Rules made under s.51.

DRUG TRAFFICKING (DETENTION AND FORFEITURE OF CASH) RULES, 1995

(LN. 1995/062)

4.5.1995

Amending enactments	Relevant current provisions	Commencement date
LN. 1997/097		2.10.1997

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DRUG TRAFFICKING (DETENTION AND FORFEITURE OF CASH) RULES, 1995

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Title.

1. These Rules may be cited as the Drug Trafficking (Detention and Forfeiture of Cash) Rules, 1995.

Interpretation.

2. In these Rules, reference to a form is a reference to a form set out in the Schedule or a form to the like effect.

Application for continued detention of seized cash.

3. (1) An application for an order under section 48(2) for continued detention of cash seized under section 48(1) shall be made in writing in Form A to a justice of the peace.

(2) A copy of Form A, upon completion, 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 48(2) shall require the matters contained in it to be sworn by the applicant under oath, may require the applicant to answer any questions under oath, and may require any statement in response by the person from whom the cash was seized to be made under oath.

(2) The justice 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.

Unattended parcels, etc.

5. In rules 3, 4 and 9, references to the person from whom the cash was seized include references to the sender and the intended recipient, where known, of a letter, parcel, container or other means of unattended dispatch, but a justice of the peace shall not decline to hear an application in such a case solely on the ground that it has not been proved that the sender or intended recipient has received a copy of Form A.

Order for continued detention of seized cash.

6. (1) An order made by a justice of the peace under section 48(2) shall be in Form B.

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(2) Notice of any order mentioned in subrule (1) shall be given forthwith by the applicant to any person appearing to him to be affected by it and such notice shall be in the form set out in Form B and shall be accompanied by a copy of the order.

Notice of order for continued detention of seized cash.

7. Where in accordance with an order made under section 48(2), the applicant gives notice to any person affected by the order, the applicant shall notify the clerk to the magistrates' court of the names and addresses of the persons so notified.

Subsequent applications.

8. (1) An application under section 48(3) for further detention of cash shall be in Form C and shall be sent to the clerk to the magistrates' court.

(2) An application under section 48(6) for the release of detained cash shall be made in writing to the clerk to the magistrates' court, and shall specify the grounds on which it is made.

(3) The clerk to the magistrates' court when he receives an application in accordance with subrule (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 of the application and of the date fixed for the hearing.

(4) If the magistrates' court is satisfied that an order for further detention of cash should be made under section 48(3), it shall endorse the order for continued detention accordingly, and a copy of the order so endorsed shall be given by the clerk to any persons to whom notice of the order for continued detention has been given.

Direction for release of cash.

9. A direction under section 48(6)(a) for the release of detained cash shall be in Form D, and shall provide for the release of the cash within 7 days of the date of the giving 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 notice.

Forfeiture.

10. (1) An application for forfeiture of cash under section 49 shall be in Form E and shall be addressed to the clerk to the magistrates' court.

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(2) The clerk to the magistrates' court when he receives such an application shall fix a date for the hearing, shall notify the applicant thereof and shall notify any person to whom notice of an order for continued detention has been given of the application and of the date fixed for the hearing.

Joinder.

11. At any hearing under section 48(3) or (6) or under section 49 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 person be joined as a party to the proceedings and, if the court so orders, otherwise than at such a hearing, the clerk to the magistrates' court shall give notice to the other parties.

Notice.

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

Procedure at hearings.

13.(1) At the hearing of an application under section 48(3) or (6) or under section 49, any person to whom notice of the application has 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.

(2) Subject to the foregoing provisions of these rules, proceedings resulting from such an application shall be regulated in the same manner as proceedings on a complaint, and accordingly for the purposes of this rule the application shall be deemed to be a complaint, the applicant to be a complainant, the respondents to be the defendants, and any notice given by the clerk to the magistrates' court under rule 7(3) or 9(2) 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 to answer to any such notice.

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DRUG TRAFFICKING (DETENTION AND FORFEITURE OF CASH) RULES, 1995

SCHEDULE

Rule 2

FORM A

DRUG TRAFFICKING OFFENCES ACT, 1995

APPLICATION FOR CONTINUED DETENTION OF SEIZED CASH (SECTION 48(2)).

Gibraltar Magistrates' Court

Date . . . . . .

*Person from whom cash seized . . . . . .

*Address. . . . . .

. . . . . .

Amount seized (estimated) . . . . . .

Date of seizure. . . . . .

Time of seizure. . . . . .

Place of seizure. . . . . .

Name of applicant. . . . . .

Grade. . . . . .

Address of applicant. . . . . .

. . . . . .

I apply for an order under section 48(2) of the Drug Trafficking Offences Act, 1995 for the continued detention of the above cash.

I will state upon oath that–

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* *With letters, parcels, containers, etc. insert names and address of sender and addressee, if known.*

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(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. . . . . 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.

Signed . . . . . .

Note:

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 may require any statement in response by the person from whom the cash was seized to be given underoath.
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DRUG TRAFFICKING (DETENTION AND FORFEITURE OF CASH) RULES, 1995

FORM B

DRUG TRAFFICKING OFFENCES ACT, 1995

ORDER FOR CONTINUED DETENTION OF SEIZED CASH
(SECTION 48(2))

Gibraltar Magistrates' Court

Date. . . . . .

+Person from whom cash was seized: . . . . . .

+Address: . . . . . .

. . . . . .

. . . . . .

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

. . . . . .

at (time) . . . . . .

on (date) . . . . . .

at (place) . . . . . .

Name of applicant: . . . . . .

After hearing oral evidence from the applicant / *representations from . . . . . (name)
who is the person from whom the cash was seized.

+ *With letters, parcels, containers etc insert names of sender and addressee, if known.*
* *Delete as necessary*

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Decision

The above cash is to be detained for . . . . . (state period of up to three months) from the date of this order or until release is directed (if sooner).

Notice of this order

The applicant must immediately send a copy of this order to anyone affected by it, accompanied by a notice in the form set out below.

Justice of the Peace.
Date: . . . . . .

Further detention under Section 48(2) of the Drug Trafficking Offences Act, 1995.			
Date of order	Oral evidence from applicant/ *representations from person from whom cash has been seized	Period of detention (up to 3 months)	Justice of the Peace

CUS 203

NOTICE TO PERSONS AFFECTED BY ORDER FOR CONTINUED DETENTION OF SEIZED CASH

Cash in the sum of . . . . . .(amount) was seized on . . . . . (date and time)
at . . . . . (place)
from . . . . . .(person from whom received),
and on . . . . . (date of order)

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an order was made under section 48(2) of the Drug Trafficking Offences Act, 1995 authorising the continued detention of the cash for a period of . . . . . (state period).

A copy of the order is enclosed with this notice.

You are being given notice of the order because it appears that you may be affected by it. You may be able to apply for the release of the cash under section 48(6) of the Drug Trafficking Offences Act, 1995.

At the end of the above-mentioned period of detention, an application may be made for the further detention of the cash. You will be notified by the court if such an application is made, or if any other person makes an application to the court for release of the cash.

Signed. . . . . .

Date . . . . . .

CUS 204”

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DRUG TRAFFICKING (DETENTION AND FORFEITURE OF CASH) RULES, 1995

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FORM C

DRUG TRAFFICKING OFFENCES ACT, 1995

APPLICATION FOR FURTHER DETENTION OF SEIZED CASH
(SECTION 48(3))

Gibraltar Magistrates' Court

Date. . . . . .

Date of order for continued detention of seized cash . . . . . .

Name of applicant. . . . . .

Grade. . . . . .

Address of applicant . . . . . .

. . . . . .

I apply for an order under section 48(3) of the Drug Trafficking Offences Act, 1995 authorising the further detention of cash in the sum of . . . . . .(amount).

Signed. . . . . .

To: The Clerk to the Magistrates' Court.

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FORM D

DRUG TRAFFICKING OFFENCES ACT, 1995

DIRECTION FOR RELEASE OF DETAINED CASH
(SECTION 48(6))

Gibraltar Magistrates' Court

Date. . . . . .

Name of of applicant . . . . . .

Grade. . . . . .

Address of applicant. . . . . .

. . . . . .

On the application of . . . . . (name of applicant), After hearing oral evidence from the applicant and/or representations from and/or on behalf of . . . . . (name) being the person from whom the cash was seized or a person affected by the seizure of the cash.

Decision:
It is directed that the sum of . . . . . together with interest accruing thereon in accordance with section 48(8) of the Drug Trafficking Offences Act, 1995 be released to or to the order of . . . . . .(name) on or before . . . . . (date, not more than 7 days from the date of order or such later date as with the agreement of the person from whom the cash has been seized may be specified.)

Justice of the Peace

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DRUG TRAFFICKING (DETENTION AND FORFEITURE OF CASH) RULES, 1995

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FORM E

DRUG TRAFFICKING OFFENCES ACT, 1995

APPLICATION FOR FORFEITURE OF CASH SEIZED UNDER SECTION 48

Gibraltar Magistrates' Court

Date. . . . . .

Name of applicant. . . . . .

Grade. . . . . .

Address of applicant. . . . . .

. . . . . .

I apply for an order under section 49(1) of the Drug Trafficking Offences Act, 1995 for the forfeiture of cash in the sum of . . . . . .(amount) seized on. . . . . (date and time) from . . . . . (person from whom seized), together with any interest accruing thereon pursuant to section 48 of the Drug Trafficking Offences Act, 1995 on the grounds that the said cash–

*(a) directly or indirectly represents any person's proceeds of drug trafficking, and/or

*(b) is intended by any person for use in drug trafficking .

To:The Clerk to the Magistrates' Court.

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* *Delete as necessary*

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