1992 No. 191

MAGISTRATES' COURTS

Magistrates' Courts (Criminal Justice (International Co-operation) Act 1990) (No. 2) Rules (Northern Ireland) 1992

Made	*7th April 1992*
Coming into operation . .	*1st June 1992*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**a**) and section 28(2) of the Criminal Justice (International Co-operation) Act 1990(**b**), 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 (Criminal Justice (International Co-operation) Act 1990) (No. 2) Rules (Northern Ireland) 1992 and shall come into operation on 1st June 1992.

Interpretation

2.—(1) In these rules "the Act" means the Criminal Justice (International Co-operation) Act 1990(**b**); 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 III of the Act was made.

Application for continued detention of seized cash

3.—(1) An application for an order under section 25(2) for continued detention of cash seized under section 25(1) shall be made to a justice of the peace in writing in Form 1.

(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.

(**a**) S.I. 1981/1675 (N.I. 26)
(**b**) 1990 c. 5

Hearing of application for continued detention of seized cash

4.—(1) A justice of the peace considering an application under section 25(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 25(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 25(2) shall be in Form 2.

(2) Notice of any order made under section 25(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 25(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 25(5) 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 25(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 25(5)(*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 26 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.

Joinder

10. At any hearing of an application under section 25(3) or (5) or under section 26, 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

11. 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) or 10 of these rules may be given by ordinary first class post to his last known address.

Procedure at hearings

12. At the hearing of an application under section 25(3), (5) or 26, 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 7th April 1992 *Mackay of Clashfern*, C.

SCHEDULE Rule 2

Form 1 Rule 3

Criminal Justice (International Co-operation) Act 1990
(Section 25(2))

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 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 of ..... (not exceeding the limits referred to in section 25(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.**

Dated this day of 19 .

Signed

Applicant

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

**Delete as appropriate.

***Details of the time, date and place at which the hearing of the application is to be heard should always be included, unless these details are not known to the applicant.

Note:

(1) 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 of the peace may require any statement in response by the person from whom the cash was seized to be given under oath.

(2) A person from whom cash has been seized may, at any time, apply under section 25(5) of the Criminal Justice (International Co-operation) Act 1990 to a magistrates' court for the release of the cash.