

Account Forfeiture Order Notices – the administrative method.

Introduction

1. The idea behind notices is that it makes it easier for law enforcement to forfeit recoverable property, or property that is to be used in unlawful conduct, without going to court. The powers should only be used where there is no likelihood that the forfeiture will be objected to.
2. Though these seem simple provisions there are a lot of possible issues, such as the length of notice, who and how it is served, if it is reasonable to serve one in the first place, and if forfeiture occurs, if it can be set aside by an aggrieved party at a later date.

Background

3. Since June 2015, Cash seized by police using their seizure powers under the Proceeds of Crime Act 2002 ('POCA'), has been able to be forfeited under an administrative mechanism, known as a Forfeiture notice. This power was introduced in the Policing and Crime Act 2009, though it took 6 years to be put into force. With Account Forfeiture Orders ("AFO's") the power to issue an administrative forfeiture notice was brought in with the original act.

Overview

4. An Account Forfeiture Notice is made under section 303Z9 of POCA. It must be made when the account has been frozen. A senior officer, as set out in s.303Z2 (4), has to give notice that the money is recoverable property or is intended for use in unlawful conduct. The notice, in accordance with section 202Z9 (4); must state the amount of money held in the account which is to be forfeited; confirm the grounds; specify how much time there is to object and where objections should be sent; and explain that the money will be forfeited if there is no objection.
5. The period of objection must be at least 30 days though it can be longer. An objection can be made by anyone, it does not need to be the person who received the notice. An objection means in writing, an objection is made when it is received at the specified address. If there is no objection to the notice, and the order does not lapse, the money will be transferred to a nominated account and then the freezing order ceases to have effect.
6. The giving of the notice is governed by the Administrative Forfeiture of Terrorist Cash and Terrorist Money Held in Building Society Accounts (Cash and Account Forfeiture Notices) Regulations 2017. These came into force at the same time as AFO's. Rules 4 to 7 set out the relevant service provisions. If these are not followed the notice will not be valid. The rules set out provisions for standard service, service when the address is unknown, service by electronic means, service on children and vulnerable people, among other categories.
7. If an objection is made, by any party within the period specified in the notice. The objection must be received by the address within the period. Though the period of

time must be reasonable. A written objection, does not have to contain any details, it will simply result in the notice lapsing. The result of it will be that the application will be contested, and then formal directions will be set by the court.

8. The notice will also lapse if an application is made to forfeit the money under section 303Z14 or if there is an order made setting aside the freezing order. The latter is unlikely, while the former should happen if there is likely to be an objection to the order, or the applicant is informed of an objection by another means.
9. If a forfeiture order is made under this provision the order can be set aside, if the provisions under section 303Z12 are met. These state that the court must apply a two-stage test. First if there were exceptional circumstances for the failure to object and the failure to make a set aside application 30 days after the objecting period. When considering this application, the court need to consider if the money could be forfeited under section 303Z14.

Key Points

10. The key points to consider when looking at notice is a) was it correctly made b) was it correctly served c) are their grounds to set aside the order. Notices should not be used if objections are to be made. A similar principle has been set out in cash seizures where there is a history of objections, a forfeiture should be not made if the respondent fails to appear. All of the above areas should be checked if a notice is received, though in those circumstances the key point will be to file an objection, so that a forfeiture does not take place. The objection can be very perfunctory.
11. The points become of key consideration if a forfeiture has been made and the original respondent or an interested party wants to consider set aside the order. At that point time will be of the essence and I would recommend swift advice on the merits of an application.

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