
STATUTORY INSTRUMENTS

2002 No. 2998 (L.17)

**MAGISTRATES' COURTS,
ENGLAND AND WALES**

PROCEDURE

**The Magistrates' Courts (Detention
and Forfeiture of Cash) Rules 2002**

Made - - - - *2nd December 2002*
Laid before Parliament *9th December 2002*
Coming into force - - *30th December 2002*

The Lord Chancellor, in exercise of the powers conferred on him by section 144 and 145(1)(a) of the Magistrates' Courts Act 1980(1), 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 Cash) Rules 2002 and shall come into force on 30th December 2002.

Interpretation

2. In these Rules—

- (a) “the Act” means the Proceeds of Crime Act 2002(2);
- (b) “justices' clerk” means the justices' clerk for the justices who are to hear or have heard an application;
- (c) words and expressions used have the same meaning as in Chapter 3 of Part 5 of the Act;
- (d) a reference to a form is a reference to a form set out in the Schedule to these Rules or a form with the same effect.

(1) 1980 c. 43.
(2) 2002 c. 29.

Prior approval of searches for cash

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

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

First application for the continued detention of seized cash

4.—(1) The first application under section 295(4) of the Act for an order under section 295(2) of the Act for the continued detention of cash seized under section 294 of the Act shall be made in form A and shall be sent to the justices' chief executive for the petty sessions area of the court before which the applicant wishes to make the application.

(2) But where the reasonable grounds for suspicion which led to the seizure of cash to which an application under section 295(4) of the Act 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) of the Act relates, then the application may be sent to the justices' chief executive for the petty sessions area of the court 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) But 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 been given 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.

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

(9) The justices' chief executive 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 known to be affected by the order.

Further applications for the continued detention of seized cash

5.—(1) An application under section 295(4) of the Act for a further order under section 295(2) of the Act for the continued detention of cash shall be made in Form A and shall be sent to the justices' chief executive to whom the first application under section 295(4) of the Act was sent.

(2) The applicant shall send a copy of the application to every person to whom notice of previous related orders made under section 295(2) of the Act 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 the justices'

chief executive shall notify that date to the applicant and every person to whom notice of the previous orders has been given.

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

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

(6) The justices' chief executive shall also give—

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

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

Applications for the release of detained cash

6.—(1) An application under section 297(3) or 301(1) of the Act for the release of detained cash shall be made in writing and sent to the justices' chief executive for the petty sessions area of the court before which the applicant wishes to make the application.

(2) But if the applicant has been given notice of an order under section 295(2) of the Act in respect of the detained cash, then the application shall be sent to the justices' chief executive who sent him that notice.

(3) The justices' chief executive 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 officer of the police force to which the constable belongs (or in the case of a constable who is a member of the National Crime Squad, the Director General of that Squad), 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) of the Act has been given.

(4) 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 the justices' chief executive 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) of the Act, 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.

(6) A direction under section 297(2) of the Act shall be in Form D, an order under section 301(3) of the Act shall be in Form E and an order under section 301(4) of the Act shall be in Form F.

(7) A direction under section 297(2) of the Act and an order under section 301(3) or (4) of the Act shall provide for the release of the cash within seven days of the date of the making of the order or direction, 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) of the Act applies.

Application for forfeiture of detained cash

7.—(1) An application under section 298(1) of the Act for the forfeiture of detained cash shall be in Form G and shall be sent to the justices' chief executive to whom applications for the continued detention of the cash under section 295(4) of the Act have been sent.

(2) Where no applications in respect of the cash have been made under section 295(4) of the Act, the application shall be sent to—

- (a) the justices' chief executive for the petty sessions area of the court before which the applicant wishes to make the application; or
 - (b) 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) of the Act relates, to the justices' chief executive for the petty sessions area of the court which made the order under section 295(2).
- (3) The applicant shall send a copy of the application to every person to whom notice of an order made under section 295(2) of the Act 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 justices' clerk shall set a date for a directions hearing, which, unless he directs otherwise, shall not be earlier than seven days from the date on which it is fixed, and the justices' chief executive 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 directions hearing, the court may give directions relating to the management of the proceedings, including directions as to the date for the hearing of the application.
- (6) If neither the person from whom the cash was seized, nor any other person who is affected by the detention of the cash, seeks to contest the application, the court may decide the application at the directions hearing.
- (7) An order for the forfeiture of detained cash under section 298(2) of the Act shall be in Form H and a copy of the order shall be given by the justices' chief executive to every person to whom notice of an order made under section 295(2) of the Act in respect of the detained cash has been given and to any other person known to be affected by the order.

Application for compensation

- 8.—**(1) An application under section 302(1) for compensation shall be made in writing and sent to the justices' chief executive for the petty sessions area of the court before which the applicant wishes to make the application.
- (2) But if the applicant has been given notice of an order under section 295(2) of the Act in respect of the cash which is the subject of the application, then the application shall be sent to the justices' chief executive who sent him that notice.
- (3) The justices' chief executive 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 officer of the police force to which the constable belongs (or in the case of a constable who is a member of the National Crime Squad, the Director General of that Squad), if the cash which is the subject of the application was seized by a constable.

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 the justices' chief executive shall notify the applicant and the person referred to in paragraph (3) of that date.

Notice

- 9.** Any notification or document required to be given or sent to any person under these Rules may be given by post or by facsimile to his last known address, or to any other address given by that person for the purpose of service of documents under these Rules.

Transfer of proceedings

10.—(1) Any person who is a party to, or affected by, proceedings under Chapter 3 of Part 5 of the Act may, at any time, make an application to the court dealing with the matter for the proceedings to be transferred to a different petty sessions area.

(2) Any such application shall be made in writing and sent to the justices' chief executive for the petty sessions area in which the proceedings are being dealt with and shall specify the grounds on which it is made.

(3) The justices' chief executive shall send a copy of the application to the parties to the proceedings and any other person affected by the proceedings.

(4) 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 the justices' chief executive shall notify the date to the applicant and every person to whom a copy of the application is required to be sent under paragraph (3).

(5) The court may grant the application if it is satisfied that it would be more convenient or fairer for proceedings to be transferred to a different petty sessions area.

(6) If the application is granted—

- (a) the justices' chief executive shall give a copy of the order to the parties to the proceedings and any other person affected by the proceedings;
- (b) the justices' chief executive shall send all relevant papers to the justices' chief executive for the petty sessions area to which proceedings are transferred;
- (c) any further proceedings under Chapter 3 of Part 5 of the Act in respect of the cash to which the proceedings relate shall be dealt with in the petty sessions area to which proceedings are transferred;
- (d) any requirement under these Rules to make an application to a justices' chief executive shall be read as a requirement to make an application to the justices' chief executive for the petty sessions area to which proceedings are transferred.

Procedure at hearings

11.—(1) At the hearing of an application under Chapter 3 of Part 5 of 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' chief executive under rules 5(3), 6(4), 7(4), 8(4) or 10(4) 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 Chapter 3 of Part 5 of 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 the substance of any statements made under oath which are not already recorded in the written application.

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2nd December 2002

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SCHEDULE

FORM AFirst/Further** application for continued detention of seized cash

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Rules 4(1) and 5(1) and Rule 2

(Section 295(4) Proceeds of Crime Act 2002; MC (Detention and Forfeiture of Cash) Rules 2002 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 amount seized (only in the case of a first application for continued detention) **

Amount to which reasonable grounds of suspicion apply/Estimated amount to which reasonable grounds for suspicion apply (only in the case of a first application for continued detention) ** where it is not reasonably practicable to detain only that part

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)

Constable/Customs Officer **, apply for an order under section 295(2) of the Proceeds of Crime Act 2002 authorising the continued detention of cash in the sum of and will state upon oath that one of the two grounds below is satisfied in relation to all of the cash/ the sum of but it is not reasonably practicable to detain only that part of the cash **;

1. There are reasonable grounds for suspecting that the cash is recoverable 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.

2. There are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct 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.
(state grounds)

Signed

To: The Justices' Chief Executive

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 * * *.

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Further Application—This application must wherever possible be submitted to the justices' chief executive at least seven days before the expiry of the last period of detention that was ordered by the court. You must give a copy of this application to the person from whom the cash was seized and any other person specified in any order made under section 295(2) of the Proceeds of Crime Act 2002 ***.

*In the case of a means of unattended dispatch such as a letter, parcel or container, insert names and addresses, if known, of sender and intended recipient. In the case of any other unattended cash, state that you believe the cash was unattended and explain your grounds for believing that the cash was unattended.

**Delete as appropriate

*** In the case of a means of unattended dispatch such as a letter, parcel or container, the copy application and, if applicable, notification of hearing should be given to the sender and intended recipient (if known), rather than the person from whom the cash was seized. In the case of any other unattended cash, there is no requirement to give the copy application and, if applicable, notification of hearing to the person from whom the cash was seized.

FORM BFirst/Further** order for continued detention of seized cash

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Rules 4(8) and 5(4)

(Section 295(2) Proceeds of Crime Act 2002; MC (Detention and Forfeiture of Cash) Rules 2002 rr 4(8), 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 amount seized (only in the case of a first order for continued detention)**

Amount to which reasonable grounds of suspicion apply/Estimated amount to which reasonable grounds for suspicion apply (only in the case of a first order for continued detention)** where it is not reasonably practicable to detain only that part

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 means of unattended dispatch such as a letter, parcel or container, insert names and addresses, if known, of sender and intended recipient. In the case of any other unattended cash, state that the cash was unattended and state the grounds given by the applicant for believing that the cash was unattended.

**Delete as appropriate

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

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Rules 4(9) and 5(6)

(Section 295(8) of the Proceeds of Crime Act 2002; MC (Detention and Forfeiture of Cash) Rules 2002 rr 4(9), 5(6))

Magistrates' Court

(Code)

Date

Name of person from whom cash was seized*

Amount seized/Estimated amount seized (only in the case of a first order for continued detention)**

Amount to which reasonable grounds of suspicion apply/Estimated amount to which reasonable grounds for suspicion apply (only in the case of a first order for continued detention) ** where it is not reasonably practicable to detain only that part

Date of seizure

Time of seizure

Place of seizure

On (date) an order was made under section 295(2) the Proceeds of Crime Act 2002 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 section 297 of 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 any cash detained or any part of it belongs to him, may apply for the release of the detained cash or part of it under section 301 of that Act if either—

1. he was deprived of it or of property which it represents by criminal conduct and the property he was deprived of was not, immediately before he was deprived of it, recoverable property; or
2. the conditions for detaining the cash are no longer met or the court decides not to make a forfeiture order in respect of the cash and no objection has been made by the person from whom the cash was seized.

An application under section 297 or 301 of the Proceeds of Crime Act 2002 should be made in writing to the justices' chief executive 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 also 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

(Justices' Chief Executive)

*In the case of a means of unattended dispatch such as a letter, parcel or container, insert names, if known, of sender and intended recipient. In the case of any other unattended cash, state that the cash was unattended and state the grounds given by the applicant for believing that the cash was unattended.

**Delete as appropriate

FORM DDirection for the release of detained cash under section 297(2) of the Proceeds of Crime Act 2002(MC (Detention and Forfeiture of Cash) Rules 2002 r 6(6))

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Rule 6(6)

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 section 296(1) of the Proceeds of Crime Act 2002, 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 section 298(4) of the Proceeds of Crime Act 2002 (which provides that detained cash may not be released whilst forfeiture proceedings are ongoing) applies.

Justice of the Peace
[or by Order of the Court, Clerk of the Court]

*Delete as appropriate

FORM EOrder for the release of detained cash under section 301(3) of the Proceeds of Crime Act 2002(MC (Detention and Forfeiture of Cash) Rules 2002 r 6(6))

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Rule 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

1. the sum below belongs to the applicant,
2. the applicant was deprived of it or of property which it represents by criminal conduct, and
3. the property the applicant was deprived of was not, immediately before he was deprived of it, recoverable 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 section 296(1) of the Proceeds of Crime Act 2002, 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)

Cash is not to be released under this direction where section 298(4) of the Proceeds of Crime Act 2002 (which provides that detained cash may not be released whilst forfeiture proceedings are ongoing) applies.

Justice of the Peace
[or by Order of the Court, Clerk of the Court]

*Delete as appropriate

FORM FOrder for the release of detained cash under section 301(4) of the Proceeds of Crime Act 2002 (MC (Detention and Forfeiture of Cash) Rules 2002 r 6(6))

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Rule 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

1. the sum below was not seized from the applicant,
2. the sum below belongs to the applicant,
3. the conditions in section 295 of the Proceeds of Crime Act 2002 for detaining the sum below are no longer met or the court has decided not to order forfeiture of the sum below under section 298(2) of the Proceeds of Crime Act 2002, and
4. no objection to the making of this order has been made by the person from whom the sum below was seized/the cash was unattended*.

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 section 296(1) of the Proceeds of Crime Act 2002, 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)

Cash is not to be released under this direction where section 298(4) of the Proceeds of Crime Act 2002 (which provides that detained cash may not be released whilst forfeiture proceedings are ongoing) applies.

Justice of the Peace

[or by Order of the Court, Clerk of the Court]

*Delete as appropriate

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FORM GApplication for forfeiture of detained cash

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Rule 7(1)

(Section 298(1) of the Proceeds of Crime Act 2002; MC (Detention and Forfeiture of Cash) Rules 2002 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 application

Amount seized

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)

Constable/Customs Officer**, apply for an order under 298(2) of the Proceeds of Crime Act 2002 for the forfeiture of cash in the sum of _____ together with any interest accruing thereon pursuant to section 296(1) of that Act, on the grounds that the cash is recoverable property or is intended by any person for use in unlawful conduct.

(state grounds)

To: The Justices' Chief Executive

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 section 295(2) of the Proceeds of Crime Act 2002***.

Note to copy recipients—If you are not the person from whom the cash was seized but the cash belongs to you and the court decides not to make a forfeiture order, you may apply to the court under section 301(4) of the Proceeds of Crime Act 2002 for the cash to be released to you. You can make an application before the court makes its decision on forfeiture. However, the court will not be able to release the cash to you until the forfeiture proceedings are finished.

*In the case of a means of unattended dispatch such as a letter, parcel or container, insert names and addresses, if known, of sender and intended recipient. In the case of any other unattended cash, state that you believe the cash was unattended and explain your grounds for believing that the cash was unattended.

**Delete as appropriate

*** In the case of a means of unattended dispatch such as a letter, parcel or container, the copy application and, if applicable, notification of hearing should be given to the sender and intended recipient (if known), rather than the person from whom the cash was seized. In the case of any other unattended cash, there is no requirement to give the copy application and, if applicable, notification of hearing to the person from whom the cash was seized.

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FORM HOrder for forfeiture of detained cash (section 298(2) of the Proceeds of Crime Act 2002; MC (Detention and Forfeiture of Cash) Rules 2002 r 7(7))

Rule 7(7)

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

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 section 299 of the Proceeds of Crime Act 2002. 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 means of unattended dispatch such as a letter, parcel or container, insert names, if known, of sender and intended recipient. In the case of any other unattended cash, state that the cash was unattended and state the grounds given by the applicant for believing that the cash was unattended.

**Delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedure to be followed for applications to a magistrates' court for the detention, further detention, forfeiture or release of cash seized under Chapter 3 of Part 5 of the Proceeds of Crime Act 2002. Cash may be seized by a constable or customs officer on reasonable suspicion that the cash represents the benefit from unlawful conduct or is intended for use in unlawful

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conduct. The Rules also prescribe the procedure to be followed for applications to a magistrates' court for compensation where no forfeiture order is made. In addition, the Rules prescribe the forms to be used in connection with the applications and hearings.