STATUTORY RULES OF NORTHERN IRELAND

1996 No. 54

MAGISTRATES' COURTS

Magistrates' Courts (Drug Trafficking Act 1994) Rules (Northern Ireland) 1996

Made - - - - 27th February 1996

Coming into operation 18th March 1996

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**) and section 46(1) of the Drug Trafficking Act 1994(**2**), on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following rules:—

Citation, commencement and revocation

1.—(1) These rules may be cited as the Magistrates' Courts (Drug Trafficking Act 1994) Rules (Northern Ireland) 1996 and shall come into operation on 18th March 1996.

(2) The Magistrates' Courts (Criminal Justice (International Co-Operation) Act 1990) (No. 2) Rules (Northern Ireland) 1992(**3**) are hereby revoked.

Interpretation

2.—(1) In these rules "the Act" means the Drug Trafficking Act 1994; a reference to a section by number is a reference to that section as numbered in the Act; and expressions used which are defined in the Act have the same meaning as in the Act.

(2) Any reference in these rules to a Form by number is a reference to that Form so numbered in the Schedule to these rules.

(3) Any reference in these rules to the clerk of petty sessions is a reference to the clerk of petty sessions for the petty sessions district in which the seizure of cash under Part II of the Act was made.

Application for continued detention of seized cash

3.—(1) An application for an order under section 42(2) for continued detention of cash seized under section 42(1) shall be made to a justice of the peace in writing in Form 1.

(**1**) S.I.1981/1675 (N.I. 26)
(**2**) 1994 c. 37
(**3**) S.R. 1992 No. 191

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

Hearing of application for continued detention of seized cash

4.—(1) A justice of the peace considering an application under section 42(2) shall require the matters contained in it to be sworn by the applicant on oath, may require the applicant to answer any questions on oath, and may require any statement in response by the person from whom the cash was seized to be made on oath.

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

Unattended parcels etc.

5. In rules 3, 4 and 8, references to the person from whom the cash was seized include references, where known, to the sender and intended recipient of a letter, parcel, container or other means of unattended dispatch, but a justice of the peace shall not decline to hear an application for an order under section 42(2) 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 3(2).

Order and notice of order for continued detention of seized cash

6.—(1) An order made under section 42(2) shall be in Form 2.

(2) Notice of any order made under section 42(2) shall be given forthwith in Form 3 by the applicant to any person appearing to him to be affected by it and shall have attached a copy of the said order.

(3) The applicant shall notify the clerk of petty sessions of the names and addresses of all persons to whom notice in Form 3 has been given.

Subsequent applications

7.—(1) An application under section 42(3) for further detention of cash shall be made in writing in Form 4 and shall be lodged with the clerk of petty sessions and shall have attached a copy of the relevant Order for continued detention.

(2) An application under section 42(6) 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.

(3) 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, shall notify the applicant thereof and shall notify any persons to whom notice of the order for continued detention has been given or the person who applied for the continued or further detention of the cash, as the case may be, 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 42(3), it shall endorse the order for continued detention accordingly, and a copy of the order so endorsed shall be given by the clerk of petty sessions 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 42(6)(*a*) for the release of detained cash shall be in Form 5, and shall provide for the release of the cash within seven 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 direction.

Forfeiture

9.—(1) An application for forfeiture of cash under section 43 shall be made in writing in Form 6 and shall be lodged with the clerk of petty sessions.

(2) The clerk of petty sessions 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.

Appeal against order forfeiting cash

10.—(1) Where an appeal against a forfeiture order is made to the county court under section 44 the appellant shall, within thirty days commencing on the day on which the decision of the magistrates' court was made, serve on the other party notice of his appeal in writing in Form 7 and shall within the said period serve a copy of such notice on the clerk of petty sessions.

(2) The notice of appeal to be served on the other party 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 8 ("the form of appeal") set out the terms of the order appealed against 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 44, 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 his Order Book.

(7) Any notice of abandonment of an appeal under section 44 shall be in Form 9.

Application for release of cash for appeal

11.—(1) An application under section 44(4) for the release of cash to meet the applicant's legal expenses, in connection with his appeal to the county court, shall be made in writing and shall contain the name and address of the solicitor instructed by the applicant and the amount requested to be released, together with any evidence in support of the application.

(2) A copy of the written application under paragraph (1) above shall be served by the applicant on the other party to the appeal.

(3) The clerk of petty sessions who receives such an application shall fix a date for the hearing of the application, shall notify the applicant thereof, and shall notify any persons to whom notice of forfeiture was given.

(4) A direction for the release of cash under section 44(4) shall be in Form 10.

Joinder

12. At any hearing of an application under section 42(3) or (6), 43 or 44, 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 a person be joined as a party to the proceedings and, if the court so orders, otherwise than at such a hearing, the clerk of petty sessions shall give notice to the other parties.

Notice

13.—(1) Any notice, notification, copy of any order or any other document required to be given to any person under the provisions of rule 6(2), 7(3) and (4), 9(2), 10(5)-(7), 11 or 12 of these rules may be given by ordinary first class post 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(**4**).

Procedure at hearings

14. At the hearing of an application under section 42(3), (6), 43 or 44, any person to whom notice of the application has been given, or should have 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.

Dated 27th February 1996 *Mackay of Clashfern, C.*

(**4**) 1954 c. 33 (N.I.)

SCHEDULE Rule 2

Form 1Drug Trafficking Act 1994(Section 42(2))

Rule 3

Application for Continued Detention of Seized Cash

Petty Sessions District of .....

County Court Division of.....

Person from whom cash seized* .....

Address of that person*.....

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

Date of seizure .....

Time of seizure.....

Place of seizure .....

(*Name of applicant*) ..... of

.....(*address and official*

position of applicant) will apply (at.....

(*place*) on .....(*date*) at.....

(*time*) ***], for an order under section 42(2) of the Drug Trafficking Act 1994 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 of ..... (not exceeding the limits referred to in section 42(3) of the Act) is 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.**