

2001 No. 4013

**MAGISTRATES' COURTS, ENGLAND AND WALES
PROCEDURE**

**The Magistrates' Courts (Detention and Forfeiture of
Terrorist Cash) (No. 2) Rules 2001**

Made - - - - - 14th December 2001

Laid before Parliament 17th December 2001

Coming into force - - 20th December 2001

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

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001 and shall come into force on 20th December 2001.

Revocation

2. The Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) Rules 2001(b) are hereby revoked.

Interpretation

3. In these Rules—
- (a) "the Act" means the "Anti-terrorism, Crime and Security Act 2001(c)";
 - (b) words and expressions used have the same meaning as in Schedule 1 to the Act;
 - (c) a reference to a paragraph of Schedule 1 by number alone is a reference to a paragraph so numbered in Schedule 1 to the Act; and
 - (d) a reference to a form is a reference to a form set out in the Schedule to these Rules.

First application for continued detention of seized cash

4.—(1) The first application under paragraph 3(5) of Schedule 1 for an order under paragraph 3(2) of Schedule 1 for continued detention of cash seized under paragraph 2 of Schedule 1 shall be made in Form A and shall be sent to the justices' clerk for the petty sessions area in which the cash was seized.

(2) 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.

(a) 1980 c. 43.
(b) S.I. 2001/194.
(c) 2001 c. 24.

(3) Where seized cash is found in a letter, parcel, container or other means of unattended dispatch, the reference in paragraph (2) to the person from whom the cash was seized shall be read as a reference to the sender and intended recipient of the letter, parcel, container or other means of unattended dispatch.

(4) Where paragraph (3) 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 hearing.

(5) An order for continued detention of seized cash shall be in Form B.

(6) The justices' clerk shall give—

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

(b) a copy of the order,

to the person from whom the cash was seized and to any other person who is affected by the order.

Further applications for continued detention of seized cash

5.—(1) An application under paragraph 3(5) of Schedule 1 for a further order under paragraph 3(2) of Schedule 1 for the continued detention of cash shall be in Form A and shall be sent to the justices' clerk referred to in rule 4(1).

(2) The applicant shall send a copy of the application to every person to whom notice of previous orders made under paragraph 3(2) of Schedule 1 has been given.

(3) The justices' clerk 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 he shall notify the applicant and every person to whom notice of the previous orders has been given of that date.

(4) A further order for the continued detention of seized cash shall be in Form B.

(5) The justices' clerk shall give a copy of the order to every person to whom notice of the previous orders has been given.

(6) The justices' clerks shall also give—

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

(b) a copy of the order,

to any other person other than one referred to in paragraph (5) who is affected by the order.

Applications for release of detained cash

6.—(1) An application under paragraph 5(2) or paragraph 9(1) of Schedule 1 for the release of detained cash shall be made in writing to the justices' clerk referred to in rule 4(1), and shall specify the grounds on which it is made.

(2) The justices' clerk shall send a copy of the application to the authorised officer who seized the cash and to every person to whom notice of an order made under paragraph 3(2) of Schedule 1 has been given.

(3) The justices' clerk 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 the applicant, the authorised officer who seized the cash and every person to whom notice of an order made under paragraph 3(2) of Schedule 1 has been given of that date.

(4) At a hearing of an application under paragraph 9(1) of Schedule 1, the court may, if it thinks fit, order that the applicant shall be joined as a party to all the proceedings in relation to the detained cash.

(5) A direction under paragraph 5(2) of Schedule 1 for the release of detained cash shall be in Form D, 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 applicant may be specified in the direction, except that the cash shall not be released whilst paragraph 5(4) of Schedule 1 applies.

(6) An order under paragraph 9(3) of Schedule 1 for the release of detained cash shall be in Form E, and shall provide for the release of the cash within seven days of the date of the making of the order or such longer period as with the agreement of the applicant may be specified in the order.

Application for forfeiture of detained cash

7.—(1) An application under paragraph 6(1) of Schedule 1 for the forfeiture of detained cash shall be in Form F and shall be sent to the justices' clerk referred to in rule 4(1).

(2) The applicant shall send a copy of the application to every person to whom notice of an order made under paragraph 3(2) of Schedule 1 has been given.

(3) The justices' clerk 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 the applicant and every person to whom notice of an order made under paragraph 3(2) of Schedule 1 has been given of that date.

(4) An order for the forfeiture of detained cash under paragraph 6(2) of Schedule 1 shall be in Form G and a copy of the order shall be given by the justices' clerk to every person to whom notice of an order made under paragraph 3(2) of Schedule 1 has been given.

Application for compensation

8.—(1) An application under paragraph 10(1) of Schedule 1 for compensation shall be made in writing to the justices' clerk referred to in rule 4(1), and shall specify the grounds on which it is made.

(2) The justices' clerk 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 police force to which the constable belongs, if the cash which is the subject of the application was seized by a constable;
- (c) the Secretary of State, if the cash which is the subject of the application was seized by an immigration officer.

(3) The justices' clerk 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 the applicant and the person referred to in paragraph (2) of that date.

Notice

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

Procedure at hearings

10.—(1) At the hearing of an application under Schedule 1 to the Act, any person to whom notice of the application has been given may attend and be heard on the question of 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) 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 these Rules, the application shall be deemed to be a complaint, the applicant a complainant, the respondents to be defendants and any notice given by the justices' clerk under rules 5(3), 6(3), 7(3) or 8(3) 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.

(3) At the hearing of an application under Schedule 1 to the Act, 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.

(4) 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.

14th December 2001

Irvine of Lairg, C.

SCHEDULE

FORM A

First/Further** application for continued detention of seized cash

(Paragraph 3(5) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001; MC (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001 rr 4(1), 5(1))

Magistrates' Court

(Code)

Date

Name of person from whom cash seized*

Address*

Names and addresses of any other persons likely to be affected by an order for detention of the cash (if known)

Amount seized (estimated**)

Date of seizure

Time of seizure

Place of seizure

Date of latest order for continued detention of seized cash (if any)

Amount detained under latest order for continued detention (if any)

Amounts released since the latest order for continued detention (if any)

I,

of

(official address and position of applicant)

Authorised Officer/Commissioner of Customs and Excise**, apply for an order under paragraph 3(2) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 authorising the continued detention of cash in the sum of and will state upon oath that one of the three grounds below is satisfied:

**1. There are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either—

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

**2. There are reasonable grounds for suspecting that the cash consists of resources of an organisation which is a proscribed organisation and that either—

- (a) its continued detention is justified while investigation is made into whether or not it consists of such resources or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

**3. There are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either—

- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(state grounds)

Signed

To: The Clerk to the Justices

Magistrates' Court

Notes to the Applicant—

First Application—You must give a copy of this application and notification of the hearing of it to the person from whom the cash was seized.

Further Application—This application must wherever possible be submitted to the Justices' Clerk at least seven days before the expiry of the last period of detention that was ordered by the court. You must send a copy of this application to the person from whom the cash was seized and any other person specified in any order made under paragraph 3(2) of Schedule 1.

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

**Delete as appropriate

FORM B

First/Further** order for continued detention of seized cash

(Paragraph 3(2) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001; MC (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001 rr 4(5), 5(4))

Magistrates' Court

(Code)

Date

Name of person from whom cash was seized*

Address*

Names and addresses of any other persons identified by the Court as being affected by this order

Amount seized (estimated**)

Date of seizure

Time of seizure

Place of seizure

Date of latest order for continued detention of seized cash (if any)

Amount detained under latest order for continued detention (if any)

Amounts released since the latest order for continued detention (if any)

On the application of

after hearing oral evidence from

and representations from

It is ordered that the sum of

be further detained for a period of

(state a period up to a maximum of three months from the date of this order, and not beyond the end of a period of two years from the date of the first order) or until its release may be otherwise ordered, whichever is the earlier.

Notice of this Order shall be given without delay to the person from whom the cash was seized and to any other person affected by it. Such notice shall be in Form C and shall be accompanied by a copy of this order.

Justice of the Peace

[or by order of the Court

Clerk of the Court]

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

**Delete as appropriate.

FORM C

Notice to persons affected by an order for continued detention of seized cash

(Paragraph 3(4) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001; MC (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001 rr 4(6), 5(6))

Magistrates' Court

(Code)

Date

Name of person from whom cash was seized*

Amount seized (estimated**)

Date of seizure

Time of seizure

Place of seizure

On (date) an order was made under paragraph 3(2) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 authorising the continued detention of cash in the sum of for a period of

A copy of the order accompanies this notice.

The person from whom the cash was seized may apply for the release of the detained cash or any part of it under paragraph 5(2) of Schedule 1 to that Act. If the cash was in a letter, parcel, container or other means of unattended dispatch, the sender or the intended recipient may make the application.

A person who claims that—

1. any cash detained or any part of it belongs to him,
2. that he was deprived of it or of property which it represents by criminal conduct and
3. that the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it represent such property

may apply for the release of the detained cash or part of it under paragraph 9(1) of Schedule 1 to that Act. Such a person may apply to the court to be joined as a party to proceedings.

An application under paragraph 5(2) or paragraph 9(1) of Schedule 1 should be made in writing to the Justices' Clerk at the Magistrates' Court which made the order for continued detention of seized cash. The application should state the grounds relied on and identify as clearly as possible the cash referred to.

At the end of the above-mentioned period of detention an application may be made for the further detention of the cash. An application may be made to forfeit the cash.

You will be notified if an application is made, or if any other person makes an application to the court for the release of the detained cash.

If you intend to consult a solicitor about these proceedings you should do so at once and hand this notice and the copy of the order to him.

Signed

(Clerk to the Justices)

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

**Delete as appropriate.

FORM D

Direction for the release of detained cash under paragraph 5(2) of Schedule 1 to the Anti-terrorism,
Crime and Security Act 2001

(MC (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001 r 6(5))

Magistrates' Court

(Code)

Date

On the application of (name of applicant)

of (address)

after hearing oral evidence from

and representations from

It is directed that the sum of which represents the whole/part* of the sum seized, together with any interest accruing thereon in accordance with paragraph 4(1) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001, be released to or to the order of (name)

on or before

(specify a date, not more than seven days from the date of this direction unless a later date is agreed by the applicant)

Cash is not to be released under this direction where paragraph 5(4) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 applies.

Justice of the Peace

[or by Order of the Court

Clerk of the Court]

*Delete as appropriate

FORM E

Order for the release of detained cash under paragraph 9(3) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001

(MC (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001 r 6(6))

Magistrates' Court

(Code)

Date

On the application of (name of applicant)

of (address)

after hearing oral evidence from

and representations from

It appears to the court that the sum below

1. belongs to the applicant,
2. that the applicant was deprived of it or of property which it represents by criminal conduct and
3. that the property the applicant was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it represent such property.

It is ordered that the sum of which represents the whole/part* of the sum seized, together with any interest accruing thereon in accordance with paragraph 4(1) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001, be released to or to the order of (name)

on or before

(specify a date, not more than seven days from the date of this order unless a later date is agreed by the applicant)

Justice of the Peace

[or by Order of the Court

Clerk of the Court]

*Delete as appropriate

FORM F

Application for forfeiture of detained cash

(Paragraph 6(1) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001; MC (Detention and Forfeiture of Terrorist Cash (No. 2) Rules 2001 r 7(1))

Magistrates' Court

(Code)

Date

Name of person from whom cash seized*

Address*

Names and addresses of any other persons identified by the Court as being affected by this order

Amount seized (estimated**)

Date of seizure

Time of seizure

Place of seizure

Date of latest order for continued detention of seized cash (if any)

Amount detained under latest order for continued detention (if any)

Amounts released since the latest order for continued detention (if any)

I,

of

(official address and position of applicant)

Authorised Officer/Commissioner of Customs and Excise**, apply for an order under paragraph 6 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 for the forfeiture of cash in the sum of together with any interest accruing thereon pursuant to paragraph 4(1) of Schedule 1 to that Act, on the grounds that the said cash

**1. is intended to be used for the purposes of terrorism

**2. consists of the resources of an organisation which is a proscribed organisation

**3. is or represents property obtained through terrorism (i.e. is property earmarked as terrorist property within the meaning of Part 5 of Schedule 1 to that Act)

(state grounds)

To: The Clerk to the Justices

Magistrates' Court

Note to the Applicant—You must send a copy of this application to the person from whom the cash was seized and any other person specified in any order made under paragraph 3(2) of Schedule 1.

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

**Delete as appropriate.

FORM G

Order for forfeiture of detained cash
(Paragraph 6(2) of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001; MC (Detention and

Forfeiture of Terrorist Cash (No. 2) Rules 2001 r 7(4))

Magistrates' Court

(Code)

Date

Name of person from whom cash was seized*

Address*

Names and addresses of any other persons whom the court has identified as being affected by the above-mentioned order

Amount seized (estimated**)

Date of seizure

Time of seizure

Place of seizure

Date of latest order for continued detention of seized cash (if any)

Amount detained under latest order for continued detention (if any)

Amounts released since the latest order for continued detention (if any)

On the application of

after hearing oral evidence

and representations from

It is ordered that the whole/part** of the above-mentioned cash be forfeited.

Sum forfeited

Justice of the Peace

[or by Order of the Court

Clerk of the Court]

Note to the parties to these proceedings—Any party to the proceedings in which this forfeiture order is made may appeal against the order to the Crown Court under paragraph 7 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001. The appeal must be brought before the end of the period of 30 days beginning with the date on which this order was made.

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

**Delete as appropriate.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules revoke and replace the Magistrates' Court (Detention and Forfeiture of Terrorist Cash) Rules 2001. They prescribe the procedure to be followed for applications to a magistrates' court for the detention, further detention, forfeiture or release of cash seized by a constable, customs officer, or immigration officer under Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 on reasonable suspicion of a connection to terrorism. They also prescribe the procedure to be followed for applications to a magistrates' court for compensation where no forfeiture order is made. The Rules prescribe the forms to be used in connection with the applications and hearings.

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