
STATUTORY INSTRUMENTS

1991 No. 1923 (L.30)

MAGISTRATES' COURTS

PROCEDURE

**The Magistrates' Courts (Detention and
Forfeiture of Drug Trafficking Cash) Rules 1991**

<i>Made</i>	- - - -	<i>21st August 1991</i>
<i>Laid before Parliament</i>		<i>2nd September 1991</i>
		<i>23rd September</i>
<i>Coming into force</i>	- -	<i>1991</i>

The Lord Chancellor, in exercise of the power conferred on him by section 144 of the Magistrates' Courts Act 1980(1), after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

Citation, Commencement and Interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Detention and Forfeiture of Drug Trafficking Cash) Rules 1991, and shall come into force on 23rd September 1991.

(2) In these Rules—

- (a) “the Act” means the Criminal Justice (International Co-operation) Act 1990(2); and
- (b) any reference to a form is a reference to a form set out in the Schedule to these Rules or a form to the like effect.

Application for continued detention of seized cash

2.—(1) An application for an order under section 25(2) of the Act for continued detention of cash seized under section 25(1) thereof shall be made in writing in Form A to a justice of the peace who ordinarily acts for the petty sessions area in which the cash was seized.

(2) A copy of the written application under paragraph (1) above shall be given by the applicant to the person from whom the cash was seized.

(1) 1980 c. 43; section 144 was extended by section 145 of that Act, and by section 28(2) of the Criminal Justice (International Co-operation) Act 1990 (c. 5).

(2) 1990 c. 5.

Hearing of application for continued detention of seized cash

3.—(1) A justice of the peace considering an application under section 25(2) of the Act shall require the matters contained in it to be sworn by the applicant under oath, may require the applicant to answer any questions under oath, and may require any statement in response by the person from whom the cash was seized to be made under oath.

(2) The justice shall record or cause to be recorded in writing the substance of any statements made under oath which are not already recorded in the written application.

Unattended parcels etc.

4. In rules 2, 3 and 8 of these Rules, references to the person from whom the cash was seized include references to the sender and the intended recipient, where known, of a letter, parcel, container or other means of unattended dispatch, but a justice of the peace shall not decline to hear an application in such a case solely on the ground that it has not been proved that the sender or intended recipient has received a copy of the written application under rule 2(2) of these Rules.

Order for continued detention of seized cash

5.—(1) An order made by a justice of the peace under section 25(2) of the Act shall be in Form B.

(2) Notice of any order mentioned in paragraph (1) above shall be given forthwith by the applicant to any person appearing to him to be affected by it and such notice shall be in the form set out in Form B and shall be accompanied by a copy of the said order.

Notice of order for continued detention of seized cash

6. Where, in accordance with an order made under section 25(2) of the Act, the applicant gives notice to any person affected by the order, the applicant shall notify the clerk of the magistrates' court to which any application under section 25(3) or (5) would, in accordance with rule 7(1) and (2) of these Rules, be made of the names and addresses of the persons so notified.

Subsequent applications

7.—(1) An application under section 25(3) of the Act for further detention of cash shall be in Form C and shall be sent to the clerk to the justices for the petty sessions area in which the seizure was made.

(2) An application under section 25(5) of the Act for the release of detained cash shall be made in writing to the clerk of the said magistrates' court, and shall specify the grounds on which it is made.

(3) The clerk of the magistrates' court who receives an application in accordance with paragraph (1) or (2) above shall fix a date for the hearing of the application, shall notify the applicant thereof and shall notify any persons to whom notice of the order for continued detention has been given of the application and of the date fixed for the hearing.

(4) If the court is satisfied that an order for further detention of cash should be made under section 25(3) of the Act, it shall endorse the order for continued detention accordingly, and a copy of the order so endorsed shall be given by the clerk of the court to any persons to whom notice of the order for continued detention has been given.

Direction for release of cash

8. A direction under section 25(5)(a) of the Act for the release of detained cash shall be in Form D, and shall provide for the release of the cash within 7 days of the date of the making of the direction

or such longer period as with the agreement of the person from whom the cash was seized may be specified in the notice.

Forfeiture

9.—(1) An application for forfeiture of cash under section 26 of the Act shall be in Form E and shall be addressed to the clerk of the magistrates' court referred to in rule 7(1) of these Rules.

(2) The clerk of the magistrates' court who receives such an application shall fix a date for the hearing, shall notify the applicant thereof, and shall notify any persons to whom notice of an order for continued detention has been given of the application and of the date fixed for the hearing.

Joinder

10. At any hearing under section 25(3) or (5) of the Act, or under section 26 thereof, or on the application of any person affected by an order for continued or further detention, the court may, if it thinks fit, order that such person be joined as a party to the proceedings and, if the court so orders, otherwise than at such a hearing, the clerk of the magistrates' court shall give notice to the other parties.

Notice

11. Any notice or copy of any order required to be given to any person under the foregoing provisions of these Rules may be given by post to his last known address.

Procedure at hearings

12.—(1) At the hearing of an application under section 25(3) or (5) of the Act, or under section 26 thereof, any person to whom notice of the application has been given may attend and be heard on the question whether a further order should be made, an existing order should be discharged, or a forfeiture order should be made, as the case may be, but the fact that any such person does not attend shall not prevent the court from hearing the application.

(2) Subject to the foregoing provisions of these Rules, proceedings on such an application shall be regulated in the same manner as proceedings on a complaint, and accordingly for the purposes of this rule the application shall be deemed to be a complaint, the applicant to be a complainant, the respondents to be defendants, and any notice given by the clerk to a magistrates' court under rule 7(3) or 9(2) of these Rules to be a summons; but nothing in this rule shall be construed as enabling a warrant of arrest to be issued for failure to appear in answer to any such notice.

21st August 1991

Mackay of Clashfern, C.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Rule 1(2)(b)

FORMS

FORM A *Application for Continued Detention of Seized Cash (Criminal Justice (International Co-operation) Act 1990 s.25(2))*

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Rule 1(2)(b)

SCHEDULE

FORMS

FORM A

Application for Continued Detention of Seized Cash (Criminal Justice (International Co-operation) Act 1990 s.25(2))

.....Magistrates' Court

.....Code

Date.....

Person from whom cash seized*

Address.....*

Amount seized (**estimated).....

Date of seizure

Time of seizure.....

Place of seizure.....

(Name of applicant)....., of
(address and official position of applicant)

.....
applies for an order under section 25(2) of the Criminal Justice (International Co-operation) Act 1990 authorising the continued detention of the above-mentioned cash and will state upon oath that

(a) there are reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking, namely—
(state grounds)

and

(b) the continued detention of the cash for a period ofis justified while—

- (i) its origin or derivation is further investigated,**
- (ii) consideration is given to the institution of criminal proceedings against any person for an offence with which the cash is connected.**

Note:

A copy of this application must be given to the person from whom the cash was seized. The justice of the peace who considers this application will require the facts alleged in it to be sworn under oath and may require the applicant to answer any questions under oath. The justice may require any statement in response by the person from whom the cash was seized to be given under oath.

* In the case of a letter, parcel, container or other means of unattended dispatch, insert names, if known, of sender and intended recipient.

** Delete as appropriate

FORM B Order for Continued Detention of Seized Cash (Criminal Justice (International Co-operation) Act 1990 s.25(2))

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FORM B

Order for Continued Detention of Seized Cash (Criminal Justice (International Co-operation) Act 1990 s.25(2))

.....Magistrates' Court

.....Code

Date.....

Person from whom money seized.....*

Address.....*

Amount seized.....

Date of seizure.....

Time of seizure.....

Place of seizure.....

On the application of.....(name of applicant), after hearing oral evidence from the applicant/representations from(name), being the person from whom the cash was seized,

Decision. It is ordered that the above-mentioned cash be further detained for a period of (state period up to a maximum of three months) from the date of this order or until its release may be sooner directed.

Notice of this order must be given forthwith by the applicant to any person appearing to him to be affected by it. Such notice shall be in the form set out overleaf, and shall be accompanied by a copy of this order.

Justice of the Peace

- In the case of a letter, parcel, container or other means of unattended dispatch, insert names, if known, of sender and intended recipient.

NOTICE TO PERSONS AFFECTED BY ORDER FOR CONTINUED DETENTION OF SEIZED CASH

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NOTICE TO PERSONS AFFECTED BY ORDER FOR CONTINUED DETENTION OF SEIZED CASH

Cash in the sum of.....(amount) was seized on(date and time).....at (place) from(person from whom seized), and on(date of order) an order was made under section 25(2) of the Criminal Justice (International Co-operation) Act 1990 authorising the continued detention of the cash for a period of(state period). A copy of the order is enclosed with this notice.

You are being given notice of the order because it appears that you may be affected by it. You may be able to apply for the release of the cash under section 25(5) of the Criminal Justice (International Co-operation) Act 1990.

At the end of the above-mentioned period of detention an application may be made for its further detention. You will be notified by the court if such an application is made, or if any other person makes an application to the court for release of the cash.

Signed.....

Date.....

FORM C Application for Further Detention of Seized Cash (Criminal Justice (International Co-operation) Act 1990 s.25(3))

5013

SI 1991/1923

FORM C

Application for Further Detention of Seized Cash (Criminal Justice (International Co-operation) Act 1990 s.25(3))

.....Magistrates' Court
.....Code

Date.....
Date of order for continued detention of seized cash
(Name of applicant).....of
(address and official position of applicant) applies for an order under section 25(3) of the Criminal Justice (International Co-operation) Act 1990 authorising the further detention of cash in the sum of(amount).

To: The Clerk to the Justices
.....Magistrates' Court

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FORM D Direction for Release of Detained Cash (Criminal Justice (International Co-operation) Act 1990 s.25(2))

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FORM D

Direction for Release of Detained Cash (Criminal Justice (International Co-operation) Act 1990 s.25(2))

Magistrates' Court Code

Date.....

On the application of (name of applicant).....
of (address of applicant).....
after hearing oral evidence from.....representations from.....

Decision. It is directed that the sum of..... together with the interest accruing thereon in accordance with section 27 of the Criminal Justice (International Co-operation) Act 1990, be released to or to the order of..... (name) on or before..... (date, not more than 7 days from date of order or such later date as with the agreement of the person from whom the cash has been seized may be specified).

Justice of the Peace

FORM E Application for Forfeiture of Cash Seized Under Section 25 Criminal Justice (International Co-operation) Act 1990 (Criminal Justice (International Co-operation) Act 1990 s.26(1))

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM E

Application for Forfeiture of Cash Seized Under Section 25 Criminal Justice (International Co-operation) Act 1990 (Criminal Justice (International Co-operation) Act 1990 s.26(1))

.....Magistrates' Court
.....Code

Date.....

(Name of applicant)of

(address and official position of applicant) applies for an order under section 26(1) of the Criminal Justice (International Co-operation) Act 1990 for the forfeiture of cash in the sum of

(amount) seized on..... (date and time)

from(person from whom seized), together with any interest accruing thereon pursuant to section 27 of that Act, on the grounds that the said cash

- (i) directly or indirectly represents any person's proceeds of drug trafficking, and/or
- (ii) is intended by any person for use in drug trafficking. *

To: The Clerk to the Justices
.....Magistrates' Court

* Delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for the procedure to be followed in relation to applications under Part III of the Criminal Justice (International Co-operation) Act 1990 (seizure, detention and forfeiture of cash suspected to be the proceeds of drug trafficking or intended for use in drug trafficking).