates' court may authorise continued detention of cash following seizure from 3 months to 6 months (subject to an overall cap of 2 years). Paragraph 9 is amended to make provision for the court to order the release of detained cash to a person to whom the cash belongs but from whom it was not seized, providing certain conditions are met. Sections 39 and 40 of the CFA introduced new powers to seize, detain and forfeit listed items of property and to freeze and forfeit money in bank or building society accounts (see Schedules 3 and 4 of ATCSA) ("the new forfeiture powers"). These Rules make provision for a scenario where a cash forfeiture case is related to the grounds of suspicion in a preceding matter under the new forfeiture powers (see below).

7.3 Section 41 of the CFA created the new role of "counter-terrorism financial investigators" ("CTFI"). This means financial investigators who are specifically

trained in the operation of the Terrorism Act 2000 and ATCSA. These Rules make some amendments so that provisions in the 2001 Rules apply where a case is conducted by a CTFI.

7.4 New paragraph 10Z9 of Schedule 1 to ATCSA sets out the powers of prosecutors to appear in cash recovery proceedings, as inserted by paragraph 15 of Schedule 5 to the CFA.

7.5 In addition to the amendments resulting from the CFA provisions, these Rules make further amendments to the 2001 Rules to add detail to the provisions relating to how documents are to be given; to make provision for the transfer of cases to a different magistrates' court, and to make various minor and technical amendments to ensure the efficient operation of the 2001 Rules. Those further amendments mirror provision made in Rules relating to new powers under the CFA (for example, the Magistrates' Courts (Detention and Forfeiture of Terrorist Assets) Rules 2017, which are being laid at the same time as these Rules.

7.6 Specific changes made by these Rules to the 2001 Rules are as follows:

- Various minor and technical changes to reflect contemporary drafting practices, including removing references to "justices' clerk" and "designated officer" and replacing them with references to actions being taken by "the court", in order to provide a less prescriptive approach to court procedure.
- Rule 3 amends the interpretation provision in the 2001 Rules, to introduce new definitions required as a result of the amendments made by Rule 10 of these Rules (see below).
- Rules 4 and 7 of these Rules make amendments to the effect that applications for the further detention of cash or for cash forfeiture can be sent to the applicant's local court, or to a court which has made an order in relation to a matter under the new forfeiture powers involving the same grounds for suspicion as the cash forfeiture application.
- Cash that is subject to administrative forfeiture without a court hearing is detained under bespoke provisions (paragraphs 5B and 5C of Schedule 1 to ATCSA). Paragraph 5E provides that an application can be made to the magistrates' court to release cash detained under these provisions. These rules make a consequential amendment to the existing provisions in the 2001 Rules which provide for the release of detained cash (see Rule 6 of these Rules).
- Paragraph 5D of Schedule 1 to ATCSA relates to making an application to the magistrates' court to set aside administrative forfeiture of cash. Rule 8 of these Rules inserts a new rule 7A into the 2001 Rules to provide for this.
- In relation to the ability of prosecutors to appear in these civil proceedings, rule 8 of these Rules also inserts a new rule 7B to the 2001 Rules to provide that the court must be notified if a prosecutor is appearing in the proceedings. This ensures that various notices will be served on the relevant prosecutor.
- Provisions relating to the giving of notice were set out in rule 9 of the 2001 Rules. These are now considered not to be of sufficient detail, in particular when compared to the provisions in Part 6 of the Civil Procedure Rules.
- The amendments made by rule 10 in these Rules to the 2001 Rules therefore set out in detail the procedure for the giving of notice and documents. This

includes the giving of documents by post, by means of electronic communication, by an alternative method or at an alternative place, to a child or protected person and to a person outside the United Kingdom.

- Rule 11 of these Rules inserts new Rule 9F into the 2001 Rules, which makes provision for the transfer of proceedings to a different magistrates' court.
- Rule 12 omits the prescribed court forms A and F from the Schedule to the 2001 Rules. This reflects the current approach where court forms are not prescribed as part of the statutory instrument, in order to allow greater flexibility.

Consolidation

7.7 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 CFA, 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, although they have been reviewed by persons experienced in magistrates' courts procedure in non-criminal matters (some technical amendments being made in response to comments received as part of that process).

9. Guidance

9.1 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 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 These regulations will be reviewed whenever issues arise as a matter of their operation in practice, but also where amendments are made to the Act which require a revised set of regulations.

13. Contact

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