



House of Lords
House of Commons

Joint Committee on Statutory Instruments

Eighth Report of Session 2024–25

291-viii / HL Paper 53

Drawing special attention to:

*The Magistrates' Courts (Conversion of Cryptoassets)
Rules 2024*

*The Magistrates' Courts (Conversion of Terrorist Cryptoassets)
Rules 2024*

*The Magistrates' Courts (Detention, Freezing and Forfeiture of
Terrorist Cryptoassets, and Miscellaneous Amendments) Rules
2024*

*The Magistrates' Courts (Detention, Freezing and Forfeiture of
Cryptoassets, and Miscellaneous Amendments) Rules 2024*

Joint Committee on Statutory Instruments

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i.** that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii.** that its parent legislation says that it cannot be challenged in the courts;
- iii.** that it appears to have retrospective effect without the express authority of the parent legislation;
- iv.** that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
- v.** that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi.** that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii.** that its form or meaning needs to be explained;
- viii.** that its drafting appears to be defective;
- ix.** any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Current membership

House of Lords

[Lord Beith](#) (Liberal Democrat)

[Lord Chartres](#) (Crossbench)

[Lord Haselhurst](#) (Conservative)

[Lord Meston](#) (Crossbench)

[Lord Sahota](#) (Labour)

[Baroness Sater](#) (Conservative)

[Lord Watson of Wyre Forest](#) (Labour)

House of Commons

[Sir Bernard Jenkin](#) (Conservative, Harwich and North Essex) (Chair)

[Lewis Atkinson](#) (Labour, Sunderland Central)

[Mark Ferguson](#) (Labour, Gateshead Central and Whickham)

[Claire Hughes](#) (Labour, Bangor Aberconwy)

[Charlie Maynard](#) (Liberal Democrat, Witney)

[Gordon McKee](#) (Labour, Glasgow South)

[Ms Julie Minns](#) (Labour, Carlisle)

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No.73, relating to Public Business.

Publication

This Report, together with formal minutes relating to the report, was Ordered by the House of Commons and by the House of Lords, on 4 December 2024, to be printed.

It was published on 6 December 2024. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee reports are published on the Committee's website at www.parliament.uk/copyright and in print by Order of the House.

Contacts

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Contents

Instruments reported	1
1 S.I. 2024/1040: Reported for defective drafting and failure to comply with proper legislative practice	1
<i>The Magistrates' Courts (Conversion of Cryptoassets) Rules 2024</i>	
2 S.I. 2024/1041: Reported for defective drafting	3
<i>The Magistrates' Courts (Conversion of Terrorist Cryptoassets) Rules 2024</i>	
3 S.I. 2024/1042: Reported for defective drafting	4
<i>The Magistrates' Courts (Detention, Freezing and Forfeiture of Terrorist Cryptoassets, and Miscellaneous Amendments) Rules 2024</i>	
4 S.I. 2024/1043: Reported for defective drafting	4
<i>The Magistrates' Courts (Detention, Freezing and Forfeiture of Cryptoassets, and Miscellaneous Amendments) Rules 2024</i>	
Instruments not reported	6
Annex	6
Appendix 1: Memorandum from the Ministry of Justice	8
S.I. 2024/1040	8
<i>The Magistrates' Courts (Conversion of Cryptoassets) Rules 2024</i>	
Appendix 2: Memorandum from the Ministry of Justice	10
S.I. 2024/1041	10
<i>The Magistrates' Courts (Conversion of Terrorist Cryptoassets) Rules 2024</i>	

Appendix 3: Memorandum from the Ministry of Justice **11**

S.I. 2024/1042 11

The Magistrates' Courts (Detention, Freezing and Forfeiture of Terrorist Cryptoassets, and Miscellaneous Amendments) Rules 2024

Appendix 4: Memorandum from the Ministry of Justice **12**

S.I. 2024/1043 12

The Magistrates' Courts (Detention, Freezing and Forfeiture of Cryptoassets, and Miscellaneous Amendments) Rules 2024

Formal Minutes **14**

Instruments reported

At its meeting on 4 December 2024 the Committee scrutinised a number of instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to four of those considered. The instruments and the grounds for reporting are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2024/1040: Reported for defective drafting and failure to comply with proper legislative practice

The Magistrates' Courts (Conversion of Cryptoassets) Rules 2024

Procedure: Made negative

- 1.1 The Committee draws the special attention of both Houses to these Rules on the grounds that they are defectively drafted in one respect, and fail to comply with proper legislative practice in another respect.**
- 1.2** These Rules prescribe the procedures to be followed for applications to a magistrates' court under Chapter 3F of Part 5 of the Proceeds of Crime Act 2002 ("POCA"). That Chapter, which was inserted into POCA by the Economic Crime and Corporate Transparency Act 2023, makes new provision for the treatment of cryptoassets, in particular their conversion into money, in the context of investigation and enforcement in cases under powers in POCA. Rules 9(3) and 11(3) list the persons to whom copies of certain court applications must be sent, depending on which of those persons made relevant earlier applications. It appeared to the Committee that this list of persons includes persons who could never have made such earlier relevant applications, because the relevant definitions within POCA do not encompass persons designated as "accredited financial investigators" for the purposes of Chapter 3F. The Committee asked the Ministry of Justice to explain.

- 1.3** In a memorandum printed at Appendix 1, the Department asserts that, under provisions in POCA, the relevant earlier applications can be made by an “accredited financial investigator” (“AFI”). The Department suggests that the lists of persons set out in rules 9(3) and 11(3) specify the persons to whom applications should be sent where it was an AFI who made that earlier application, as well as other persons to whom applications should be sent where the earlier application was made by another party who may do so under POCA. However, the Committee notes that the definition of “accredited financial investigator” in POCA that is referenced by the Department is qualified by the requirement that such a person “falls within a description specified in an order made for the purposes of this Chapter”. Whilst there is an order that specifies AFIs for other Chapters within POCA – S.I. 2021/640 — that order does not appear to deal with references to AFIs within Chapter 3F. As a result, the definition to which the Department refers does not encompass all those persons listed in rules 9(3) and 11(3) and their inclusion in these provisions is misleading for readers of the instrument. **The Committee accordingly reports rules 9(3) and 11(3) for defective drafting.**
- 1.4** The Rules are made under powers in the Magistrates’ Courts Act 1980. Under that Act, the Rules are to be made by the Lord Chief Justice, with the concurrence of the Lord Chancellor. The Committee noted that the signature block indicates that concurrence was given by Heidi Alexander in her capacity as a Minister of State within the Ministry of Justice, rather than as delegate for the Lord Chancellor. The Committee therefore asked the Ministry of Justice to explain the basis on which the Lord Chancellor had concurred with the making of these Rules.
- 1.5** In its memorandum, the Department explains that the Minister who signed the instrument did so acting in support of the Lord Chancellor, stating that the Ministry of Justice supports both the Secretary of State for Justice and the Lord Chancellor. The Committee notes the Department’s explanation but does not agree with the implicit suggestion that officials and junior Ministers in the Ministry of Justice can be deployed informally as delegates of the Lord Chancellor on an ad hoc basis. Despite the original intention of reforms instituted by the Constitutional Reform Act 2005, the position of Lord Chancellor has been retained as an active office by the Government, distinct from the Secretary of State for Justice (albeit that the offices have been occupied by the same individual since the inception of the Ministry of Justice in 2007). The Committee’s view, therefore, is that, in the cases where a Minister is signing or concurring to a statutory instrument on behalf of the Lord Chancellor, that Minister’s relationship to the Lord Chancellor should be made clear on the face of the instrument in the signature block,

as is often done in other instruments (see, for instance, S.I. 2024/1131). **The Committee accordingly reports this instrument for failure to comply with proper legislative practice.**

2 S.I. 2024/1041: Reported for defective drafting

The Magistrates' Courts (Conversion of Terrorist Cryptoassets) Rules 2024

Procedure: Made negative

- 2.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in one respect.**
- 2.2 These Rules prescribe the procedures to be followed for applications to a magistrates' court under Part 4BD of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 ("ATCSA"). That Part, which was inserted into ATCSA by the Economic Crime and Corporate Transparency Act 2023, makes new provision for the treatment of cryptoassets, in particular their conversion into money, where such assets have been seized on the grounds that it is suspected they are intended to be used for the purposes of terrorism. Rule 4(7) and (11) uses the term "maintained" in respect of the administration of crypto wallets, whereas rule 4(4) uses the term "administered" in what is apparently the same context (and the use of the term "administered" is provided for in ATCSA). The Committee asked the Ministry of Justice to explain.
- 2.3 In a memorandum printed at Appendix 2, the Department explains that, while it would have been more consistent with the terms of the primary legislation and rule 4(4) to use the term "administered" throughout rule 4, the term "maintained" has the same effect and it should be reasonably clear that the persons referenced in rule 4(4) and rule 4(7) are the same. The Committee does not share this view. It is a general presumption of statutory interpretation that where different words are used in legislation they have different meanings (see Bennion at 21.3). In the Committee's view, that presumption applies with particular force in the context of this instrument for three reasons. First, these Rules deal with technical financial instruments where precision in terminology is particularly important. Second, one of the terms in question is used in the related Act in a specific manner. Third, the inconsistency arises within a single provision which is a further indication that the terms should bear different meanings. **The Committee accordingly reports rule 4(7) and (11) for defective drafting.**

3 S.I. 2024/1042: Reported for defective drafting

The Magistrates' Courts (Detention, Freezing and Forfeiture of Terrorist Cryptoassets, and Miscellaneous Amendments) Rules 2024

Procedure: Made negative

- 3.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in one respect.**
- 3.2 These Rules prescribe the procedures to be followed for applications to a magistrates' court under Parts 4BA, 4BB and 4BD of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 ("ATCSA"). Those Parts, which were inserted into ATCSA by the Economic Crime and Corporate Transparency Act 2023, make new provision for the seizure and detention of cryptoassets that are suspected of being terrorist property or intended for terrorist purposes. The Committee noted that rule 8(7) – (9), and rule 11(6) – (7), appear to be drafted in such a way that it is unclear for which types of court applications they are intended to make provision, as applications under different ATCSA provisions are referenced in different parts of each rule. The Committee asked the Ministry of Justice to explain.
- 3.3 In a memorandum printed at Appendix 3, the Department acknowledges that these provisions contain drafting errors, and undertakes to correct these by way of an amending instrument at the next available opportunity. **The Committee accordingly reports rule 8(7) to (9) and rule 11(6) to (7) for defective drafting, acknowledged by the Department.**

4 S.I. 2024/1043: Reported for defective drafting

The Magistrates' Courts (Detention, Freezing and Forfeiture of Cryptoassets, and Miscellaneous Amendments) Rules 2024

Procedure: Made negative

- 4.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in one respect.**

- 4.2** These Rules prescribe the procedures to be followed for applications to a magistrates' court under Chapters 3C, 3D and 3E of Part 5 of the Proceeds of Crime Act 2002 ("POCA"). Those Chapters, which were inserted into POCA by the Economic Crime and Corporate Transparency Act 2023, make new provision for the seizure and detention of cryptoassets that are recoverable or intended for use in unlawful conduct. Rules 4(2), 5(1), 7(2), 8(1), 10(2) and 13(4)(b) are drafted to permit an applicant to send an application to the court that made a previous relevant order or to which a previous application had been sent. However, the Committee noticed that these rules appear to overlap with other rules that also allow an applicant to make such a choice. The Committee asked the Ministry of Justice to explain.
- 4.3** In a memorandum printed at Appendix 4, the Department explains that the intention of these provisions is that where a court has made previous orders or received previous applications in relation to a case, subsequent applications in the matter may only be sent to that court. The Department acknowledges that it may have been clearer in these provisions to have stated that applications "may only be sent" to the relevant court, rather than "may be sent", but asserts that use of the latter language was preferred for reasons of consistency with other similar magistrates' courts Rules, and that the use of such language has not caused confusion in practice. In the Committee's view, the issue here is more than one of clarity. If the intention is to impose a requirement that subsequent applications may only be sent to a specific court, the Rules should not be drafted to provide a choice. Relying on a drafting precedent that does not achieve the policy intention but which apparently works in practice does not excuse this: two legislative wrongs do not make a right. **The Committee accordingly reports rules 4(2), 5(1), 7(2), 8(1), 10(2) and 13(4)(b) for defective drafting, acknowledged in part by the Department.**

Instruments not reported

At its meeting on 4 December 2024 the Committee considered the instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Draft instruments requiring affirmative approval

S.I. Number	S.I. Title
Draft	Combined Authorities (Borrowing) and East Midlands Combined County Authority (Borrowing and Functions) (Amendment) Regulations 2025
Draft	Official Controls (Amendment) Regulations 2024
Draft	Clean Heat Market Mechanism Regulations 2024
Draft	Free-Range Egg Marketing Standards (Amendment) (England) Regulations 2024
Draft	Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2024/1073	The Housing (Right to Buy) (Limits on Discount) (England) Order 2024
S.I. 2024/1074	The Civil and Criminal Legal Aid (Financial Resources and Contribution Orders) (Amendment) Regulations 2024

S.I. Number	S.I. Title
S.I. 2024/1075	The Supplementary Protection Certificates (Amendments Relating to the Windsor Framework) Regulations 2024
S.I. 2024/1077	The Trade Marks (International Registration) (Amendment) Order 2024
S.I. 2024/1078	The Limited Liability Partnerships (Application of Company Law) (No. 2) Regulations 2024
S.I. 2024/1084	The Road Vehicles (Construction and Use) (Amendment) Regulations 2024
S.I. 2024/1086	The National Health Service (Charges for Drugs and Appliances) (Amendment) (No. 2) Regulations 2024
S.I. 2024/1090	The Insolvency Practitioners (Amendment and Transitional Provisions) Regulations 2024
S.I. 2024/1092	The Income-related Benefits (Subsidy to Authorities) Amendment Order 2024
S.I. 2024/1116	The Insurance and Reinsurance Undertakings (Overseas Insurance Regime, Transitional Provisions, etc.) Regulations 2024

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2024/979	The Power to Award Degrees etc. (The Northern School of Art) Order 2024
S.I. 2024/980	The Dudley Integrated Health and Care National Health Service Trust (Dissolution) Order 2024
S.I. 2024/1132	The Finance Act 2021 (Schedule 26 Second Penalty Assessments) (Appointed Day: Regulation Making Power) Regulations 2024
S.I. 2024/1138	The Levelling-up and Regeneration Act 2023 (Commencement No. 6) Regulations 2024
S.I. 2024/1143	The Pensions Act 2004 (Code of Practice) (Defined Benefit Funding) Appointed Day Order 2024

Appendix 1: Memorandum from the Ministry of Justice

S.I. 2024/1040

The Magistrates' Courts (Conversion of Cryptoassets) Rules 2024

1. The Committee has asked the Ministry of Justice for a memorandum on the following points:
 1. *In relation to rule 9(3) and rule 11(3) explain why these list people who do not appear to be accredited financial investigators for the purposes of Chapter 3F of the Proceeds of Crime Act 2002.*
 2. *Noting that the signature block provides that Heidi Alexander concurred with the making of these Rules in her capacity as a Minister of State within the Ministry of Justice, explain the basis on which the Lord Chancellor concurred with the making of this instrument (noting further the Committee's Forty-Sixth Report of Session 2019-21 in relation to S.R. 2021/16, and by analogy to the Committee's Thirty-Seventh Report of Session 2022-23 in relation to S.I. 2023/366).*
2. On the first question, rule 9(3) requires the court to send copies of an application for the release of detained converted cryptoassets to one or more of the persons listed in that paragraph, depending on who applied for the order for further detention. Similar provision is made by rule 11(3) in relation to applications for compensation.
3. Orders for further detention can, according to section 303Z57(7)(a)(iv) of the Proceeds of Crime Act 2002 ("POCA"), be applied for by accredited financial investigators ("AFIs"). Accordingly, sub-paragraphs (e) and (g) of rule 9(3), and rule 11(3)(f), specify the persons to whom the application is to be sent where an AFI applied for the order for further detention.
4. However, according to section 303Z57(7) of POCA, there are a number of other persons who may apply for such orders. These other persons are listed in rules 9(3) and 11(3) of this instrument along with AFIs.

5. On the second question, the Minister of State is, in signing a statutory instrument to signify the Lord Chancellor's approval, acting in support of the Lord Chancellor, rather than the Secretary of State for Justice; for the Ministry of Justice supports both the Secretary of State for Justice and the Lord Chancellor. Accordingly, Heidi Alexander's signature is an appropriate basis on which to say that the Lord Chancellor concurred with the making of this instrument.

Ministry of Justice

26th November 2024

Appendix 2: Memorandum from the Ministry of Justice

S.I. 2024/1041

The Magistrates' Courts (Conversion of Terrorist Cryptoassets) Rules 2024

1. The Committee has asked the Ministry of Justice for a memorandum on the following points:

Explain whether the use of the term “maintained” in rule 4(7) and (11) is correct, given that rule 4(4) uses the term “administered” (the use of which is provided for in paragraph 10Z7B(6)(b) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001).
2. The department’s position is that, though it would have been more consistent with the terms of the primary legislation, and rule 4(4), to use the term “administered”, the language of “maintained” has the same effect.
3. Rule 4(7) makes provision about service of the application for conversion, and for service of the order, where “the applicant is the person by or for whom the crypto wallet which is the subject of the application is maintained.” It should be reasonably clear that the person by or for whom the wallet is maintained is the same person by or for whom it is administered, as per rule 4(4).

Ministry of Justice

26 November 2024

Appendix 3: Memorandum from the Ministry of Justice

S.I. 2024/1042

The Magistrates' Courts (Detention, Freezing and Forfeiture of Terrorist Cryptoassets, and Miscellaneous Amendments) Rules 2024

1. The Committee has asked the Ministry of Justice for a memorandum on the following points:

Explain:

1. *why rule 8(7) - (9) relates only to applications under paragraph 10Z7AI(3), given that rule 8 also deals with applications under paragraph 10Z7CK(1); and*
 2. *explain why rule 11(6) and (7) refers only to applications under paragraph 10Z7CK(1) and orders under 10Z7CK(4) and (5), given that rule 11 deals with applications under paragraph 10Z7CL(1).*
2. In relation to both questions, the department's response is that these are errors. The department apologises and intends to rectify these errors by way of an amending SI at the next available opportunity.

Ministry of Justice

26th November 2024

Appendix 4: Memorandum from the Ministry of Justice

S.I. 2024/1043

The Magistrates' Courts (Detention, Freezing and Forfeiture of Cryptoassets, and Miscellaneous Amendments) Rules 2024

1. The Committee has asked the Ministry of Justice for a memorandum on the following points:
 1. *why rules 4(2), 7(2), 10(2) and 13(4)(b) allow an applicant to send an application to the court that made a previous order when those rules already allow applications to be sent to any court;*
 2. *why rules 5(1) and 8(1) provide that further applications “may” be sent to the court to which the first application was sent; and in both cases, explain whether the intention is that applicants should send such applications to the courts specified.*
2. On the first question, rules 4(1), 7(1), 10(1) and 13(1) all allow and indeed require applications to be sent to the court before which the applicant wishes to make the application.
3. Rules 4(2), 7(2), 10(2) and 13(4)(b) qualify this provision in cases where there is a connection between, on the one hand, the reasonable grounds for suspicion which led to the relevant application, and on the other hand the reasonable grounds for suspicion which led to the seizure of cash or other property to which a previous order for further detention relates, or the reasonable grounds for suspicion which led to the making of a previous freezing order. “Freezing order” and “order for further detention” are defined by rule 2.
4. In these cases, the application must specify the connection to the relevant previous order, and the intention is that the applicant may only send the application to a court which made the previous order. Such a court may, of course, be different to the court before which the applicant would

wish to make his application. The provision is necessary so that the court dealing with the application is the one with the greatest knowledge of the background of the case.

5. We do accept that the language of “may only be sent” rather than just “may be sent” in the rules the committee has inquired about might have been clearer. However, we were following the precedent set by various Magistrates’ Courts relating to other types of property, including most recently the Magistrates’ Courts (Detention and Forfeiture of Listed Assets) Rules 2017 (S.I. 2017/1293 (“the Listed Assets Rules”) – see, for example, rule 4(2) of those Rules.
6. We wanted to be as consistent as possible with these rules in order to avoid any misapprehension that the rules for cryptoassets were significantly different to those for other property. The wording of “may be sent” does not appear to have caused any confusion in practice, and has been use in rules of this kind since the Magistrates’ Courts (Detention and Forfeiture of Cash) Rules (S.I. 2002/2998).
7. On the second question, the use of the word “may” in rules 5(1) and 8(1) was again an attempt to be consistent with, for example, rule 5(1) of the Listed Assets Rules, for the same reasons as outlined above. The intention is indeed that further applications may only be sent to the court to which the first application under the relevant section of the Proceeds of Crime Act 2002 was sent.

Ministry of Justice

26 November 2024

Formal Minutes

Wednesday 4 December 2024

Members present

Sir Bernard Jenkin, in the Chair

Lewis Atkinson

Lord Chartres

Mark Ferguson

Claire Hughes

Gordon McKee

Lord Meston

Ms Julie Minns

Lord Sahota

Baroness Sater

Lord Watson of Wyre Forest

Report consideration

Draft Report (Eighth Report), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 4.3 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 4.

Resolved, That the Report be the Eighth Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Adjournment

Adjourned till Wednesday 11 December at 3.40 p.m.