EXPLANATORY MEMORANDUM TO

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

2024 No. 1042 (L. 17)

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 and support non-conviction-based proceedings for the detention, freezing and forfeiture of cryptoassets, in counter terrorism investigations. This instrument also provides for miscellaneous amendments to the existing Rules for terrorist cash, terrorist assets, and terrorist funds frozen in an account.

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 physical property, largely due to their technological qualities. This has made terrorist financing cases involving cryptoassets particularly difficult to investigate and enforce using existing Anti-terrorism, Crime and Security Act 2001 (c.24) ("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 "terrorist cryptoassets" (see paragraph 10Z7A of Schedule 1 to ATCSA).

5.3 Prior to the ECCTA, no provisions were made in ATCSA that were specifically designed to detain, freeze and forfeit cryptoassets. The ECCTA amends Schedule 1 to ATCSA, to effectively bridge this gap by enabling law enforcement to apply ATCSA powers to cryptoasset cases.

What was the previous policy, how is this different?

5.4 These new magistrates' court rules are required to support the new non-conviction-based proceedings for the detention, freezing and forfeiture of cryptoassets (such as Bitcoin) in counter-terrorism financing investigations. These will use the new powers provided for under new Parts 4BA to 4BD of Schedule 1 to ATCSA, introduced by amendments set out in Schedule 10 to the ECCTA.

5.5 These Rules closely follow the established rules already in operation under Parts 1 to 4B of Schedule 1 to the ATCSA, including cash seized under Part 2, listed assets (such as precious stones) seized under Part 4A, and funds frozen in a bank or building society account under Part 4B. The new freezing and detention powers will (like the current powers) apply to property which is reasonably suspected to be "terrorist property" as defined in Part 1 of ATCSA, or of being intended for the purposes of terrorism. Forfeiture can be ordered by a court where the enforcement authority can show that it is terrorist property or intended for the purposes of terrorism. As with the existing forfeiture powers in ATCSA, these powers do not specify a minimum amount below which the powers are unavailable.

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

- for property to be detained or further detained (rules 3 to 7)
- for a freezing order over a so-called 'crypto wallet' (which equivalent to a bank account) or to vary or set aside such an order (rules 9 and 10),
- for the release of detained or frozen property (rules 8 and 13),
- for the forfeiture of cryptoassets (rules 11 and 12),
- for compensation in the event that cryptoassets are detained, or a crypto wallet frozen, and no order for forfeiture is ultimately made (rule 14).

5.7 These Rules also make provision for related matters including the manner in which documents are to be given in proceedings under Parts 4BA, 4BB, and 4BC of ATCSA, for the transfer of proceedings and for the procedure at hearings.

5.8 These Rules also provide for miscellaneous amendments to the existing "Terrorist Cash Rules" (S.I. 2001/4013), the "Terrorist Assets Rules" (S.I. 2017/1296), and the "Terrorist Account Freezing Rules" (S.I. 2017/1290), to ensure that connected terrorist financing investigations involving detained or frozen cryptoassets, cash, assets or funds in accounts, can be sent to and determined by the same court.

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 and recover cash, listed assets and funds in accounts that are suspected of being terrorist property or intended for the purposes of terrorism. The new legislative framework for the forfeiture of cryptoassets is broader than the existing scheme to cover cryptoassets as a newly emerging type of asset and will cater for all of the circumstances in which terrorist 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 Parts (4BA to 4BD) are introduced to Schedule 1 to ATCSA to support the preservation and forfeiture of cryptoassets.

6.2 The new powers in Part 4BA of Schedule 1 to ATCSA 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 "un-hosted" and not in the custody of a third-party, akin to a bank.

6.3 The new powers in Part 4BB of that Schedule enable the freezing of cryptoassets held in a device called a "crypto wallet", similar to a bank account, administered by cryptoasset exchanges or custodian wallet providers.

6.4 Part 4BC of the Schedule provides for the forfeiture of cryptoassets following seizure or the application of a freezing order.

6.5 The new magistrates' court rules are required to support the implementation of these new powers.

Why was this approach taken to change the law?

6.6 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 monitor the implementation of these new Rules and to 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").