

Home Office Circular: Criminal Finances Act 2017

FORFEITURE OF MONEY HELD IN BANK AND BUILDING SOCIETY ACCOUNTS SECTIONS 303Z1-303Z19

Introduction

1. This circular is issued to ensure consistency in practice by law enforcement agencies (LEAs) in the operation of provisions with regard to forfeiture of money held in bank and building society accounts. This circular does not constitute legal advice. It is not a statement of law and is not intended to provide a comprehensive description or interpretation of the power.

Summary

2. Amendments in Part 5 of the Proceeds of Crime Act 2002 (POCA) through the Criminal Finances Act 2017 will allow authorised law enforcement agencies to seek the freezing, and subsequent forfeiture, of monies or funds held in bank and building society accounts that is recoverable property or is intended by any person for use in unlawful conduct (as defined in section 241 of POCA, with further details in sections 304-310). The provision provides that the powers can be exercised by constables, HMRC officers, SFO officers or an accredited financial investigator (AFI) who have been authorised to do so by a senior officer. SFO officers and AFIs cannot use these provisions in relation to an account maintained in Scotland. Prosecutors (except in Scotland) may appear in proceedings on behalf of a constable or an AFI, if asked to and they consider it appropriate.
3. The building society accounts where such action can be taken are those held by those building societies defined in the Building Societies Act 1986. Banks accounts are those held by authorised deposit takers as defined in the Financial Services and Markets Act 2000, which must also have a head office or branch in the UK. Action can be taken against an account where the funds or money in that account is not less than the minimum amount. That amount is currently set at £1000.
4. It should be noted that the provisions do not permit aggregation of accounts for the purposes for meeting the minimum amount; any sub-accounts subject to these provisions must also contain not less than the minimum amount.
5. The provisions allow authorised law enforcement agencies to seek all or part of the funds held in an account.

Freezing of an account

6. A senior officer (as defined in 303Z2(4)), or an officer who is authorised by a senior officer, may apply for an account freezing order (AFO) in respect of a bank or building society account, where they are satisfied that there are reasonable grounds to suspect that the money in it is recoverable property (as

defined in sections 304-310 of POCA) or is intended by any person for use in unlawful conduct. Each account should be subject to its own freezing order.

7. The AFO must be applied for at a magistrates' court in England, Wales and Northern Ireland, or to the sheriff in Scotland. The application can be made by a senior officer, or by a person authorised by a senior officer. The AFO can be made without notice, if notice of application would prejudice the taking of any steps to later forfeit monies under section 303Z1(4). The monies within the account remain with the bank or building society, until the forfeiture process is concluded.
8. The court may make the order, if there are reasonable grounds for suspecting that the funds or monies in the account (whether all or in part), are either recoverable property, or are intended for use in unlawful conduct. The court sets the timeframe for the freezing order which must be no more than two years. The court may vary or set aside an account freezing order at any time, and can do so upon application by an enforcement officer or any person affected by such an order.
9. The AFO prohibits each person by or for whom the account is operated from making withdrawals or payments from the account, unless authorised under the exclusions authorised by the court. The AFO does not prevent monies from being paid into the account.
10. The court may make exclusions from the prohibition on making withdrawals or payments from the account for the purpose of meeting living expenses or to allow a person to carry on a trade, business, profession or occupation. For example, this would allow a court to permit the freezing of a business account where only part of the money in that account is regarded as recoverable property, while allowing the business to continue to use the remainder of the funds. The application would permit the use of the money or funds within it, apart from that part considered to be recoverable property and used in unlawful conduct, specified in the AFO. It also permits exclusions for legal expenses (except in Scotland, as detailed in section 303Z5(7)). As discussed above, the AFO does not prevent money from being paid into the account to which the order applies; however, should the LEA believe that monies or funds coming into a partially frozen account are recoverable or intended for use in unlawful conduct, the LEA can seek a variation of the AFO to account for this. Please note that the Court has a general power to make exclusions, and this is not an exhaustive list of the exclusions that can be made.
11. A court in which proceedings relating to an account that is subject to an application for an AFO are pending can stay (or, in Scotland, sist) those proceedings in accordance with its discretion. That court may also order that the proceedings can continue on any terms it thinks are appropriate.

Administrative account forfeiture

12. Except in Scotland, a senior officer may issue an "account forfeiture notice" (AFN), which is a notice for the purposes of forfeiting the funds or monies in all

or part the credit balance of a “frozen account” (as detailed in 303Z9(1)). The senior officer must be satisfied that the monies or funds are either recoverable property, or are intended to be used in unlawful conduct. The monies or funds must be subject to an account freezing order for an account forfeiture notice to be served. It should be noted that administrative account forfeiture only applies in England, Wales and Northern Ireland, but not Scotland.

13. The account forfeiture notice must set out the amount to be forfeited, the period for objecting to the forfeiture, and specify the address to which any objections must be sent. The notice must confirm that the senior officer is satisfied that the threshold has been met as specified in 303Z9(2). It must also explain that the money will be forfeited unless an objection is received at the address and within the period for objecting specified within the notice. The period for objecting must be at least 30 days starting with the day after the notice is given. An objection may be made by anyone, in writing. The Secretary of State will make regulations regarding how an account forfeiture notice is to be given to the interested parties. Those parties will include the account holder, the bank or building society, and any other person or organisation with an interest in the account.
14. If no objection is received, at the end of the period the amount of money stated in the account forfeiture notice will be forfeited, and the bank or building society must transfer that money into the interest bearing account nominated by the enforcement officer. An objection does not prevent forfeiture of the money or funds by court order. It is not necessary for an account forfeiture notice to be sought if the senior officer wishes to seek forfeiture of the money by order of a court.
15. The account forfeiture notice lapses if
 - a. an objection is received;
 - b. an application for forfeiture is made; or
 - c. if the AFO is set aside
16. A person may apply for an administrative forfeiture to be set aside. The application must be made before the end of the objection period, although it can be made after a longer period if the court is satisfied there are exceptional circumstances.
17. The court must consider whether the money could be forfeited under a forfeiture by court order. If it is satisfied that the funds could not be forfeited, it must order the release of that money.
18. If no objection is made within the period for objecting and the notice has not lapsed under section 303Z11, the bank or building society with which the frozen account is maintained must transfer that amount of money into an interest bearing account nominated by an enforcement officer.

Forfeiture via a court (Account Forfeiture Order or AFO)

19. An application may be made to the relevant court for the forfeiture of the money in an account that is the subject of an account freezing order.
20. The relevant court may order the forfeiture of the money in an account if the court is satisfied that the money is recoverable property, or it is intended for use in unlawful conduct. If the court is satisfied that the criteria are met, the bank or building society must transfer the funds to an interest bearing account nominated by the enforcement officer. The enforcement officer must notify the decision, and the details of the account to which the funds must be transferred. Monies or funds forfeited by a magistrates' court under a forfeiture order (as well as any interest accrued on it whilst in the "frozen account") should be paid into the Consolidated Fund, or in the case of funds forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.
21. Where a court declines to order the forfeiture of a monies or funds, and the authorised law enforcement agency appeals, the agency may also apply for an extension of the account freezing order pending the appeal.
22. In the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, any resulting forfeiture order from a magistrates' court cannot apply to the recoverable property that the court believes is attributable to the excepted joint owner's share.
23. A person may appeal against the forfeiture order. The time period for the lodging of an appeal is 30 days from the day that the court makes the order. If the appeal is upheld, it may order the release of the whole or part of the funds. If a forfeiture order is upheld by the court, it may order the release of the whole or any part of the money, with any interest accrued on it whilst in the "frozen account". No action can be taken to close the account whilst proceedings are ongoing.
24. If an AFO is made and none of that money is later forfeited, the person by or for whom the account is operated may make an application to court for compensation. The court must be satisfied that the individual suffered loss as a result of the AFO being made, and that the circumstances are exceptional. The amount of compensation will be the amount the relevant court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.