



BERMUDA

MAGISTRATES' COURTS (PROCEEDS OF CRIME) (DETENTION AND
FORFEITURE OF CASH) RULES 1999

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The Magistrates, in exercise of the power conferred on them under section 21 of the Magistrates Act 1948 and section 52 of the Proceeds of Crime 1997, hereby make the following Rules as approved by the Chief Justice-

Citation and interpretation

1 (1) These Rules may be cited as the Magistrates' Courts (Proceeds of Crime) (Detention and Forfeiture of Cash) Rules 1999.

(2) In these Rules-

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“the Act” means the Proceeds of Crime Act 1997;

“cash” has the meaning given in section 52(4) of the Act (that is to say, it includes coins and bank-notes in any currency and negotiable instruments);

“clerk” means the person whom the Senior Magistrate may designate as the clerk of the Magistrates’ Court for the purposes of these Rules;

“criminal conduct” has the meaning given in section 3 of the Act;

“form” means a form set out in the Schedule to these Rules or a form to the like effect.

Application for continued detention of seized cash

2 (1) An application for an order under section 50(2) of the Act for continued detention of cash seized under section 50(1) shall be made in Form PoC 1 to a magistrate.

(2) A copy of the application under paragraph (1) above shall be given by the applicant to the person from whom the cash was seized.

Hearing of application for continued detention of seized cash

3 (1) The magistrate considering an application under section 50(2) of the Act-

- (a) shall require the matters contained in it to be sworn by the applicant under oath;
- (b) may require the applicant to answer any questions under oath; and
- (c) may require any statement in response by the person from whom the cash was seized to be made under oath.

(2) The magistrate 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.

4 In rules 2, 3 and 8, 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 magistrate 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 the written application under rule 2(2).

Order for continued detention of seized cash

5 (1) An order made by a magistrate under section 50(2) of the Act shall be in Form PoC 2.

(2) Notice of any order mentioned in paragraph (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 PoC 2 and shall be accompanied by a copy of the order.

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Notice of order for continued detention of seized cash

6 Where, in accordance with an order made under section 50(2) of the Act, the applicant gives notice to any person affected by the order, the applicant shall notify the clerk of the names and addresses of the persons so notified.

Subsequent applications

7 (1) An application under section 50(3) of the Act for further detention of cash shall be in Form PoC 3 and shall be sent to the clerk.

(2) An application under section 50(5) of the Act for the release of detained cash shall be made in writing to the clerk, and shall specify the grounds on which it is made.

(3) The clerk shall fix a date for the hearing of such an 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 court is satisfied that an order for further detention of cash should be made under section 50(3) of the Act, 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

8 A direction under section 50(5)(a) of the Act for the release of detained cash shall be in Form PoC 4, and shall provide for the release of the cash within 7 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 notice.

Forfeiture

9 (1) An application for forfeiture of cash under section 51 of the Act shall be in Form PoC 5 and shall be addressed to the clerk.

(2) The clerk 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.

Legal expenses for appeal against order

10 (1) An application under section 51(4) of the Act for the release of cash to meet the appellant's legal expenses shall be made in writing and shall contain the name and address of the barrister and attorney instructed by the appellant and the amount requested to be released, together with any evidence in support of the application.

(2) A copy of the written application shall be served on the person on whose application the order forfeiting cash was made.

(3) The clerk who receives such an application shall fix a date for the hearing of the application, shall notify the appellant thereof, and shall notify any persons to whom notice of forfeiture was given.

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(4) A direction for the release of cash under section 51(4) of the Act shall be in Form PoC 6.

Joinder

11 At any hearing under section 50(3) or (5) or 51 of the Act, 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 shall give notice to the other parties.

Notice

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

Procedure of hearings

13 (1) At the hearing of an application under section 50(3) or (5) or 51 of the Act, any person to whom notice of the application has been given may attend and be heard on the question whether-

- (a) a further order should be made,
- (b) an existing order should be discharged, or
- (c) 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 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 this rule the application shall be deemed to be a complaint, the applicant to be a complainant, the respondents to be defendants, and any notice given by the clerk under rule 7(3) or 9(2) of these Rules 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.

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SCHEDULE

(Rule 1(2))

FORMS

FORM POC 1

Application for Continued Detention of Seized Cash - section 50(2) of Proceeds of Crime Act 1997

Date.....
Person from whom cash seized.....
Address.....
Amount seized (**estimated).....
Date of seizure.....
Time of seizure.....
Place of seizure.....
(Name of applicant)..... of
(address and official position of applicant)
.....

applies for an order under section 50(2) of the Proceeds of Crime Act 1997 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, criminal conduct, 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.**

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

*** Delete as appropriate*

Note:

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A copy of this application must be given to the person from whom the cash was seized. The magistrate 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 magistrate may require any statement in response by the person from who the cash was seized to be given under oath.

FORM POC 2

Order for Continued Detention of Seized Cash - section 50(2) of Proceeds of Crime Act 1997

Date.....
Person from whom cash seized.....
Address.....
Amount seized.....
Date of seizure.....
Time of seizure.....
Place of seizure.....

On the application of, (name of applicant), after hearing oral evidence from the applicant/representations from (name), being the person from whom the cash was seized,

Decision. It is ordered that the above-mentioned cash be further detained for a period of (state period up to a maximum of three months) from the date of this order or until its release may be sooner directed.

Notice of this order must be given forthwith by the applicant to any person appearing to him to be affected by it. Such notice shall be in the form set out below, and shall be accompanied by a copy of this order.

Magistrate

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

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 seized), and on (date of order) an order was made under section 50(2) of the Proceeds of Crime Act 1997 authorising the continued detention of the cash for a period of (state period). A copy of 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 50(5) of the Proceeds of Crime Act 1997.

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At the end of the above-mentioned period of detention an application may be made for its further detention. 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

FORM POC 3

Application for Further Detention of Seized Cash - section 50(3) of Proceeds of Crime Act 1997

Date.....

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

(Name of applicant).....

of.....

(address and official position of applicant) applies for an order under section 50(3) of the Proceeds of Crime Act 1997 authorising the further detention of cash in the sum of (amount).

To: The Clerk to Magistrates' Court

FORM POC 4

Direction for Release of Detained Cash - section 50(2) of Proceeds of Crime Act 1997

Date.....

On the application of (name of applicant).....

of (address of applicant).....

after hearing oral evidence from...../representations from.....

Decision. It is directed that the sum of together with any interest accruing thereon in accordance with section 52(1) of the Proceeds of Crime Act 1997, be released to or to the order of (name) on or before (date, not more than 7 days from date of order or such later date as with the agreement of the applicant may be specified).

Magistrate

FORM POC 5

Application for Forfeiture of Cash Seized under section 50 of Proceeds of Crime Act 1997

Date.....

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(Name of applicant)..... of

(address and official position of applicant) applies for an order under section 51(1) of the Proceeds of Crime Act 1997 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 52(1) of that Act, on the grounds that the said cash-

- (a) directly or indirectly represents any person's proceeds of criminal conduct;
or
- (b) is intended by any person for use in criminal conduct.*

To: The Clerk of the Magistrates' Court

* *Delete as appropriate*

FORM POC 6

Application for Release of Cash for Legal Expenses under section 51(4) of Proceeds of Crime Act 1997

Date.....
On the application of (name of applicant).....
of (address of applicant).....
after hearing oral evidence from.....
/representations from.....

Decision. It is directed that the sum of be released to meet the legal expenses of the applicant in connection with his appeal, in accordance with section 51 of the Proceeds of Crime Act 1997.

Magistrate

Made this 2nd day of December 1999
Senior Magistrate
Chief Justice