



Drug Trafficking Act 1994

1994 CHAPTER 37

PART II

DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH

42 Seizure and detention

- (1) A customs officer or constable may seize and, in accordance with this section, detain any cash which is being imported into or exported from the United Kingdom if—
 - (a) its amount is not less than the prescribed sum; and
 - (b) he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of drug trafficking, or is intended by any person for use in drug trafficking.
- (2) Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorised by an order made by a justice of the peace or in Scotland the sheriff; and no such order shall be made unless the justice or, as the case may be, the sheriff is satisfied—
 - (a) that there are reasonable grounds for the suspicion mentioned in subsection (1) above; and
 - (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the United Kingdom or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.
- (3) Any order under subsection (2) above shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and a magistrates' court or in Scotland the sheriff, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that—
 - (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and

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- (b) the total period of detention shall not exceed two years from the date of the order under subsection (2) above.
- (4) Any order under subsection (2) above shall provide for notice to be given to persons affected by the order.
- (5) Any application for an order under subsection (2) or (3) above shall be made—
 - (a) by the Commissioners of Customs and Excise or a constable if made to a justice or magistrates' court; and
 - (b) by a procurator fiscal if made to the sheriff.
- (6) At any time while cash is detained by virtue of the preceding provisions of this section—
 - (a) a magistrates' court or in Scotland the sheriff may direct its release if satisfied—
 - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds for its detention as are mentioned in subsection (2) above; or
 - (ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and
 - (b) a customs officer or constable, or in Scotland a procurator fiscal, may release the cash if satisfied that its detention is no longer justified, but shall first notify the justice, magistrates' court or sheriff under whose order it is being detained.
- (7) If at a time when any cash is being detained by virtue of the preceding provisions of this section—
 - (a) an application for its forfeiture is made under section 43 of this Act, or
 - (b) proceedings are instituted (whether in the United Kingdom or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.
- (8) Cash seized under this section and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

43 Forfeiture

- (1) A magistrates' court or in Scotland the sheriff may order the forfeiture of any cash which has been seized under section 42 of this Act if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of drug trafficking, or is intended by any person for use in drug trafficking.
- (2) Any application for an order under this section shall be made—
 - (a) by the Commissioners of Customs and Excise or a constable if made to a magistrates' court; and
 - (b) by a procurator fiscal if made to the sheriff.
- (3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether

or not proceedings are brought against any person for an offence with which the cash in question is connected.

- (4) Proceedings on an application under this section to the sheriff shall be civil proceedings.

44 Appeal against forfeiture order made by a magistrates' court

- (1) This section applies where an order for the forfeiture of cash (“the forfeiture order”) is made under section 43 of this Act by a magistrates' court.
- (2) Any party to the proceedings in which the forfeiture order is made (other than the applicant for the order) may, before the end of the period of 30 days beginning with the date on which it is made, appeal to the Crown Court or, in Northern Ireland, to a county court.
- (3) An appeal under this section shall be by way of a rehearing.
- (4) On an application made by the appellant to a magistrates' court at any time, that court may order the release of so much of the cash to which the forfeiture order relates as it considers appropriate to enable him to meet his legal expenses in connection with the appeal.
- (5) The court hearing an appeal under this section may make such order as it considers appropriate.
- (6) If it upholds the appeal, the court may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.
- (7) Subsection (3) of section 43 of this Act applies in relation to a rehearing on an appeal under this section as it applies to proceedings under that section.

45 Appeal against forfeiture order made by sheriff

Any party to proceedings in which an order for the forfeiture of cash is made by the sheriff under section 43 of this Act may appeal against the order to the Court of Session.

46 Rules of court

- (1) Provision may be made by rules of court with respect to applications or appeals to any court under this Part, for the giving of notice of such applications or appeals to persons affected, for the joinder, or in Scotland sisting, of such persons as parties and generally with respect to the procedure under those sections before any court.
- (2) Subsection (1) above is without prejudice to the generality of any existing power to make rules.

47 Receipts

- (1) Any money representing cash forfeited under this Part or accrued interest thereon shall be paid into the Consolidated Fund.
- (2) Subsection (1) above does not apply—

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- (a) where an appeal is made under section 44 or 45 of this Act, before the appeal is determined or otherwise disposed of; and
- (b) in any other case—
 - (i) where the forfeiture was ordered by a magistrates' court, before the end of the period of 30 days mentioned in section 44(2) of this Act; or
 - (ii) where the forfeiture was ordered by the sheriff, before the end of any period within which, in accordance with rules of court, an appeal under section 45 of this Act must be made.

48 Interpretation of Part II

- (1) In this Part—
 - “cash” includes coins and notes in any currency;
 - “customs officer” means an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979; and
 - “exported”, in relation to any cash, includes its being brought to any place in the United Kingdom for the purpose of being exported.
- (2) In the application of this Part in Scotland and Northern Ireland, “drug trafficking” and “the proceeds of drug trafficking”—
 - (a) as respects Scotland, have the same meaning as in Part I of the Criminal Justice (Scotland) Act 1987; and
 - (b) as respects Northern Ireland, have the same meaning as in the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.
- (3) In section 42 of this Act “the prescribed sum” means such sum in sterling as may for the time being be prescribed for the purposes of that section by an order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and in determining under that section whether an amount of currency other than sterling is not less than the prescribed sum that amount shall be converted at the prevailing rate of exchange.
- (4) For the avoidance of doubt it is hereby declared that notwithstanding sections 8 and 9 of the Isle of Man Act 1979 references in this Part to importation into or export from the United Kingdom include references to importation into the United Kingdom from the Isle of Man and exportation from the United Kingdom to the Isle of Man.