



How to challenge and respond to an HMRC account freezing order/ account forfeiture notice

June 2025

Guidance note

Introduction

1. Account Freezing Orders (AFOs) and Account Forfeiture Orders (FOs) were introduced into Part 3B, Proceeds of Crime Act 2002 (POCA) in January 2018, as part of the wide-ranging powers provided to law enforcement agencies in the Criminal Finances Act 2017.
2. Since their introduction, AFOs and FOs have been adopted by all eligible investigators, including HMRC officers.
3. AFOs are granted by a Magistrates' Court on application of an officer and freeze the monies in a bank or building society account to enable a full investigation to be conducted as to whether the monies in that account are the proceeds of crime. FOs and Account Forfeiture Notices (AFNs) are the two procedures by which monies already frozen may be forfeit as being the proceeds of crime.
4. As AFOs and FOs are granted by a Magistrates' Court and require modest evidential hurdles to be overcome, they are considered by investigators to be quicker and easier to obtain than a freezing order from the High Court, where the level of scrutiny is likely to be greater.

Procedure

5. AFOs and FOs are orders made by a Magistrates' Court under which funds in a bank or building society, electronic money institution, or payment institution (which shall be referred to collectively in this guidance note as "bank account") are frozen or forfeited.

AFOs

6. Under section 303Z1, POCA, an officer can apply to a Magistrates' Court for monies in a bank account to be frozen for the purpose of allowing investigation into the origin of the monies to be undertaken, if there are reasonable grounds for suspecting that the money held in the bank account is recoverable property, or intended by any person for use in unlawful conduct¹.

¹ Including money laundering under section 327-329, POCA.

7. Recoverable property is property obtained through unlawful conduct and is traceable to any converted, mixed or new property², whether in the hands of the original party or not³, unless the new party obtained the property in good faith, for value and without notice that it was recoverable property⁴. As per *World Uyghur Congress, R (on the application of) v National Crime Agency* [2024] EWCA Civ 715, though, the provision of adequate consideration anywhere in the chain of possession does not prevent any such property being identified as criminal property in the hands of another individual with the requisite knowledge or suspicion.
8. The application must be made in writing to the Magistrates' Court setting out the basis for the application and the evidence relied upon⁵ and a copy of the written application and notification of the hearing of the application must be given by the applicant to any person by or for whom the account which is the subject of the application is operated⁶, unless that person cannot be identified⁷.
9. The written evidence supporting the application (by way of witness statement) will usually be confirmed by oral witness evidence which may expand on the contents of the witness statement.
10. If the court is satisfied that the grounds for making an AFO have been met, it can order monies in the bank account to be frozen for a period of up to two years. Because the purpose of an AFO is to enable an investigation to be conducted, it is likely to be granted by the court.
11. Once granted, either party can apply for a variation of an AFO, including for reasonable living expenses, to carry on business, or to pay legal expenses in relation to an AFO, AFN or FO⁸. Such variation applications require evidence to support the variation. Any variation ordered will usually be limited in both scope and amount.

AFNs

12. Once an AFO has been granted, a senior enforcement officer may give an AFN confirming that they are forfeiting the monies in the frozen account, if they are satisfied that the monies are recoverable property or intended by any person for use in unlawful conduct.
13. The AFN must state:
 - the amount of money held in the frozen account which it is proposed be forfeited
 - that the senior officer is satisfied the conditions for forfeiture have been met
 - a period for objecting to the proposed forfeiture (not less than 30 days from the day after the notice is given) and an address to which any objections must be sent
 - that the money will be forfeited unless an objection is received at that address within the period for objecting.
14. If no objection to the AFN is received within the stated period, the senior enforcement officer can apply to the court for the funds to be forfeited. There will be no court hearing and objections will not be invited.
15. If an objection is received to the AFN, the enforcement officer must make an application to a Magistrates' Court for an FO.

FOs

16. Like an AFN, an application for an FO must be made while an AFO is in place.

² Sections 304-306, POCA.

³ Section 305, POCA.

⁴ Section 308(1), POCA.

⁵ Rule 3(1) of The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

⁶ Rule 3(3) of The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

⁷ Rule 3(4) of The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

⁸ Section 303Z5, POCA.

17. An enforcement officer commences an FO application by filing a written application with the same Magistrates' Court which granted the FO⁹. A copy of the application, and evidence in support of the application, must be served on every person who was served with a notice of freezing order and any other person identified by the court¹⁰.
18. The court must schedule a date for a directions hearing not earlier than seven days after the date of the application¹¹. If no objections are received to the application, the court can order the FO at the directions hearing. If any objections are received, the court will fix a date for the FO application to be heard and may give directions in relation to the management of the proceedings, which will usually include directions for when each party must file and serve any evidence that it intends to rely on during the hearing, together with a timetable for when each witness will be called and how long they will take giving their evidence¹².
19. At the hearing, witnesses will be called to give evidence on oath and may be cross-examined. It is not uncommon for expert witness evidence to be called.
20. Following the hearing, the court may issue a decision straight away, or schedule a time to issue its decision.
21. If the court decides to grant an FO, any aggrieved party (ie anyone negatively affected by the decision) can appeal the decision to the Crown Court within 30 days of the court making the FO.

General points to note

- Recoverable property can be traced into the hands of a new owner/account holder unless that new owner obtained the property in good faith, for value and without notice that it was recoverable property.
- Where recoverable property is jointly owned by an owner that acquired it in good faith, for value and without notice, that share of the property should not be forfeited.
- Recoverable monies in a 'clean' account are recoverable in proportion to the portion of the mixed property which is attributable to the recoverable property.
- However, paying market value (adequate consideration) for criminal property does not cleanse the property and prevent it being criminal property anywhere in the supply chain following a recent Court of Appeal case¹³.
- Any evidence provided by an account holder, interested party, or third party in AFO or FO proceedings, may be used in any subsequent criminal investigation or prosecution. It is essential that before providing any evidence or comment, expert legal advice is sought.
- The requirement for notice of an AFO hearing is discharged by giving notice. That notice does not have to have been received, nor received in a timely manner and it is not uncommon for notice to be given on the day of the hearing.
- Hearings and decisions in a Magistrates' Court are not routinely recorded (and in some courts are not recorded at all). If you require a record of the hearing or of the decision, you will need to either arrange to take your own note of the hearing/decision or request the permission of the court for a private transcriber to attend court.

Top tips

- Time is of the essence. If you want to register an objection to an AFO, AFN or FO, there are narrow time frames in which this can be done.
- It is essential that the grounds for an AFO, AFN or FO application are carefully reviewed, particularly as there is often a very short timeframe in which to obtain evidence to support any objection.
- There is no protection for information provided at any stage of the process and what is said in objecting to an AFO, AFN or FO, may be used in a criminal prosecution against the person, a joint owner of the property, or third party. It is essential therefore that expert legal advice is taken at the outset.

⁹ Rule 5(1) of The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

¹⁰ Rule 5(3) of The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

¹¹ Rule 5(4) of The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

¹² Rule 5(5) of The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.

¹³ *World Uyghur Congress, R (on the application of) v National Crime Agency* [2024] EWCA Civ 715.

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