STATUTORY INSTRUMENTS

2011 No. 1709

The Criminal Procedure Rules 2011

PART 6

INVESTIGATION ORDERS

SECTION 3: ORDERS UNDER THE TERRORISM ACT 2000

[Note. The rules in Section 2 (general rules) also apply.]

Application for an order under the Terrorism Act 2000

6.6.—(1) This rule applies where an applicant wants the court to make one of the orders listed in rule 6.1(1).

(2) The applicant must—

(a) apply in writing;

(b) serve the application on—

(i) the court officer, and

(ii) the respondent (unless the court otherwise directs);

(c) identify the respondent;

(d) give the information required by whichever of rules 6.7 to 6.10 applies; and

(e) serve any order made on the respondent.

[Note. Under rules 6.3 and 6.4, the court may—

(a) *exercise its powers in a respondent's absence; and*

(b) *dispense with a requirement for service.*

Under rule 6.12, an applicant may withhold information from material that is served on a respondent.]

Content of application for a production etc. order

6.7. As well as complying with rule 6.6, an applicant who wants the court to make an order for the production of, or access to, material, or for a statement of its location, must—

(a) describe that material;

(b) explain why the applicant thinks the material is—

(i) in the respondent's possession, custody or power, or

(ii) likely to be so within 28 days of the order;

(c) explain how the material constitutes or contains excluded material or special procedure material;

(d) confirm that none of the material is expected to be subject to legal privilege;

(e) explain why the material is likely to be of substantial value to the investigation;

(f) explain why it is in the public interest for the material to be produced, or for the applicant to be given access to it, having regard to—

(i) the benefit likely to accrue to the investigation if it is obtained, and

(ii) the circumstances in which the respondent has the material, or is expected to have it; and

(g) propose—

(i) the terms of the order, and

(ii) the period within which it should take effect.

[Note. See paragraphs 5 to 9 of Schedule 5 to the Terrorism Act 2000. The applicant for a production, etc. order must be a constable.

Under paragraph 4 of Schedule 5 to the 2000 Act, 'legal privilege', 'excluded material' and 'special procedure material' mean the same as under sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984.

The period within which an order takes effect must be specified in the order and, unless the court otherwise directs, must be—

(a) *where the respondent already has the material, 7 days from the date of the order; or*

(b) *where the respondent is likely to have the material within 28 days, 7 days from the date the respondent notifies the applicant of its receipt.]*

Content of application for an explanation order

6.8. As well as complying with rule 6.6, an applicant who wants the court to make an explanation order must—

(a) identify the material that the applicant wants the respondent to explain;

(b) confirm that the explanation is not expected to infringe legal privilege; and

(c) propose—

(i) the terms of the order, and

(ii) the period within which it should take effect, if 7 days from the date of the order would not be appropriate.

[Note. See paragraph 13 of Schedule 5 to the Terrorism Act 2000. The applicant for an explanation order must be a constable.

An explanation order can require a lawyer to provide a client's name and address.]

Content of application for a customer information order

6.9. As well as complying with rule 6.6, an applicant who wants the court to make a customer information order must—

(a) explain why it is desirable for the purposes of the investigation to trace property said to be terrorist property within the meaning of the Terrorism Act 2000;

(b) explain why the order will enhance the effectiveness of the investigation; and

(c) propose the terms of the order.

[Note. See Schedule 6 to the Terrorism Act 2000. The applicant for a customer information order must be a police officer of at least the rank of superintendent.

'Customer information' is defined by paragraph 7 of Schedule 6 to the 2000 Act. 'Terrorist property' is defined by section 14 of the Act.]

Content of application for an account monitoring order

6.10. As well as complying with rule 6.6, an applicant who wants the court to make an account monitoring order must—

(a) specify—

(i) the information sought,

(ii) the period during which the applicant wants the respondent to provide that information (to a maximum of 90 days), and

(iii) where, when and in what manner the applicant wants the respondent to provide that information;

(b) explain why it is desirable for the purposes of the investigation to trace property said to be terrorist property within the meaning of the Terrorism Act 2000;

(c) explain why the order will enhance the effectiveness of the investigation; and

(d) propose the terms of the order.

[Note. See Schedule 6A to the Terrorism Act 2000. The applicant for an account monitoring order must be a police officer.

'Terrorist property' is defined by section 14 of the Act.]

Application to vary or discharge an order

6.11.—(1) This rule applies where one of the following wants the court to vary or discharge an order listed in rule 6.1(1)—

(a) an applicant;

(b) the respondent; or

(c) a person affected by the order.

(2) That applicant, respondent or person affected must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on—

(i) the court officer, and

(ii) the respondent, applicant, or any person known to be affected, as applicable;

(c) explain why it is appropriate for the order to be varied or discharged;

(d) propose the terms of any variation; and

(e) ask for a hearing, if one is wanted, and explain why it is needed.

Application containing information withheld from a respondent or other person

6.12.—(1) This rule applies where—

(a) an applicant serves on a respondent or other person an application for one of the orders listed in rule 6.1(1), or for the variation or discharge of such an order; and

(b) the application includes information that the applicant thinks ought not be revealed to that recipient.

(2) The applicant must—

(a) omit that information from the part of the application that is served on the respondent or other person;

(b) mark the other part, to show that it is only for the court; and

(c) in that other part, explain why the applicant has withheld it.

(3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of the respondent and any other person.

(4) At a hearing of an application to which this rule applies—

(a) the general rule is that the court will receive, in the following sequence—

(i) representations first by the applicant and then by the respondent and any other person, in the presence of them all, and then

(ii) further representations by the applicant, in the others' absence; but

(b) the court may direct other arrangements for the hearing.

Application to punish for contempt of court

6.13.—(1) This rule applies where a person is accused of disobeying—

(a) a production etc. order made under paragraph 5 of Schedule 5 to the Terrorism Act 2000;

(b) an explanation order made under paragraph 13 of that Schedule; or

(c) an account monitoring order made under paragraph 2 of Schedule 6A to that Act.

(2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See paragraphs 10(1) and 13(5) of Schedule 5, and paragraph 6(1) of Schedule 6A, to the Terrorism Act 2000, and section 45 of the Senior Courts Act 1981(**1**)*.*

Disobedience to an explanation order or to a customer information order is an offence: see paragraph 14 of Schedule 5, and paragraph 1(3) of Schedule 6, to the 2000 Act.]

(**1**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).