

Guidelines on Cash Seizures

This document should be read in conjunction with the Criminal Justice Act 1994 Act and the Proceeds of Crime (Amendment) Act 2005

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A more recent version of this manual is available

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The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Appendix 1: Court Documents

AN CHUIRT DUICHE



THE DISTRICT COURT

***(INSERT DISTRICT) DISTRICT COURT
DISTRICT COURT AREA (INSERT DISTRICT NUMBER)***

Criminal Justice Act 1994, Section 38 (as amended by Section 20, Proceeds of Crime (Amendment) Act 2005

(1) INFORMATION

The information of ***(INSERT OFFICERS NAME)***, an Officer of Customs & Excise and an Officer of the Revenue Commissioners, ***(INSERT ADDRESS OF OFFICERS WORKPLACE)***

Who says on oath that:

On the ***(INSERT DATE CASH WAS SEIZED)*** approximately ***(INSERT TIME CASH WAS SEIZED)*** at ***(INSERT LOCATION CASH WAS SEIZED)*** in the court (area and) District aforesaid, I seized and detained in accordance with Section 38 of the Criminal Justice Act, 1994, as amended by Section 20, Proceeds of Crime (Amendment) Act 2005 from one ***(INSERT NAME OF RESPONDENT)***, cash in the amount of ***(INSERT AMOUNT OF CASH SEIZED)*** approximately (being an amount not less than the sum prescribed by the Minister for Justice, Equality and Law Reform, for the purpose of the said Act, as the prescribed sum) which said cash was being *exported from/imported into* ***(DELETE AS APPLICABLE)*** the State.

I had at the time of such seizure and detention and have now reasonable grounds for suspecting that:

the said ***(INSERT NAME OF RESPONDENT)*** was *exporting/importing* ***(DELETE AS APPLICABLE)*** or intended to or was about to export/import the said cash **and** ***(DELETE ENTIRELY IF SEIZURE WAS MADE INLAND)***

the said cash directly or indirectly represented the proceeds of crime **and/or** the said cash was intended by ***(INSERT NAME OF RESPONDENT)*** for use in connection with criminal conduct.

The basis for my so suspecting is as follows:

I believe that the continued detention of the said cash beyond forty-eight hours from its seizure and detention is justified

while its origin or derivation is further investigated **and/or**

while consideration is given to the institution (whether in the State or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

The basis for my belief is as follows:

(INSERT REASONS FOR SUSPICION HERE)

A)

B)

C)

I hereby apply for an order authorising the detention of the said cash for the period of **three months** (being a period not exceeding three months) until the ***(INSERT DATE THE ORDER IS SOUGHT UNTIL)***

Signed _____
Informant

Sworn before me this ***(INSERT DATE)*** day of ***(INSERT MONTH)*** 20____.

Signed _____
Judge of the District Court

* Initial order sought for a period of three months to allow for further investigations. Cash may be returned to the respondent during this period if investigations are concluded before the expiry of this order.

AN CHUIRT DUICHE



THE DISTRICT COURT

(INSERT DISTRICT) DISTRICT COURT
(1) DISTRICT COURT AREA (INSERT DISTRICT NUMBER)

Criminal Justice Act 1994, Section 38 (as amended by Section 20, Proceeds of Crime (Amendment) Act 2005)

**ORDER AUTHORISING DETENTION OF CASH BEYOND
FORTY-EIGHT HOURS**

WHEREAS from the application by information on oath and in writing under Section 38(2) of the above named Act of 1994 (as amended) sworn before me on this day by **(INSERT OFFICERS NAME)**, and Officer of Customs and Excise and an authorised Officer of the Revenue Commissioners, of **(INSERT ADDRESS OF OFFICERS WORKPLACE)**

I AM SATISFIED THAT

On the **(INSERT DATE CASH WAS SEIZED)**, at **(INSERT LOCATION CASH WAS SEIZED)** in the Court (area and) District aforesaid, in accordance with Section 38 of the Criminal Justice Act, 1994, as amended by Section 20, Proceeds of Crime (Amendment) Act 2005 the said applicant seized and detained from one **(INSERT NAME OF RESPONDENT)**, cash in the amount of **(INSERT AMOUNT OF CASH SEIZED)** approximately (being an amount not less than the sum prescribed by the Minister for Justice, Equality and Law Reform, for the purpose of the said Act, as the prescribed sum).

The said applicant had at the time of such seizure and detention and has reasonable ground for suspecting that:
the said **(INSERT NAME OF RESPONDENT)** was exporting/importing **(DELETE AS APPLICABLE)** or intended to export/import **(DELETE AS APPLICABLE)** or was about to export/import the said cash **and**
the said cash directly or indirectly represented the proceeds of crime **and/or**
the said cash was intended by **(INSERT NAME OF RESPONDENT)** for use in connection with criminal conduct.

The continued detention of the said cash beyond forty-eight hours from its seizure and detention is justified:
while its origin or derivation is further investigated **and**
while consideration is given to the institution (whether in the State or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

IT IS ORDERED that the detention of the said cash seized and detained by the applicant by virtue of section 38 of the above-mentioned Act be and is hereby authorised for a period of **three months** (being a period not exceeding three months) from the date of this Order until the **xx day of xxxx 20__**. ***(INSERT DATE THE ORDER IS SOUGHT UNTIL)***

Notice of the Order shall be given to ***(INSERT NAME OF RESPONDENT)*** and any other person affected by this Order.

Dated this **xx day of xxxx 20__**. ***(INSERT DATE THE APPLICATION IS BEING MADE)***

Signed _____
Judge of the District Court.

A more recent version of this manual is available.

Appendix 2: Legislation

Criminal Justice Act 1994

PART VI

Drug Trafficking Money Imported or Exported in Cash

38. -

- (1) A member of the Garda Síochána or an officer of customs and excise may seize and, in accordance with this section, detain any cash which is being imported into or exported from the State if its amount is not less than the prescribed sum and he has 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.
- (2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its detention beyond forty-eight hours is authorised by an order made by a judge of the District Court and no such order shall be made unless the judge is satisfied-
 - (a) that there are reasonable grounds for the suspicion mentioned in *subsection (1)* of this section, and
 - (b) that detention of the cash beyond forty-eight hours is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the State or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.
- (3) Any order under *subsection (2)* of this section 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 judge of the District Court, 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
 - (b) the total period of detention shall not exceed two years from the date of the order under subsection (2) of this section.

- (4) Any application for an order under *subsection (2) or (3)* of this section may be made by a member of the Garda Síochána or an officer of customs and excise.
- (5) At any time while cash is detained by virtue of the foregoing provisions of this section a judge of the District Court may direct its release if satisfied-
- (a) 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)* of this section, or
 - (b) on an application made by any other person, that detention of the cash is not for that or any other reason justified.
- (6) If at a time when any cash is being detained by virtue of the foregoing provisions of this section-
- (a) an application for its forfeiture is made under *section 39* of this Act; or
 - (b) proceedings are instituted (whether in the State 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.

39. -

- (1) A judge of the Circuit Court may order the forfeiture of any cash which has been seized under *section 38* 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, or is intended by any person for use in, drug trafficking.
- (2) Any application under this section shall be made, or caused to be made, by the Director of Public Prosecutions.
- (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.

40. -

- (1) This section applies where an order for the forfeiture of cash (in this section known as “the *section 39* order”) is made under *section 39* of this Act.
- (2) Any party to the proceedings in which the *section 39* order is made (other than the Director of Public Prosecutions) may, before the end of the period of 30 days beginning with the date on which it is made, appeal in respect of the order to the High Court.
- (3) An appeal under this section shall be by way of a rehearing.
- (4) On an application made by the appellant to a judge of the Circuit Court at any time, the judge may order the release of so much of the cash to which *section 39* order relates as he considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.
- (5) When hearing an appeal under this section the High Court may make such order as it considers appropriate.
- (6) If it upholds the appeal, the judge may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.
- (7) *Section 39 (3)* of this Act shall apply in relation to a rehearing on an appeal under this section as it applies to proceedings under *section 39* of this Act.

41. -

Cash seized under this Part of this Act and detained for more than forty-eight 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.

42. -

- (1) An order under *section 38 (2)* of this Act shall provide for notice to be given to persons affected by the order.
- (2) Provision may be made by rules of court with respect to applications or appeals to any court under this Part of the Act, for the giving of notice of such applications or appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part of this Act before any court.

43. -

- (1) In this Part of this Act-

“cash” includes coins and notes in any currency;

“exported” in relation to any cash, includes its being brought to any place in the State for the purpose of being exported.

- (2) In *section 38* of this Act “the prescribed sum” means such sum as may for the time being be prescribed for the purposes of that section by any regulations made under *section 44* of this Act.

44. -

- (1) The Minister may by regulations prescribe a sum for the purposes of *section 38* of this Act and in determining under that section whether an amount of foreign currency is not less than the prescribed sum that amount shall be converted at the prevailing rate of exchange.
- (2) Where it is proposed to make regulations under *subsection 1* of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such House.

45. -

Any money representing cash which is forfeited under this Part of this Act or accrued interest thereon shall, following the payment of any expenses or remuneration that may have risen in relation to such forfeiture, be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

Proceeds of Crime (Amendment) Act 2005

PART 4

Amendments to Act of 1994

Amendment of Title to Part VI of Act of 1994

19. The Title to Part VI of the Act of 1994 is hereby amended by the substitution of “SEARCH FOR, SEIZURE AND DISPOSAL OF MONEY GAINED FROM, OR FOR USE IN, CRIMINAL CONDUCT” for “DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH”.

Amendment of section 38 (seizure and detention) of Act of 1994

20. Section 38 of the Act of 1994 is hereby amended-

(a) by the substitution of the following subsections for subsection (1):

“(1) A member of the Garda Síochána or an officer of customs and excise may search a person if the member or officer has reasonable grounds for suspecting that –

- (a) the person is importing or exporting, or intends or is about to import or export, an amount of cash which is not less than the prescribed sum, and
- (b) the cash directly or indirectly represents the proceeds of crime or is intended by any person for use in connection with any criminal conduct.

(1A) A member of the Garda Síochána or an officer of the Revenue Commissioners may seize and in accordance with this section detain any cash (including cash found during a search under subsection (1)) if –

- (a) its amount is not less than the prescribed sum, and
- (b) he or she has reasonable grounds for suspecting that it directly or indirectly represents the proceeds of crime or is intended by any person for use in any criminal conduct.”,

and

(b) by the insertion of the following subsection after subsection (3):

“(3A) Where an application is made under section 39(1) for an order for the forfeiture of cash detained under this section, the cash shall, notwithstanding subsection (3), continue to be so detained until the application is finally determined.”.

Amendment of Section 39 (forfeiture of seized cash) of Act of 1994

21. Section 39(1) of Act of 1994 is hereby amended by the substitution of “the proceeds of crime or is intended by any person for use in connection with any criminal conduct” for “any person’s proceeds of, or is intended by any person for use in drug trafficking”.

Amendment of Section 43 (interpretation of Part VI) of Act of 1994

22. Section 43 of the Act of 1994 is hereby amended by the substitution of the following subsection for subsection (1):

“(1) In this Part of the Act-

“cash” includes coins and notes in any currency, postal orders, cheques of any kind (including travellers’;

“criminal conduct” means any conduct which –

- a. constitutes an offence or more than one offence, or
- b. where the conduct occurs outside the State, constitutes an offence under the law of the state or territory concerned and would constitute an offence or more than one offence if it occurred within the State;

“exported” in relation to any cash, includes its being brought to any place in the State for the purpose of being exported;

“proceeds of crime” has the meaning given to that expression by section 1(1) (as amended by section 3 of the Proceeds of Crime (Amendment) Act 2005) of the Proceeds of Crime Act 1996.”.

Criminal Justice Act 1994

PART VI as amended by Proceeds of Crime (Amendment) Act 2005

PART 4 (**non-statutory document**)

SEARCH FOR, SEIZURE AND DISPOSAL OF MONEY GAINED FROM, OR FOR USE IN, CRIMINAL CONDUCT (S19 POCA 2005)

38.– *(1) A member of the Garda Síochána or an officer of customs and excise may search a person if the member or officer has reasonable grounds for suspecting that –

(a) the person is importing or exporting, or intends or is about to import or export, an amount of cash which is not less than the prescribed sum, and

(b) the cash directly or indirectly represents the proceeds of crime or is intended by any person for use in connection with any criminal conduct.

*(1A) A member of the Garda Síochána or an officer of the Revenue Commissioners may seize and in accordance with this section detain any cash (including cash found during a search under subsection (1)) if –

(a) its amount is not less than the prescribed sum, and

(b) he or she has reasonable grounds for suspecting that it directly or indirectly represents the proceeds of crime or is intended by any person for use in any criminal conduct.

*(as amended by s20(a) POCA 2005)

(2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its detention beyond forty-eight hours is authorised by an order made by a judge of the District Court and no such order shall be made unless the judge is satisfied-

(b) that there are reasonable grounds for the suspicion mentioned in *subsection (1)* of this section, and

(c) that detention of the cash beyond forty-eight hours is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the State or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under *subsection (2)* of this section 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 judge of the District Court, 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
- (b) the total period of detention shall not exceed two years from the date of the order under *subsection (2)* of this section.

******(3A) Where an application is made under section 39(1) for an order for the forfeiture of cash detained under this section, the cash shall, notwithstanding subsection (3), continue to be so detained until the application is finally determined.

****** (as amended by s20(b) POCA 2005)

(4) Any application for an order under *subsection (2)* or *(3)* of this section may be made by a member of the Garda Síochána or an officer of customs and excise.

(5) At any time while cash is detained by virtue of the foregoing provisions of this section a judge of the District Court may direct its release if satisfied-

- (a) 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)* of this section, or
- (b) on an application made by any other person, that detention of the cash is not for that or any other reason justified.

(6) If at a time when any cash is being detained by virtue of the foregoing provisions of this section-

- (a) an application for its forfeiture is made under *section 39* of this Act; or
- (b) proceedings are instituted (whether in the State 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.

39. -

- (1) A judge of the Circuit Court may order the forfeiture of any cash which has been seized under *section 38* of this Act if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents ***the proceeds of crime, or is intended by any person for use in connection with any criminal conduct.

*** (as amended by s21 POCA 2005)

- (2) Any application under this section shall be made, or caused to be made, by the Director of Public Prosecutions.

- (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.

40. -

- (1) This section applies where an order for the forfeiture of cash (in this section known as "the *section 39* order") is made under *section 39* of this Act.

- (2) Any party to the proceedings in which the *section 39* order is made (other than the Director of Public Prosecutions) may, before the end of the period of 30 days beginning with the date on which it is made, appeal in respect of the order to the High Court.

- (3) An appeal under this section shall be by way of a rehearing.

- (4) On an application made by the appellant to a judge of the Circuit Court at any time, the judge may order the release of so much of the cash to which *section 39* order relates as he considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.

- (5) When hearing an appeal under this section the High Court may make such order as it considers appropriate.

- (6) If it upholds the appeal, the judge may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.

- (7) *Section 39 (3)* of this Act shall apply in relation to a rehearing on an appeal under this section as it applies to proceedings under *section 39* of this Act.

41. - Cash seized under this Part of this Act and detained for more than forty-eight 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.

42. – (1) An order under *section 38 (2)* of this Act shall provide for notice to be given to persons affected by the order.

(2) Provision may be made by rules of court with respect to applications or appeals to any court under this Part of the Act, for the giving of notice of such applications or appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part of this Act before any court.

43. - **** (1) In this Part of the Act-

“cash” includes coins and notes in any currency, postal orders, cheques of any kind (including travellers’;

“criminal conduct” means any conduct which –

(a) constitutes an offence or more than one offence, or

(b) where the conduct occurs outside the State, constitutes an offence under the law of the state or territory concerned and would constitute an offence or more than one offence if it occurred within the State;

“exported” in relation to any cash, includes its being brought to any place in the State for the purpose of being exported;

“proceeds of crime” has the meaning given to that expression by section 1(1) (as amended by section 3 of the Proceeds of Crime (Amendment) Act 2005) of the Proceeds of Crime Act 1996.

**** (as amended by s22 POCA 2005)

(2) In *section 38* of this Act “the prescribed sum” means such sum as may for the time being be prescribed for the purposes of that section by any regulations made under *section 44* of this Act.

44. - (1) The Minister may by regulations prescribe a sum for the purposes of *section 38* of this Act and in determining under that section whether an amount of foreign currency is not less than the prescribed sum that amount shall be converted at the prevailing rate of exchange.

(2) Where it is proposed to make regulations under *subsection 1* of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such House.

45. - Any money representing cash which is forfeited under this Part of this Act or accrued interest thereon shall, following the payment of any expenses or remuneration that may have risen in relation to such forfeiture, be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

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