



Home Office

**CODE OF PRACTICE FOR
OFFICERS ACTING
UNDER SCHEDULE 1 TO
THE ANTI-TERRORISM,
CRIME AND SECURITY
ACT 2001**

2017

Code of Practice for officers acting under
Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001

Introduction

This Code of Practice is made pursuant to paragraph 6(1) of Schedule 14 to the Terrorism Act 2000 (TACT) which requires the Secretary of State to issue a Code of Practice in relation to the exercise of powers conferred on officers by the “terrorist property” provisions of Schedule 1 to Anti-Terrorism, Crime and Security Act 2001 (the Act). Under paragraph 6(4) of Schedule 14 to TACT the Secretary of State may revise the code and issue the revised code.

This code has been updated to reflect the amendments made to TACT and to Schedule 1 to the Act by Part 2 of the Criminal Finances Act 2017 (CFA), including the introduction in Schedule 1 to the Act of a new power to administratively forfeit “terrorist cash” in new Part 2A and new civil recovery powers in new Parts 4A and 4B to seize, detain and forfeit terrorist assets and terrorist money held in bank and building society accounts.

References to the Act or to TACT are references to those legislative acts as amended up to and including the CFA.

General

1. This code applies to the exercise by an officer of functions conferred by Schedule 1 to the Act.
2. “Officer” for the purpose of this code has the same meaning as in paragraph 1(a) of Schedule 14 to TACT. It therefore applies to an immigration officer and a customs officer when exercising functions under Schedule 1 to the Act, as well as to a constable, counter-terrorism financial investigator, an enforcement officer and a senior officer (the latter which may include an officer of Revenue and

Customs, or an immigration officer, of equivalent rank to at least a superintendent) exercising those powers.

3. The code must be followed by officers when exercising functions under Schedule 1 to the Act which includes powers relating to the seizure, detention and forfeiture of terrorist property. The code does not apply in other circumstances in which seizure, detention or forfeiture powers are exercised. Nor does it apply where a customs officer or constable exercises powers of seizure and detention of cash under Part 2 of the Drug Trafficking Act 1994.
4. This code should be made available for consultation by officers using these powers and by members of the public. It should also be made available at police premises and at ports where the powers are likely to be used.

Definitions

5. Schedule 1 to the Act, as amended by the CFA, now makes provision for the forfeiture of “terrorist property” which includes terrorist: cash, assets and money held in bank or building society accounts.
6. The new powers and categories of officer created by the CFA which are referred to in this code are defined below:

a) Officer:

“Officer” for the purpose of this code has the same meaning as in paragraph 1(a) of Schedule 14 to TACT and applies to the following roles:

- an authorised officer;
- an enforcement officer
- a senior officer

as those terms are defined in the Act.

b) Authorised officer:

Paragraph 19 of Schedule 1 defines an “authorised officer” as meaning:

- A constable;
- A counter terrorist financial investigator (CTFI);
- A customs officer; or
- An immigration officer

c) Enforcement officer:

An “enforcement officer” in Part 4B has the meaning given in paragraph 10Q(7) and applies to the following roles:

- A constable
- A counter terrorism financial investigator

d) Senior officer:

A “senior officer” for the purposes of:

(i) Part 2A is defined in paragraph 5A(10) as meaning:

- A senior police officer;
- An officer of Revenue and Customs of a rank equivalent to a senior police officer;
- An immigration officer of a rank equivalent to a senior police officer.

A “senior police officer” is defined as a police officer of at least the rank of superintendent.

(ii) Part 4A is defined in paragraph 10G(9) as meaning:

- In relation to a constable or CTFI, a senior police officer;
- In relation to an officer of Revenue & Customs, an officer designated by the Commissioners for HMRC with a rank equivalent to a senior police officer;
- In relation an immigration officer, an officer designated by the Secretary of State with a rank equivalent to senior police officer.

A “senior officer” is defined as a police officer of at least the rank of superintendent.

(iii) Part 4B is defined in paragraph 10G(9) as meaning a police officer of at least the rank of superintendent.

e) Terrorist Property:

Schedule 1 to the Act now makes provision for the forfeiture of “terrorist property”. This includes “terrorist cash”, “terrorist assets” and terrorism-related funds in bank or building society accounts – see below for the definition of these terms.

f) Terrorist Cash:

“Terrorist cash” is defined in paragraph 1(1) of Schedule 1 to the Act as cash which:

- is intended to be used for the purposes of terrorism;
- consists of resources of a proscribed organisation; or
- is earmarked as terrorist property.

“Cash” is defined in paragraph 1(2) as meaning:

- Coins and notes in any currency,
- Postal orders,
- Cheques of any kind, including travellers’ cheques,
- Bankers drafts,
- Bearer bonds and bearer shares,
- Gaming vouchers,
- Fixed-value casino tokens,
- Betting receipts

found at any place in the United Kingdom

A gaming voucher means a voucher in physical form issued by a gaming machine that represents a right to be paid the amount stated on it. A fixed-value casino token means a casino token that represents a right to be paid the amount stated on it. A betting receipt means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

g) Terrorist Assets:

Part 4A of Schedule 1 to the Act makes provision for the forfeiture of “terrorist assets” which are “listed assets” that:

- are intended to be used for the purposes of terrorism;
- consist of resources of a proscribed organisation; or
- are earmarked as terrorist property.

A “listed asset” is defined in paragraph 10A(1) of Schedule 1 to the Act as an item of property that falls within of the following descriptions:

- Precious metals;
- Precious stones;
- Watches;
- Artistic works;
- Face-value vouchers;
- Postage stamps

Precious metal means gold, silver, or platinum (whether in an unmanufactured or a manufactured state). Artistic work means a piece of work falling within section 4(1)(a) of the Copyright, Designs and Patents Act 1988. A face-value voucher means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on it.

h) Terrorism-related funds held in Bank or Building Society Accounts:

Part 4B of Schedule 1 makes provision for the forfeiture of money held in a bank or building society account which is money that:

- is intended to be used for the purposes of terrorism;
- consists of resources of a proscribed organisation; or
- is earmarked as terrorist property.

In this code money which comes within this definition is referred to as “terrorism-related funds”.

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Powers under Schedule 1 to the Act

7. The Code deals with:

- the powers available to officers to seize, detain or freeze terrorist property,
- the power to administratively forfeit terrorist property, and
- the power to apply to the court for forfeiture of terrorist property.

A. Powers to seize, detain or freeze terrorist property

Seizure and detention of terrorist cash and assets

Authorisation for Seizure and Detention of Terrorist Cash or Assets

8. Any decision by an authorised officer to seize or detain terrorist cash or assets under the Act must be authorised:

- where seizure is undertaken by a police constable, by a police officer of the rank of Inspector or above;
- where seizure is undertaken by a CTFI, by a police officer of the rank of Inspector or above;
- where seizure is undertaken by an immigration officer, by a Chief Immigration Officer;
- where seizure is undertaken by a customs officer, by a Customs Officer Pay Band 7 or above.

Authorisation to seize and detain terrorist cash or assets should be obtained prior to actual seizure of the asset itself. Verbal authorisation should be supported by written authorisation as soon as is reasonably practicable.

Use of the Powers by Immigration and Customs Officers

9. The powers to seize and detain terrorist cash or assets under the Act should only be exercised by an immigration officer or customs officer exceptionally. If such

an officer develops a suspicion in the course of exercising his/her powers under the Immigration Act 1971, the Customs and Excise Management Act 1979 or the Police and Criminal Evidence Act 1984 that terrorist cash or assets found are liable to be seized under the Act he/she should alert a police officer at the earliest opportunity in order to continue any investigation. The person or persons in possession of the cash or asset should be informed of the suspicion and of the action taken (or proposed) to inform the police.

Scope of power

10. There is no minimum or maximum limit on the amount of terrorist cash or the value of terrorist assets which may be seized and detained.
11. Under Schedule 1 to the Act an authorised officer may seize and detain cash or assets for an initial period of up to 48 hours where he/she has reasonable grounds for suspecting that the cash or asset:
 - (a) - is intended to be used for the purposes of terrorism;
- consists of resources of a proscribed organisation; and
- is earmarked as terrorist propertyand
 - (b) is found at any place in the United Kingdom.

Seizure and detention

12. "Reasonable grounds for suspecting" are likely to depend upon particular circumstances and the authorised officer should take into account such factors as how the cash or asset(s) was discovered, the amount or value involved, its origins, intended movement, destination, how the cash or asset(s) came into the person's possession, whether the courier(s) and/or the owners of the cash or asset(s) (if different) have any links with terrorists, terrorist groups or sympathisers, whether here or overseas. Where the authorised officer has suspicions about the cash or asset(s), he/she should give the person who has possession of it a reasonable opportunity to provide an explanation on the details

of its ownership, origins, purpose, destination and reasons for moving the amount or asset in this way and to provide the authorised officer with supporting documentation. The authorised officer should make clear to the person that anything said will be noted and used in the event that the cash or asset(s) is seized and an application made to the court for its detention or forfeiture.

13. If the authorised officer believes the person has committed an offence and/or is to be arrested, he or she should be cautioned and questioned in the normal way. A customs or immigration officer acting in the capacity of an authorised officer may wish or need to refer the matter to a police officer in such instances.
14. The terrorist cash or asset(s) should be counted or itemised in the presence of the person and another officer, and should not be taken out of sight of the person carrying them unless and until they are seized.
15. Where cash or asset(s) is seized, the authorised officer should inform the person in possession of them that he/she suspects that the cash is “terrorist cash” or asset(s) is a “terrorist asset” and the reasons for suspecting this.
16. The authorised officer should physically seize cash or asset(s) and give a written notification to the person from whom cash or asset(s) are seized. (This includes the sender and intended recipient of unattended parcels and other containers). This notification (see sample notification attached at Annex A) should explain that an application may be made for the extended detention of cash or asset(s) within 48 hours of seizure and provide details of the court to which the application will be made. It should also advise the person that he or she is entitled to appear at the court hearing either in person or represented by a solicitor, unless an *ex parte* application for detention is to be made. It should advise that the cash or asset(s) will be released no later than the end of the period of 48 hours from the time of seizure unless an order for its further detention is granted. (The first application to the court under paragraph 3(2) to detain cash or under paragraph 10D(4) to detain assets may be made by an authorised officer *ex parte* i.e. without giving notice of the application (see paragraphs 3(3A)(a) and 10D(4)(a)

of Schedule 1 to the Act). An authorised officer should be authorised by a police officer of the rank of a Superintendent before making an *ex parte* application.)

17. In the case of terrorist cash, where notes and coins are not in sterling, the figure should be entered in the relevant currency. The authorised officer should not attempt to convert the currency into sterling. Where different forms of cash or types of listed asset(s) are seized, a description and their value should be recorded on the written notification and receipt.
18. The authorised officer should explain the contents of the notification to the person from whom cash or asset(s) have been taken and what he or she has to do in order to try to get it back. The authorised officer should make every reasonable effort to ensure that the person concerned understands. The person should be asked to sign the statement in the written notification that the content of the notice has been read and understood and the authorised officer should give a copy of the notification to him. If the person refuses to sign the authorised officer should endorse the form "refused to sign" and initial the endorsement.
19. If the person does not appear to understand what is being said or the authorised officer has doubts as to the person's ability to speak English, the officer should make every reasonable effort to communicate so as to be satisfied that the person understands what is required of him or her, where necessary, using someone who can act as an interpreter.
20. The authorised officer should record in the written notification the time and date when the cash or asset(s) is first seized. He must release the cash or asset and return it to the person unless a court order is obtained no later than 48 hours after the cash or asset had been first seized.

Further Detention

21. Where further detention is justified, the authorised officer or the Commissioners for Customs and Excise should apply in writing without delay to the relevant court

for an order to detain cash under paragraph 3(2) or asset(s) under paragraph 10D of Schedule 1 to the Act (these should be separate orders). In Scotland, the authorised officer should report the matter without delay to the procurator fiscal who is responsible for making the application to the sheriff. A copy of the written application should be given to the person from whom the cash or asset(s) has been seized, wherever practicable at the time of the seizure in order to give him/her the maximum time in which to make an application to the court to contest seizure and secure the release of the cash or asset. If this is the first application to extend the detention period, the application may be made *ex parte* and the court may also hear and determine the application in private – see paragraphs 3(3A) and 10D(4) of Schedule 1 to the Act. An application for the detention of the cash or asset(s) should be authorised by a police officer of at least the rank of a Superintendent.

22. Where cash is detained under Schedule 1 to the Act for more than 48 hours and is deposited in an interest-bearing account in accordance with paragraph 4 of Schedule 1, the authorised officer should ensure a central record is kept of the details of the account and when the cash was deposited. To ensure interest accrued is accurately accounted, separate records for each cash seizure deposit should be kept.
23. When an order to detain cash or asset(s) has been granted the authorised officer should keep under review whether continued detention is justified. An application to extend the period of detention of cash or asset(s) beyond 6 months and up to the maximum limit of 2 years (beginning with the date when the first order was made) may only be made by a constable. An application made by an authorised officer should be authorised by a police officer of at least the rank of Superintendent or above. In Scotland, the application to extend detention may be made by a procurator fiscal.
24. Prior to an application for the further detention of cash or assets, the authorised officer should consider whether: further detention is justified; in the case of assets, the property is a listed asset; and one of the conditions set out under

either paragraphs 3(6) - (8) (for cash) or paragraphs 10D(7) - (9) (for assets) to Schedule 1 of the Act are met.

25. Any cash or asset(s) seized or received by an authorised officer under the Act should be handled in accordance with any standing instructions or orders in force. Without prejudice to any such instructions or orders, the authorised officer who seizes cash or asset(s) should ensure that it is held in a safe, secure place until it is released. In the case of cash, following an order for further detention under paragraph 3(2) of Schedule 1 to the Act, it should be lodged in an interest-bearing account (per paragraph 4 of Schedule 1 to the Act). On paying it into the account, the authorised officer must release so much of the cash held in the account as is not attributable to terrorist cash.
26. Cash or asset(s) seized by an immigration officer or a customs officer must be handed at the earliest opportunity to the police officer with responsibility for investigating whether an application for its continued detention is to be made. The amount of cash or value of the asset(s) delivered to the police officer should be agreed and a receipt given for it by the police officer receiving it.
27. An authorised officer may also carry out (or arrange for the carrying out of) tests on any item of property that comes within the definition of terrorist asset.

Release of detained cash or assets

28. Where detained cash or asset(s) is to be released, the authorised officer should inform the court without delay (in Scotland, the procurator fiscal is responsible for notifying the sheriff that detained cash is to be released).
29. If for any reason the authorised officer considers he/she is no longer justified in detaining either the cash or asset(s), he/she should release and return the cash or asset(s) to the person from whom it was seized. But this does not apply where: an application for the forfeiture of cash under paragraph 6 or for forfeiture of assets under paragraph 10G of Schedule 1 to the Act has been made and not

concluded (including any proceedings on appeal); an application has been made under paragraph 9 relating to cash or paragraph 10O relating to assets of Schedule 1 to the Act by a person who claims to be a victim and not concluded; or criminal proceedings have been commenced in connection with the cash or asset(s) and not concluded, whether in the United Kingdom or elsewhere. A decision to release the cash or asset(s) should be authorised by a police officer of at least the rank of Superintendent.

Freezing of money held in bank or building society accounts

Applying for an Account Freezing Order

30. As per paragraph 10Q(3)(b) of Schedule 1 to the Act, an enforcement officer who is a senior officer or authorised by a senior officer can make an application for an account freezing order. Prior to making this application, he / she must consult with the Treasury, unless in the circumstances it is not reasonably practicable to do so.
31. The senior officer should contact the Counter Terrorist Sanctions (CTS) team in the Treasury's Office of Financial Sanctions Implementation (OFSI). The CTS team can be contacted via the OFSI helpline or e-mail address (020 7270 5454 or OFSI@hmtreasury.gsi.gov.uk). This will assist the senior officer to consider whether an account freezing order is the most suitable order to pursue or whether another order (e.g. a designation order under the Terrorist Asset-Freezing etc. Act 2010) would be more appropriate. The senior officer will ensure that a record of this consultation is recorded.
32. Any application for an account freezing order made to a magistrate's court by an enforcement officer will be based on him / her having reasonable grounds for suspecting that money held in an account maintained with a bank or building society comprises terrorism-related funds.

Making of an Account Freezing Order

33. An application for an account freezing order may be made without notice by the enforcement officer, if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under Part 4B of Schedule 1 to the Act to forfeit terrorism-related funds.
34. When an order to freeze an account has been granted, the enforcement officer should keep under review whether a continuation of an account freezing order is justified. But this does not apply where an application has been made by a person who claims to be a victim or where criminal proceedings have been commenced in connection with the money and not concluded, whether in the United Kingdom or elsewhere.

Variation and setting aside of an Account Freezing Order

35. In cases where the authorised officer (or any person affected by the order) wishes to vary or set aside an order, he /she may apply to the relevant court under paragraph 10T of Schedule 1 to the Act. In Scotland, the references to setting aside an order are to be read as references to recalling the order instead.

B. Powers to administratively forfeit terrorist property

Administrative forfeiture of terrorist cash and bank or building society accounts

36. Administrative forfeiture is a process that permits law enforcement agencies to forfeit terrorist property by notifying affected persons of their intention to do so, and does not require an application to the court for a forfeiture order.
37. The administrative forfeiture regimes in Schedule 1 to the Act allow detained terrorist cash or frozen terrorism-related funds held in bank or building society accounts to instead be forfeited via a notice issued by a senior officer.

Issuing of Cash Forfeiture Notice (CFN) and Account Forfeiture Notices (AFN)

38. A CFN under paragraph 5A or an AFN under paragraph 10W of Schedule 1 to the Act may be given by a senior officer, if that senior officer is satisfied that either the cash (or any part of it) is terrorist cash or that the funds in the account (or any part of it) are terrorism-related funds.
39. A CFN must comply with the requirements of paragraph 5A(4) and should state *inter alia* the amount of cash in respect of which it has been given, where/when the cash was seized, confirm that the senior officer is satisfied the cash is terrorist cash, the period for objecting to the proposed forfeiture and that, unless an objection is received in time, the cash will be forfeited and the address to which any objections must be sent. The CFN should be given in accordance with regulations made by the Secretary of State under paragraph 5A(6) of Schedule 1 to the Act.
40. An AFN must comply with the requirements set out at paragraph 10W(4) and state the amount of money in the frozen account in respect to which it is given; confirm that the senior officer is satisfied the money represents terrorism-related funds; specify a period for objecting to the proposed forfeiture, the address to which any objections must be sent; and explain that unless an objection is received in time, the terrorism-related funds will be forfeited. An AFN should be given in accordance with regulations made by the Secretary of State under paragraph 10X(1) of Schedule 1 to the Act.
41. A CFN or AFN should, if possible, be given to every person to whom a notice under paragraph 3(2) of Schedule 1 to the Act or to whom notice of the account freezing order was given.
42. Where a CFN or AFN is given, the cash or terrorism-related funds in respect of which the notice has been given is to be detained or frozen until the cash or funds are forfeited under the notice, or the notice lapses, or the cash or funds are released.

43. The period for objecting must be at least 30 days, beginning from the date the notice is given. An objection may be made by anyone, in writing. If no objection is received, at the end of the period the cash or funds referred to in the notice will be forfeited.
44. An objection to an administrative forfeiture notice does not prevent court-ordered forfeiture and it is not necessary for an administrative forfeiture notice to be issued, if it is decided that an application for forfeiture should be made to the court.
45. If no objection is made within the period for objecting, and the CFN or AFN issued under paragraphs 5A or 10W respectively has not lapsed, the cash or money in respect of which the CFN or AFN has been issued is forfeited. In the case of an AFN, the enforcement officer must notify the bank or building society with which the frozen account is maintained of the court's decision.

Lapse of Cash Forfeiture and Account Forfeiture Notices

46. If an objection to the CFN or AFN is received, or if an application for forfeiture is made to the court, or if the cash or funds are released then the CFN or AFN will lapse.
47. If a CFN or AFN lapses because an objection has been made and the period of detention authorised by the court has expired, the cash or funds may be detained for a further period of up to 48 hours (calculated in accordance with paragraph 3(1A) or 10Y(9)) of Schedule 1 to the Act. If it is decided that neither an application for further detention under paragraphs 3(2) or 10T nor an application to the court for forfeiture under paragraphs 6 or 10Z(2) is going to be made, the authorised officer must notify the bank or building society as soon as possible and the cash or funds must be released.

Application to set aside forfeiture under a Cash Forfeiture Notice or an Account Forfeiture Notice

48. A person aggrieved by the forfeiture of cash via a CFN or by the forfeiture of money via an AFN may apply to the magistrates' court or (in Scotland) the sheriff for an order to set aside the forfeiture under paragraphs 5D(1) or 10Z(1) of Schedule 1 to the Act. The application to set aside must be made within 30 days of the end of the period for objecting to the forfeiture. The relevant court will consider whether the cash or funds to which the application relates could be forfeited by the court under the judicial forfeiture process (discussed below). If the court is satisfied that the cash or funds (or any part of it) could not be forfeited, then it must set aside the forfeiture notice.

Release of cash or money held in bank or building society accounts subject to Cash Forfeiture Notice or an Account Forfeiture Notice

49. Where the relevant court sets aside the administrative forfeiture of cash or money held in an account under paragraphs 5E or 10Z(6) of Schedule 1 to the Act, the appropriate authorised or enforcement officer may release the cash or money if satisfied that the detention is no longer justified.

50. Where administrative forfeiture is set aside then, per paragraph 5E, where detained cash has accrued interest whilst sitting in an interest-bearing account nominated by the law enforcement agency, that interest should be added to the money on its release. Per paragraph 10Z(7), where money held in an account has accrued interest whilst frozen, that interest should be added to the money on its release.

Application of cash forfeited under a Cash Forfeiture Notice or money forfeited under an Account Forfeiture Notice

51. Where any cash or money held in a bank or building account was first detained in pursuance of an order made by a magistrates' court and any accrued interest on it, is to be paid into the Consolidated Fund by the authorised officer. Cash or funds are paid into an interest bearing account controlled by each law enforcement agency and once forfeited a form is completed to transfer the funds and the

relevant interest to the centralised Consolidated Fund account but not before the end of the period within which an application to set aside the forfeiture can be made or, if such an application is made, until is determined. If forfeited in Scotland, it is to be paid into the Scottish Consolidated Fund.

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C. Powers to apply to the court for forfeiture of terrorist property

52. Where administrative forfeiture has either lapsed or is not applied for, an authorised officer and the Commissioners of Customs & Excise may apply to the magistrates' court for a forfeiture order in respect of terrorist cash and Commissioners for HMRC can apply in respect of assets. An enforcement officer may apply to the magistrates' court for a forfeiture order in respect of terrorism-related funds. In Scotland, applications for forfeiture of terrorist cash, assets or terrorism-related funds may be made by Scottish Ministers to the Sheriff.

Applying for forfeiture of terrorist cash

53. Whilst terrorist cash is detained under Schedule 1, any application under paragraph 6 by or on behalf of the authorised officer for the forfeiture of terrorist cash must be authorised by a police officer of the rank of Superintendent. Prior to any application being authorised, he/she should review the facts in order to be satisfied on the balance of probabilities that the cash is terrorist cash. In Scotland, applications for the forfeiture of terrorist cash are made to the sheriff by the Scottish Ministers.

54. An authorised officer should inform the person who is the owner of the cash or persons likely to be impacted by a cash forfeiture application and provide reasons for why he or she suspects that the cash should be forfeited under paragraph 6 of Schedule 1 to the Act.

Appeals

55. In cases where an application for a forfeiture order is refused, the authorised officer can appeal. He/she must make the application for appeal before the end of the period of 30 days starting with the day on which the court makes its decision.

56. Where an appeal against the making of an order for the forfeiture of cash is upheld by the Crown Court in England and Wales, the county court in Northern Ireland or, in the case of Scotland, the sheriff principal, and the court orders the release of (the whole or any part of) the cash, the authorised officer should make arrangements as soon as practicable to release the cash.

Application of forfeited cash

57. Where cash is forfeited by a magistrates' court under paragraph 6, the forfeited cash and any accrued interest should be paid into the Consolidated Fund by the authorised officer. If forfeited in Scotland, the cash should be paid into the Scottish Consolidated Fund. However, per paragraph 5(4) of Schedule 1, the cash should not be released until any other proceedings relating to the cash - such as an application for its release under paragraph 9 or proceedings for an offence with which the cash is connected - can be made or, if made, determined.

Applying for Forfeiture of Terrorist Assets

58. Where assets have been detained under Schedule 1 to the Act, the Commissioners for Her Majesty's Revenue and Customs or an authorised officer can make an application for a forfeiture order to the magistrate court, or (in Scotland) the sheriff by Scottish Ministers, for the forfeiture of (either the whole amount or any part of it) asset(s).

59. Where an application for the forfeiture of any property is made, the property is to be detained until the any proceedings linked to the application have concluded.

60. In the case of property earmarked as terrorist property, the application will state the owner, excepted joint owners to whom it belongs, the person(s) who holds the associated property or any other person who either has an interest in it or will be impacted by such an application.

Reasonable legal expenses

61. In approving the forfeiture order, a court may provide for the payment of reasonable legal expenses under paragraph 10G(3) or relevant items of expenditure under paragraph 10G(5)(a) that the persons may have occurred. Where this is the case the authorising officer should seek the authorisation from a “senior officer”. For the purposes of this section a “senior officer” means a police officer of at least the rank of superintendent.

Associated and Joint Ownership of terrorist assets

62. Associated and joint ownership mean property of the respondent that is either held jointly with other joint tenants or a recognised associated joint owner.

Agreements about Associated and Joint Ownership of terrorist assets

63. Under paragraph 10I, an authorised officer with permission from the senior officer can enter into an agreement with the excepted joint owner or the person who holds the associated property to make a payment to the person identified in the intended forfeiture order. An order to this effect will be made instead of a forfeiture order under paragraph 10G(2). The effect of this order, so far as required for giving effect to the agreement, may include provision for vesting, creating or extinguishing any interest in the property.

64. The authorised officer will need to make the magistrates’ court aware of this agreement during forfeiture proceedings so that the court can make an order for the excepted joint owner or the person who holds the associated property to make this payment. The authorised officer can also make a case to the court to reduce any payment to the person identified in the forfeiture order after establishing and agreeing with the other party that they have suffered a loss as a result of the seizure of the forfeitable property and any associated property.

65. In this agreement, the authorised officer can also make a case to reduce any payment to the person identified in the forfeiture order after agreeing with the

other party that they have suffered a loss as a result of the seizure of the forfeitable property and any associated property. Where there is more than one item of associated property or multiple excepted joint owners or persons holding associated property, the authorised officer needs to obtain an agreement with all of them to determine the total amount to be paid.

66. In cases where a forfeiture order is not granted or an order is granted to sever the excepted joint owner's interest (where no agreement was reached between the authorised officer and either the excepted joint owners or holders of associated property), the authorised officer can appeal. He / she must make the application for appeal before the end of the period of 30 days starting with the day on which the court makes its decision.

Appeals

67. Under paragraph 10K, any party, including the authorised officer, to the proceedings for a forfeiture order may appeal against:

- The making of forfeiture order under paragraphs 10G and 10J(7);
- A decision not to make an order under paragraphs 10G (unless the reason was to make an order under paragraph 10I) or 10J(7).

68. An appeal under this paragraph should be made to the Crown Court (England and Wales), Sheriff Appeal Court (Scotland) or county court (Northern Ireland). An appeal must be made within 30 days starting with the day on which the court makes the decision or order.

Realisation of Forfeited Assets

69. If property is forfeited by the court under paragraphs 10G or 10J of Schedule 1 to the Act, the authorised officer must realise the property or make arrangements for its realisation (e.g. sell or auction listed assets). The property should not be realised before the end of the period within which an appeal may be made or, if made, before the appeal is determined or otherwise disposed of.

70. The realisation of the property must as far practicable be carried out to ensure the maximum amount is obtained for the property.

Application of Forfeited Assets

71. Once the property has been realised, the authorised officer must ensure that the proceeds of realisation are applied in the following order:

- First, he / she must apply the proceeds to make any payment required under paragraph 10J(9) to the person who holds the associated property or who is an excepted joint owner;
- Second, he/she must ensure the payment of any legal expenses that are payable under paragraph 10G(3) or 10J(4);
- Third, he/she must arrange the payment or reimbursement of any reasonable costs incurred in storing or insuring the property whilst detained under Part 4A of Schedule 1 to the Act and in realising the property; and
- Fourth, the proceeds must be paid into the Consolidated Fund, if the property was forfeited by a magistrates' court or the High Court, or into the Scottish Consolidated Fund, if the property was forfeited by the sheriff or the Court of Session.

Victims

72. Under paragraph 10O, a person who claims that detained property belongs to him/her can apply to a magistrate's court, or in Scotland to the sheriff, for the property to be released. The court may order the release if it appears that (i) the applicant was deprived of the property by criminal conduct; (ii) prior to the deprivation the property was not obtained by, or for criminal conduct; and (iii) that the property belongs to the applicant. In addition to the above, the court may also order the release of funds if the conditions of paragraph 10O(6) are met. This has the same meaning as it does for paragraph 9 of Schedule 1 to the Act.

Compensation

73. Under paragraph 10P, if no forfeiture order is made in relation to detained property, the individual to whom the property belongs or from whom it was seized may make an application to a magistrate's court, or in Scotland to the sheriff, for compensation. This does not apply to orders under paragraph 10O.

74. If the court or sheriff orders compensation to be paid, it must be paid by the organisation which originally seized the property.

- If the property was seized by an officer of Revenue and Customs, the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs.
- If the property was seized by a constable;
 - In England and Wales it is to be paid out of the police fund from which the police force expenses are met;
 - In the case of the Police Service of Scotland it is to be paid by the Scottish Police Authority;
 - In the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out by the Chief Constable of the Police Service of Northern Ireland.
- If the property was seized by a counter-terrorism financial investigator who was a civilian member of the police force or a member of staff at the City of London police force, it should be paid out of the police fund from which the expenses of the force are met.
- If the property was seized by an immigration officer, the compensation is to be paid by the Secretary of State.

Applying for forfeiture of terrorism-related funds

75. While an Account Freezing Order has effect, the account to which the account freezing order applies is "the frozen account". A senior officer may make an application to a magistrate's court for the forfeiture of money held in the frozen account. In Scotland the Scottish Ministers may apply to the sheriff for forfeiture.

76. Prior to any application being made, he / she should review the facts in order to be satisfied on the balance of probabilities that the money held in a bank or building comprises terrorism-related funds.

77. An enforcement officer should inform any persons likely to be impacted by an application for forfeiture and provide reasons for why he or she suspects that the money held within this account should be forfeited.

78. Where forfeiture is ordered, the enforcement officer must notify the bank or building society with which the account is maintained as soon as is practicable of the court's decision and the requirement on the bank or building society to transfer the funds into an interest-bearing account nominated by the enforcement officer.

The enforcement officer should ensure a central record is kept of the details of the account and when the funds was deposited.

Applying for the continuation of an account freezing order pending an appeal

79. An enforcement officer may apply, without notice, to the court or sheriff, for the account freezing order to continue to have effect. The application must be authorised by a senior officer. Where an order is granted, it will continue to have effect until the end of the period of 48 hours starting with the making of the order or until any appeal that is brought within this time period is either determined or disposed of.

Appeals

80. Under paragraph 10Z4, any party to the proceedings for a forfeiture order, including the enforcement officer, may appeal against the decision to make or not to make an order under paragraph 10Z2.

81. An appeal under paragraph 10Z4 should be made to the Crown Court (England and Wales), Sheriff Appeal Court (Scotland) or county court (Northern Ireland). An appeal must be made within 30 days starting with the day on which the court makes the decision or order. If the court upholds the appeal against the forfeiture order, it may order the release of the whole or any part of the terrorism-related funds.

Application of forfeited money

82. Money forfeited by a forfeiture order and any interest accrued on it whilst in the frozen account which was forfeited by a magistrates' court, is to be paid into the Consolidated Fund by the Enforcement Officer. If forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund under paragraph 10Z6 of Schedule 1 to the Act, but not before the end of the period within which an application to set aside the forfeiture can be made or, if such an application is made, until is determined.

Compensation

83. Under paragraph 10Z7, if the account freezing order is made and none of the funds are forfeited, the person by or for whom the frozen account is operated may make an application for compensation. If the court or sheriff order compensation to be paid, it must be paid by the organisation which originally seized the property.

- If the account freezing order was applied for by a constable;
 - In England and Wales it is to be paid out of the police fund from which the police force expenses are met;
 - In the case of the Police Service of Scotland it is to be paid by the Scottish Police Authority;
 - In the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out by the Chief Constable of the Police Service of Northern Ireland.

- If the account freezing order was applied for by a counter-terrorism financial investigator who was a civilian member of the police force or a member of staff at the City of London police force, it should be paid out of the police fund from which the expenses of the force are met.

DRAFT

ANNEX A

NOTIFICATION OF CASH AND/OR ASSET SEIZURE AND DETENTION UNDER SCHEDULE 1 TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

Under Part 2 of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001, cash to the value of _____ in _____ (currency) /postal orders*/ cheques*/ travellers' cheques*/ bankers' drafts*/ bearer bonds*/ bearer shares*/ gaming vouchers*/ fixed-value casino tokens*/ betting receipts*/ was seized on _____ (date) at _____ (place).

or

Under Part 4B of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001 ("the Act"), asset(s) to the value of _____ (currency) / precious metals*/ precious stones*/ watches*/ artistic works*/ face-value token*/ postage stamps*/ was/were seized on _____ (date) at _____ (place).

Any application for continued detention of the cash under Part 2 or assets under Part 4A of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001 must be made not later than the period of 48 hours from the period beginning with the time when it was seized.

An application will be made by a constable*/ customs officer*/ immigration officer*/ the Commissioners for Customs and Excise* to the magistrates' court at _____ /*by the procurator fiscal to the sheriff's court at _____

You will receive a copy of the written application to the court with notification of the hearing unless it is made ex parte under Paragraphs 3(3A)(a) and 10D(4)(a) of Schedule 1 to the Act . You are entitled to appear in court at the hearing, either in person or represented by a solicitor. In the case of an ex parte application you will be notified of the outcome, of the application. If no application for continued detention of

the cash or asset(s) is made within the period of 48 hours mentioned above, the cash or asset(s) seized must be released.

Signed

Time

Date

I acknowledge that cash to the value of _____
in _____ (currency) / postal orders*/ cheques*/ travellers' cheques* /bankers' drafts */ bearer bonds*/ bearer shares*/ gaming vouchers*/ fixed-value casino tokens*/ betting receipts*/ has been seized from me and that I have read and understood this notification.

Signed

Time

Date

◆Delete as necessary.

Or

I acknowledge that asset(s) to the value of _____
in _____ (currency) / precious metals*/ precious stones*/ watches*/ artistic works*/ face-value token*/ postage stamps*/ has been seized from me and that I have read and understood this notification.

Signed

Time

Date.....

◆Delete as necessary.