STATUTORY RULES OF NORTHERN IRELAND

2003 No. 17

MAGISTRATES' COURTS

Magistrates' Courts (Detention and Forfeiture of Seized Cash) Rules (Northern Ireland) 2003

Made - - - -	*13th January 2003*
Coming into operation	*3rd February 2003*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**), and all other powers enabling him in that behalf, on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following Rules:–

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Detention and Forfeiture of Seized Cash) Rules (Northern Ireland) 2003 and shall come into operation on 3rd February 2003.

Interpretation

2. In these Rules–

(a) "the Act" means the Proceeds of Crime Act 2002(**2**) and a reference to a Chapter, Part or section alone is a reference to the Chapter, Part or section so numbered in the Act and expressions used have the same meaning as in Chapter 3 of Part 5 of the Act;

(b) any reference to the clerk of petty sessions is a reference to the clerk of petty sessions for the petty sessions district in which the magistrates' court is to hear or has heard an application under these Rules; and

(c) a reference to a form by number is a reference to that form so numbered in the Schedule or a form with the same effect.

Prior approval of searches for cash

3.—(1) An application to a justice of the peace under section 290(1) for prior approval of a search for cash under section 289 may be made without notice.

(**1**) S.I. 1981/1675 (N.I. 26)
(**2**) 2002 c. 29

(2) A justice of the peace may grant such an application without a hearing and may conduct any hearing in private.

First application for continued detention of seized cash

4.—(1) A first application under section 295(4) for an order under section 295(2) for continued detention of cash seized under section 294 shall be made in Form 1 and shall be sent to the clerk of petty sessions for the petty sessions district in which the cash was seized.

(2) Where the reasonable grounds for suspicion which led to the seizure of cash to which an application under section 295(4) relates are connected to the reasonable grounds for suspicion which led to the seizure of other cash to which a previous order made under section 295(2) relates, then the application may be sent to the clerk of petty sessions for the petty sessions district which made the previous order.

(3) Except where paragraph (4) or paragraph (7) applies, a copy of the written application and notification of the hearing of the application shall be given by the applicant to the person from whom the cash was seized.

(4) Where seized cash is found in a means of unattended dispatch, such as an unattended letter, parcel or container, copies of the written application and notification of the hearing of the application shall be sent by the applicant to the sender and intended recipient of the means of unattended dispatch.

(5) Where paragraph (4) applies the applicant is not required to send copies of the written application and notification of the hearing to a sender or intended recipient who cannot be identified.

(6) Where paragraph (4) applies, the court shall not decline to hear an application solely on the ground that it has not been proved that the sender and intended recipient have received a copy of the written application and notification of the hearing.

(7) Where unattended cash is seized (other than where the cash is found in a means of unattended dispatch) the applicant need not give a copy of the written application and notification of the hearing to any person.

Order and notice of order for continued detention of seized cash

5.—(1) An order made under section 295(2) shall be in Form 2.

(2) Notice of any order made under section 295 shall be given without delay by the court to the person from whom the cash was seized and to any other person who is affected by the said order. Notice shall be in Form 3 and shall be accompanied by a copy of the order.

Further application for continued detention of seized cash

6.—(1) An application under section 295(4) for a further order under section 295 for the continued detention of cash shall be in Form 1 and shall be sent to the clerk of petty sessions to whom the first application under section 295(4) was sent and shall be accompanied by a copy of the relevant order for continued detention.

(2) A copy of the application under paragraph (1) shall be given by the applicant to every person to whom notice of previous related orders made under section 295(2) has been given.

(3) The clerk of petty sessions who receives an application in accordance with paragraph (1) shall fix a date for the hearing of the application, shall notify the applicant and every person to whom notice of the previous orders has been given of the date fixed for the hearing which, unless the clerk of petty sessions directs otherwise in any particular case, shall not be within seven days of the date on which the application is received.

(4) A further order for continued detention of cash made under section 295(2) shall be in Form 2 and shall be given by the clerk of petty sessions to every person to whom notice of the previous related orders has been given.

(5) The clerk of petty sessions shall give–

(a) notice of the order in Form 3, and

(b) a copy of the order

to any other person other than one referred to in paragraph (4) who is affected by the order.

Applications for release of detained cash

7.—(1) An application under section 297(3) or 301(1) for the release of detained cash shall be made in writing, shall state the grounds on which it is made, and shall be lodged with the clerk of petty sessions for the petty sessions district in which the cash was seized.

(2) If the applicant has been given notice of an order under section 295(2) in respect of the detained cash, then the application shall be sent to the clerk of petty sessions who sent him that notice.

(3) The clerk of petty sessions shall send a copy of the application to–

(a) the Commissioners of Customs and Excise, if the cash which is the subject of the application was seized by a customs officer;

(b) the Chief Constable or, as the case may be, the chief officer of the police force to which the constable belongs, if the cash which is the subject of the application was seized by a constable; and

(c) every person to whom notice of the order made under section 295(2) has been given.

(4) The clerk of petty sessions shall fix a date for the hearing of the application, which, unless he directs otherwise, shall not be earlier than seven days from the date on which it is fixed, and shall notify that date to the applicant and to every person to whom a copy of the application is required to be sent under paragraph (3).

(5) At the hearing of an application under section 301(1) the court may, if it thinks fit, order that the applicant shall be joined as a party to the proceedings in relation to the detained cash.

(6) A direction under section 297(2) shall be in Form 4, an order under section 301(3) shall be in Form 5 and an order under section 301(4) shall be in Form 6.

(7) A direction under section 297(2) and an order under section 301(3) or (4) shall provide for the release of the cash within seven days of the date of the making of the direction or order, as the case may be, or such longer period as, with the agreement of the applicant, may be specified, except that cash shall not be released whilst section 298(4) applies.

Forfeiture

8.—(1) An application under section 298(1) for the forfeiture of detained cash shall be in Form 7 and shall be lodged with the clerk of petty sessions to whom application for the continued detention of the cash under section 295(4) has been sent.

(2) Where no applications in respect of the cash has been made under section 295(4), the application shall be sent to the clerk of petty sessions for the petty sessions district in which the cash was seized, or where the reasonable grounds for suspicion which led to the seizure of cash to which the application for forfeiture relates are connected to the reasonable grounds for suspicion which led to the seizure of cash to which an order made under section 295(2) relates, to the clerk of petty sessions for the petty sessions district of the court which made the order under section 295(2).

(3) A copy of the application shall be given by the applicant to every person to whom notice of an order made under section 295(2) in respect of the detained cash has been given and to any other person identified by the court as being affected by the application.

(4) The clerk of petty sessions who receives such an application shall fix a date for the hearing, shall notify the applicant and every person to whom a copy of the application is required to be sent under paragraph (3). Unless the clerk of petty sessions directs otherwise in any particular case, the date for hearing shall not be within seven days of the date on which the application is received.

Order for forfeiture of detained cash

9. An order for the forfeiture of detained cash made by a magistrates' court under section 298(2) shall be in Form 8 and a copy of the order shall be given to every person to whom notice of an order in respect of detained cash has been given and to any other person known to be affected by the order.

Appeal against order forfeiting cash

10.—(1) Where an appeal against a forfeiture order is made to a county court under section 299(1) the appellant shall, within the period prescribed by section 299, serve on–

(i) every person to whom notice of the order for continued detention of the cash was given, and

(ii) any person who has made an application under section 301;

notice of his appeal in writing in Form 9 and shall within the said period serve a copy of such notice on the clerk of petty sessions for the petty sessions district in which the forfeiture order was made.

(2) The notice of appeal to be served on the parties and the copy of the notice to be served on the clerk of petty sessions under paragraph (1) shall be prepared and signed by the appellant or by his solicitor or other duly authorised agent and shall contain his address or that of his solicitor or other duly authorised agent.

(3) The copy of the notice served on the clerk of petty sessions shall be endorsed with the date upon which and the manner in which the notice was served.

(4) As soon as practicable after the clerk of petty sessions has received the notice of appeal, the resident magistrate or justice of the peace from whose order the appeal is to be brought or the clerk of petty sessions shall in Form 10 ("the form of appeal") set out the terms against which it is to be appealed and that form shall include a certificate signed by the clerk of petty sessions to the effect that notice of appeal has been given.

(5) As soon as practicable after complying with the above paragraphs, the clerk of petty sessions shall–

(a) send to the chief clerk for the county court division in which the appeal will be heard, the copy of the notice of appeal and the form of appeal duly completed; and

(b) send to the appellant and to the respondent a copy of the form of appeal.

(6) After the county court has decided an appeal under section 299(1) the chief clerk for the county court division for which that county court is held shall, within seven days of that decision, certify the decision at the foot of the form of appeal and shall transmit the form of appeal to the clerk of petty sessions, who shall enter the decision in the Order Book.

(7) Any notice of abandonment of an appeal under section 299(1) shall be in Form 11.

Application for compensation

11.—(1) An application under section 302(1) for compensation shall be made in writing and shall be lodged with the clerk of petty sessions for the petty sessions district in which the cash was seized and shall specify the grounds on which it is made.

(2) If the applicant has been given notice of an order under section 295(2) in respect of the cash which is the subject of the application, then the application shall be sent to the clerk of petty sessions who sent him that notice.

(3) The clerk of petty sessions shall send a copy of the application to–

(a) the Commissioners for Customs and Excise, if the cash which is the subject of the application was seized by a customs officer;

(b) the Chief Constable or, as the case may be, the chief officer of the police force to which the constable belongs, if the cash which is the subject of the application was seized by a constable;

(4) The clerk of petty sessions who receives an application in accordance with paragraph (1) or (2) shall fix a date for the hearing of the application and shall notify the applicant and the person referred to in paragraph (3) of the date fixed for the hearing which, unless the clerk of petty sessions directs otherwise in any particular case, shall not be within seven days of the date on which the application is received.

Notice

12.—(1) Subject to paragraph (2), any notice, notification, copy of any order or any other document required to be given to any person under the provisions of these Rules may be given by ordinary first class post or by facsimile to his last known address.

(2) A notice under rule 10(1) shall be served in accordance with section 24(2) of the Interpretation Act (Northern Ireland) 1954(**3**).

Procedure at hearing

13.—(1) At the hearing of an application under Chapter 3 of Part 5 any person to whom notice of the application has been given, may attend and be heard on the question whether the application should be granted, but the fact that any such person does not attend shall not prevent the court from hearing the application.

(2) At the hearing of an application under Chapter 3 of Part 5, the court shall require the matters contained in the application to be sworn by the applicant under oath, may require the applicant to answer any questions under oath and may require any response from the respondent to the application to be made under oath.

(3) The court 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.

14. The Magistrates' Courts Rules (Northern Ireland) 1984(**4**) shall have effect subject to the provisions of these Rules.

Dated 13th January 2003 *Irvine of Lairg,* C.

(**3**) 1954 c. 33 (N.I.)
(**4**) S.R. 1984 No. 225