EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (DETENTION, FREEZING AND FORFEITURE OF CRYPTOASSETS, AND MISCELLANEOUS AMENDMENTS) RULES 2024

2024 No. 1043 (L. 18)

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 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 forfeiture of 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 ("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.

5.3 Prior to the ECCT Act 2023, no provisions were made in POCA 2002 that were specifically designed to detain, freeze and forfeit of cryptoassets. The ECCT Act 2023 amends Part 5 POCA 2002 to effectively bridge this gap by enabling law enforcement to apply POCA powers to cryptoassets cases.

What was the previous policy, how is this different?

5.4 These magistrates' courts rules are new and are required to support the new non-conviction-based proceedings for the forfeiture of cryptoassets (such as Bitcoin), in proceeds of crime cases. Such cases will take place under powers in new Chapters 3C to 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.

5.5 The Rules closely follow the procedures that already exist in connection with the established forfeiture Chapters in Part 5 of POCA including cash seized under Chapter 3, valuables called "listed assets" seized under Chapter 3A, and funds frozen in a bank or building society account under Chapter 3B. The new freezing and detention powers will (like the current powers) apply to property which is reasonably suspected to be "recoverable property" as defined in POCA 2002 or of being intended for use in unlawful conduct. Forfeiture can be ordered by a court where the enforcement authority can show that it is recoverable property or intended for use in unlawful conduct.

5.6 The Rules prescribe the procedure to be followed for applications to the magistrates' court:

- for property to be detained or further detained (rules 4 to 8)
- for a freezing order over a so-called "crypto wallet" (which is the equivalent of a bank account) or to vary/set aside such an order (rules 10 and 11),
- for the release of detained or frozen property (rules 9 and 12)
- for the forfeiture of cryptoassets (rule 13 and 14)
- for compensation in the event that cryptoassets are detained or frozen but no order for forfeiture is ultimately made (rule 15).

5.7 These Rules also make provision for related matters including the manner in which documents are to be given in proceedings under Chapters 3C, 3D and 3E of Part 5 of POCA, for the transfer of proceedings and for procedure at hearings.

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 2002, 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. The new legislative framework for the forfeiture of cryptoassets expands the existing scheme to cover cryptoassets as a newly emerging type of asset which do not already fall within the forfeiture regimes because (for example) they are not "tangible" as listed assets are. The measures are intended to cater for all of the circumstances in which illicit cryptoassets may be encountered, including where information needed to access them has to be obtained from physical articles described as "cryptoasset-related items". Given the number of new powers required, several new Chapters are

introduced to Part 5 of POCA 2002 to support the preservation and forfeiture of cryptoassets.

6.2 The new powers in Chapter 3C of POCA 2002 enable the seizure and detention of cryptoassets and cryptoasset-related items discovered when executing a search warrant. These powers will be used in circumstances where cryptoassets are "unhosted" and not in the custody of a third-party akin to a bank.

6.3 The new powers in Chapter 3D of POCA 2002 enable the freezing of cryptoassets held in crypto wallets, held by cryptoasset exchanges and custodian wallet providers.

6.4 Chapter 3E of POCA 2002 provides for the forfeiture of cryptoassets following seizure, and either their detention or the application of a freezing order.

6.5 The Rules establish procedures pertaining to applications for detained cryptoassets. This includes applying for applications for further detention and release.

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

6.7 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.

6.8 The new magistrates' courts rules are required to support the implementation of these new powers.

Why was this approach taken to change the law?

6.9 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 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 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: Economic Crime and Corporate Transparency Bill 2022: impact assessments - GOV.UK (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”).