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STATUTORY INSTRUMENTS

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**2017 No. 755**

**The Criminal Procedure (Amendment No. 3) Rules 2017**

**Amendments to the Criminal Procedure Rules 2015**

**10.** In Part 47 (Investigation orders and warrants)—

- (a) in rule 47.1 (When this Part applies) for “47.51 and 47.54” substitute “47.51, 47.54 and 47.59”;
- (b) in rule 47.1 (When this Part applies), as amended by paragraph (a) of this rule, for “47.54 and 47.59” substitute “47.54, 47.59 and 47.62”;
- (c) in rule 47.4 (Investigation orders; When this Section applies)—
  - (i) for paragraph (c) substitute—
    - “(c) for the purposes of—
      - (i) a terrorist investigation, a Circuit judge can make, and the Crown Court can vary or discharge, an account monitoring order, under paragraphs 2 and 4 of Schedule 6A to the 2000 Act<sup>(1)</sup>,
      - (ii) a terrorist financing investigation, a judge entitled to exercise the jurisdiction of the Crown Court can make, and the Crown Court can vary or discharge, a disclosure order, under paragraphs 9 and 14 of Schedule 5A to the 2000 Act<sup>(2)</sup>,”
    - (ii) in the first paragraph of the note to the rule, renumber sub-paragraphs (c) and (d) as (d) and (e) respectively and after sub-paragraph (b) insert—
      - “(c) *for the purposes of a terrorist financing investigation under the Terrorism Act 2000, a disclosure order, requiring a person to provide information or documents, or to answer questions;*”
    - (iii) in the seventh paragraph of the note to the rule, for sub-paragraph (a) substitute—
      - “(a) *an investigation into (i) whether a person has benefited from criminal conduct, (ii) the extent or whereabouts of such benefit, (iii) the available amount in respect of that person, or (iv) the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of that person (‘a confiscation investigation’);*”
    - (iv) in the seventh paragraph of the note to the rule, renumber sub-paragraph (e) as (g) and after sub-paragraph (d) insert—
      - “(e) *an investigation into the derivation of property detained under the 2002 Act, or into whether such property is intended to be used in unlawful conduct (‘a detained property investigation’);*

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(1) 2000 c. 11; Schedule 6A was inserted by section 3 of, and paragraph 1(1) and (3) of Part 1 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24). Paragraph 4 is amended by section 41(5)(c) of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(2) 2000 c. 11; Schedule 5A is inserted by Schedule 2 to the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

- (f) *an investigation into the derivation of money held in an account in relation to which an account freezing order made under the 2002 Act has effect, or into whether such money is intended to be used in unlawful conduct ('a frozen funds investigation');*”,
- (v) in the eighth paragraph of the note to the rule, in sub-paragraph (a) for “or a detained cash investigation” substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”, and
- (vi) in the ninth paragraph of the note to the rule, in sub-paragraph (b) after “paragraph 10 of Schedule 5” insert “, paragraph 14 of Schedule 5A”;
- (d) in rule 47.9 (Investigation orders; Application to punish for contempt of court)—
  - (i) in the third paragraph of the note to the rule, after “explanation order” insert “, to a disclosure order”, and
  - (ii) in the third paragraph of the note to the rule, after “paragraph 14 of Schedule 5” insert “, paragraph 11 of Schedule 5A”;
- (e) in rule 47.11 (Investigation orders; Application for an order under the Terrorism Act 2000), in paragraph (2)(b) after “terrorist investigation” insert “or terrorist financing investigation, as appropriate,”;
- (f) in rule 47.12 (Investigation orders; Content of application for production order under the Terrorism Act 2000)—
  - (i) the existing text becomes paragraph (1),
  - (ii) after paragraph (1) insert—
    - “(2) An applicant who wants the court to make an order to grant entry in aid of a production order must—
    - (a) specify the premises to which entry is sought;
    - (b) explain why the order is needed; and
    - (c) propose the terms of the order.”;
  - (iii) in the first paragraph of the note to the rule, for the text preceding sub-paragraph (a) substitute—
    - “[Note. See paragraphs 5 to 9 of Schedule 5 to the Terrorism Act 2000(3). The applicant for a production, etc. order must be an ‘appropriate officer’ as defined by paragraph 5(6) of that Schedule. Where the applicant is a counter-terrorism financial investigator the application must be for the purposes of an investigation relating to ‘terrorist property’ as defined by section 14 of the 2000 Act. Under paragraphs 5 and 7 of Schedule 5 to that Act a production order may require a specified person—”*,
  - (iv) in the first paragraph of the note to the rule, in sub-paragraphs (a) and (b) for “a constable”, in each place it occurs, substitute “an appropriate officer” and in sub-paragraph (b) for “a named constable” substitute “a named appropriate officer”;
- (g) for rule 47.13 (Investigation orders; Content of application for an order to grant entry under the Terrorism Act 2000) substitute—

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(3) 2000 c. 11; paragraphs 5, 6 and 7 of Schedule 5 were amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39). Each is further amended by section 41 of the Criminal Finances Act 2017 (c. 22), with effect from dates to be appointed.

**“Content of application for a disclosure order under the Terrorism Act 2000**

**47.13.** As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make a disclosure order must—

- (a) explain why the applicant thinks that—
  - (i) a person has committed an offence under any of sections 15 to 18 of the Terrorism Act 2000<sup>(4)</sup>, or
  - (ii) property described in the application is terrorist property within the meaning of section 14 of the 2000 Act<sup>(5)</sup>;
- (b) describe in general terms the information that the applicant wants the respondent to provide;
- (c) confirm that none of the information is—
  - (i) expected to be subject to legal privilege, or
  - (ii) excluded material;
- (d) explain why the information is likely to be of substantial value to the investigation;
- (e) explain why it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if it is obtained; and
- (f) propose the terms of the order.

*[Note. See Schedule 5A to the Terrorism Act 2000<sup>(6)</sup>. Under paragraph 9(6) of that Schedule the applicant for a disclosure order must be an ‘appropriate officer’, as defined by paragraph 5, who is, or who is authorised to apply by, a police officer of at least the rank of superintendent.*

*Section 14 of the 2000 Act defines terrorist property as money or other property which is likely to be used for the purposes of terrorism; proceeds of the commission of terrorism; and proceeds of acts carried out for the purposes of terrorism. Sections 15 to 18 of the Act create offences of fund raising for the purposes of terrorism; use or possession of property for the purposes of terrorism; funding terrorism; making an insurance payment in response to a terrorist demand; and facilitating the retention or control of terrorist property.*

*A disclosure order can require a lawyer to provide a client’s name and address.*

*The Practice Direction sets out forms of application, notice and order for use in connection with this rule.]”;*

- (h) in rule 47.14 (Investigation orders; Content of application for an explanation order under the Terrorism Act 2000), for the second sentence of the note to the rule substitute “The applicant for an explanation order may be a constable or, where the application concerns material produced to a counter-terrorism financial investigator, such an investigator.”;
- (i) in rule 47.16 (Investigation orders; Content of application for an account monitoring order under the Terrorism Act 2000), for the second sentence of the note to the rule substitute “The applicant for an account monitoring order may be a police officer or a counter-terrorism financial investigator.”;

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(4) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

(5) 2000 c. 11.

(6) 2000 c. 11; Schedule 5A is inserted by Schedule 2 to the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

- (j) in rule 47.17 (Investigation orders; Application for an order under the Proceeds of Crime Act 2002), for paragraph (2)(b)(ii) substitute—
  - “(ii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation, the cash or property involved, or the money held in the frozen account, was obtained through unlawful conduct or is intended to be used in unlawful conduct;”;
- (k) in rule 47.18 (Investigation orders; Content of application for a production order under the Proceeds of Crime Act 2002), in the second paragraph of the note to the rule for “or a detained cash investigation” substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”;
- (l) in rule 47.20 (Investigation orders; Content of application for a disclosure order under the Proceeds of Crime Act 2002)—
  - (i) in the second paragraph of the note to the rule, for “a confiscation investigation only” substitute “a confiscation investigation or a money laundering investigation”, and
  - (ii) in the third paragraph of the note to the rule, for the second sentence substitute “Under section 362(6) of the Act, a relevant authority who under section 357(7) is an ‘appropriate officer’ (as defined by section 378(1), (4) and (5)) may apply only if that person is, or is authorised to do so by, a ‘senior appropriate officer’ (as defined by section 378(2)).”;
- (m) in rule 47.22 (Investigation orders; Content of application for an account monitoring order under the Proceeds of Crime Act 2002), in the second paragraph of the note to the rule for “or a money laundering investigation” substitute “, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation”;
- (n) in rule 47.32 (Investigation warrants; Application for warrant under section 352 of the Proceeds of Crime Act 2002), in the first paragraph of the note to the rule for “or a detained case investigation” substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”;
- (o) in rule 47.43 (Orders for the retention of fingerprints, etc.; Exercise of court’s powers)—
  - (i) for “rule 47.43” substitute “rule 47.44”, and
  - (ii) for “rule 47.44” substitute “rule 47.45”;
- (p) in rule 47.44 (Orders for the retention of fingerprints, etc.; Application to extend retention period), in the note to the rule—
  - (i) for “rule 47.41(a)” substitute “rule 47.42(a)”, and
  - (ii) for “rule 47.43” substitute “rule 47.44”;
- (q) in rule 47.45 (Orders for the retention of fingerprints, etc.; Appeal)—
  - (i) in paragraph (1), for “rule 47.43” substitute “rule 47.44”, and
  - (ii) in paragraph (2)(a)(ii), for “rule 47.43(5)” substitute “rule 47.44(5)”;
- (r) for rule 47.52 (Investigation approval orders under the Regulation of Investigatory Powers Act 2000; Exercise of court’s powers) substitute—

### “Exercise of court’s powers

**47.52.**—(1) Rule 47.5 (Investigation orders; Exercise of court’s powers) applies, subject to sections 23B(2) and 32B(2) of the Regulation of Investigatory Powers Act 2000(7).

(2) Where a magistrates’ court refuses to approve the grant, giving or renewal of an authorisation or notice, the court must not exercise its power to quash that authorisation or notice unless the applicant has had at least 2 business days from the date of the refusal in which to make representations.

*[Note. Under sections 23B(2) and 32B(2) of the Regulation of Investigatory Powers Act 2000, the applicant is not required to give notice of an application to any person to whom the authorisation or notice relates, or to such a person’s legal representatives. See also sections 23B(3) and 32B(3) of the 2000 Act.]*”;

- (s) in rule 47.53 (Investigation approval orders under the Regulation of Investigatory Powers Act 2000; Application for approval for authorisation or notice), in the note to the rule for “rules 47.3 and 47.4” substitute “rule 47.5”;
- (t) in rule 47.57 (Orders for access to documents, etc. under the Criminal Appeal Act 1995; Application containing information withheld from a respondent or other person), in paragraph (1)(a) for “rule 47.55” substitute “rule 47.56”;
- (u) after rule 47.58 (Orders for access to documents, etc. under the Criminal Appeal Act 1995; Application to punish for contempt of court) insert—

### “SECTION 9: EUROPEAN INVESTIGATION ORDERS

#### When this Section applies

**47.59.** This Section—

- (a) applies where the court can—
  - (i) make a European investigation order under regulation 6 of the Criminal Justice (European Investigation Order) Regulations 2017(8),
  - (ii) vary or revoke such an order under regulation 10 of the 2017 Regulations;
- (b) does not apply where rule 18.24 or rule 18.25 applies (application to make or discharge, etc. a live link direction supplemented by a European investigation order).

*[Note. The Criminal Justice (European Investigation Order) Regulations 2017 give effect in the United Kingdom to Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters. See also the note to rule 47.61.*

*Part 18 (Measures to assist a witness or defendant to give evidence) contains rules about applications to make, vary or revoke a live link direction which is supplemented by a European investigation order. Part 49 (International co-operation) contains rules about giving effect to a European investigation order made in another participating State.]*

(7) 2000 c. 23; section 23B was inserted by section 37 and section 32B by section 38 of the Protection of Freedoms Act 2012 (c. 9).  
(8) S.I. 2017/730.

### Exercise of court's powers

**47.60.**—(1) Subject to paragraphs (2) and (3), the court may determine an application under rule 47.61 to make, vary or revoke a European investigation order—

- (a) at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and
  - (b) in the absence of—
    - (i) the applicant,
    - (ii) the respondent (if any),
    - (iii) any other person affected by the order.
- (2) The court must not determine such an application in the applicant's absence if—
- (a) under the same conditions in a similar domestic case the investigative measure to be specified in the order would be a search warrant;
  - (b) the applicant asks for a hearing;
  - (c) it appears to the court that the investigative measure which the applicant wants the court to specify in the European investigation order—
    - (i) may infringe legal privilege, within the meaning of section 10 of the Police and Criminal Evidence Act 1984<sup>(9)</sup>, section 348 or 361 of the Proceeds of Crime Act 2002<sup>(10)</sup> or article 9 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014<sup>(11)</sup>, or
    - (ii) may require the production of excluded material, within the meaning of section 11 of the 1984 Act; or
  - (d) it appears to the court that for any other reason the application is so complex or serious as to require the court to hear the applicant.
- (3) The court—
- (a) must determine such an application in the absence of any respondent or other person affected if under the same conditions in a similar domestic case—
    - (i) an investigative measure to be specified in the European investigation order would be a search warrant, or
    - (ii) each investigative measure to be specified in the European investigation order would be one to an application for which no Criminal Procedure Rule would apply other than the rules in Section 1 and this Section of this Part;
  - (b) may determine such an application in the absence of any respondent or other person affected where the court considers that—
    - (i) no requirement for the absentee's participation could be applied effectively because the application is for a European investigation order and not for a warrant, order, notice or summons to be given effect in England and Wales,
    - (ii) the applicant cannot identify or contact the absentee,
    - (iii) it would prejudice the investigation if the absentee were present,
    - (iv) it would prejudice the investigation to adjourn or postpone the application so as to allow the absentee to attend, or

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<sup>(9)</sup> 1984 c. 60.

<sup>(10)</sup> 2002 c. 29; section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

<sup>(11)</sup> S.I. 2014/1893.

- (v) the absentee has waived the opportunity to attend.
- (4) The court must not determine an application unless satisfied that sufficient time has been allowed for it.
- (5) If the court so directs, a party to an application may attend a hearing by live link or telephone.
- (6) The court must not make, vary or discharge an order unless the applicant states, in writing or orally, that to the best of the applicant's knowledge and belief—
  - (a) the application discloses all the information that is material to what the court must decide; and
  - (b) the content of the application is true.
- (7) Where the statement required by paragraph (6) is made orally—
  - (a) the statement must be on oath or affirmation, unless the court otherwise directs; and
  - (b) the court must arrange for a record of the making of the statement.
- (8) The court may—
  - (a) dispense with a requirement for service under this Section (even after service was required); and
  - (b) consider an application made orally instead of in writing.

**Application to make, vary or revoke a European investigation order**

- 47.61.**—(1) This rule applies where—
- (a) one of the following wants the court to make a European investigation order—
    - (i) a constable, acting with the consent of a prosecuting authority,
    - (ii) a prosecuting authority, or
    - (iii) a party to a prosecution;
  - (b) one of the following wants the court to vary or revoke a European investigation order made by the court—
    - (i) the person who applied for the order,
    - (ii) a prosecuting authority, or
    - (iii) any other person affected by the order.
- (2) The applicant must—
- (a) apply in writing and serve the application on the court officer;
  - (b) demonstrate that the applicant is entitled to apply;
  - (c) if, and only if, the court cannot determine an application for a European investigation order in the absence of a respondent or other person affected (see rule 47.60(3)), serve on that respondent or other person such notice of the application as the court may direct;
  - (d) serve notice of an application to vary or revoke a European investigation order on, as appropriate, the person who applied for the order and any other person affected by the order.
- (3) An application for the court to make a European investigation order must—
- (a) specify the offence under prosecution or investigation;
  - (b) explain why it is suspected that the offence has been committed;

- (c) describe, as appropriate—
    - (i) the proceedings for the offence, or
    - (ii) the investigation;
  - (d) specify the investigative measure or measures sought for the purpose of obtaining evidence for use in the proceedings or investigation, as the case may be;
  - (e) specify the participating State in which the measure or measures are to be carried out;
  - (f) explain why it is necessary and proportionate to make a European investigation order for the purposes of the proceedings or investigation;
  - (g) where a measure is one which would require the issue of a warrant, order, notice or witness summons before it could be lawfully carried out in England and Wales, explain how such an instrument could have been issued taking into account—
    - (i) the nature of the evidence to be obtained,
    - (ii) the purpose for which that evidence is sought (including its relevance to the investigation or proceedings in respect of which the European investigation order is sought),
    - (iii) the circumstances in which the evidence is held,
    - (iv) the nature and seriousness of the offence to which the investigation or proceedings relates, and
    - (v) any provision or rule of domestic law applicable to the issuing of such an instrument;
  - (h) where a measure is one which would require authorisation under any enactment relating to the acquisition and disclosure of data relating to communications, or the carrying out of surveillance, before it could be lawfully carried out in England and Wales, explain whether such authorisation has in fact been granted, or could have been granted, taking into account—
    - (i) the factors listed in paragraph (3)(g)(i) to (iv), and
    - (ii) the provisions of the legislation applicable to the granting of such authorisation;
  - (i) where a measure is in connection with, or in the form of, the interception of communications, explain whether any additional requirements imposed by legislation relating to the making of such a request have been complied with;
  - (j) where the application is for an order specifying one of the measures listed in any of regulations 15 to 19 of the Criminal Justice (European Investigation Order) Regulations 2017(12) (banking and other financial information; gathering of evidence in real time; covert investigations; provisional measures; interception of telecommunications where technical assistance is needed), explain how the requirements of that regulation are met;
  - (k) attach a draft order in the form required by regulation 8 of the 2017 Regulations (Form and content of a European investigation order) and Directive 2014/41/EU.
- (4) An application for the court to vary or revoke a European investigation order must—



- (a) explain why it is appropriate for the order to be varied or revoked;
  - (b) propose the terms of any variation; and
  - (c) ask for a hearing, if one is wanted, and explain why it is needed.
- (5) Where the court—
- (a) makes a European investigation order the court officer must promptly—
    - (i) issue an order in the form required by regulation 8 of the 2017 Regulations (Form and content of a European investigation order) and Directive 2014/41/EU,
    - (ii) where the applicant is a constable or a prosecuting authority, serve that order on the applicant,
    - (iii) in any other case, serve that order on the appropriate authority in the participating State in which the measure or measures are to be carried out;
  - (b) varies or revokes a European investigation order the court officer must promptly notify the appropriate authority in the participating State in which the measure or measures are to be carried out.

*[Note. Under regulation 6 of the Criminal Justice (European Investigation Order) Regulations 2017 the court may make an order specifying one or more ‘investigative measures’ that are to be carried out in a State listed in Schedule 2 to those Regulations (a ‘participating State’) for the purpose of obtaining evidence for use in a criminal investigation or criminal proceedings. Under regulation 10 of the 2017 Regulations the court may vary or revoke such an order.*

*Under regulations 6(4)(b) and 11 of the 2017 Regulations any such measure must be one that could have been ordered or undertaken under the same conditions in a similar domestic case; but under regulation 11(5) that does not require the court to take into account any provision of domestic law imposing a procedural requirement which the court considers cannot effectively be applied when making a European investigation order for the measure concerned.*

*See also regulations 9 and 10(5), (6) of the 2017 Regulations, which govern the transmission of an order or varied order and the giving of notice of revocation of an order.*

*The Practice Direction sets out a form of application for use in connection with this rule.]”;*

- (v) after rule 47.61, as inserted by paragraph (u) of this rule, insert—

**“SECTION 10: ORDERS FOR THE EXTENSION OF A MORATORIUM  
PERIOD UNDER THE PROCEEDS OF CRIME ACT 2002**

**When this Section applies**

**47.62.—(1)** This Section applies where the Crown Court can extend a moratorium period under section 336A of the Proceeds of Crime Act 2002(**13**).

(2) In this Section, ‘respondent’ means, as well as a person within the meaning of rule 47.2(c), an ‘interested person’ within the meaning of section 336D of the 2002 Act(**14**).

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**(13)** 2002 c. 29; section 336A is inserted by section 10 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

**(14)** 2002 c. 29; section 336D is inserted by section 10 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

*[Note. Under section 336A of the Proceeds of Crime Act 2002, the Crown Court may extend a moratorium period under section 335 or section 336 of the Act(15) by up to 31 days beginning with the day after the day on which the period otherwise would end.*

*Under sections 335 and 336 of the 2002 Act, a moratorium period is the period of 31 days starting with the day on which consent to the doing of an act is refused by a constable, a customs officer or the Director General of the National Crime Agency. The act to which those sections refer is one that would be an offence under section 327, 328 or 329 of the 2002 Act (money laundering offences) but for the making of a disclosure within the meaning of section 338 to such an officer in relation to that act. On the expiry of the moratorium period the person who made the disclosure will be treated as having the relevant officer's consent to the doing of the act and so will commit no offence by doing it.*

*The Crown Court may extend a moratorium period more than once, but the total period of extension may not exceed 186 days beginning with the day after the day on which the first 31 day period ended.*

*Under section 336D(3) of the 2002 Act, 'interested person' means the person who made the disclosure and any other person who appears to the person making an application under rule 47.61 to have an interest in the property that is the subject of that disclosure.]*

#### **Exercise of court's powers**

**47.63.**—(1) The court may determine an application to which rule 47.64 (Application for extension of moratorium period) applies—

- (a) at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and
- (b) in the absence of—
  - (i) the applicant,
  - (ii) a respondent.

(2) The court must not determine such an application in the applicant's absence if the applicant asks for a hearing.

(3) The court must not determine such an application in the absence of a respondent unless—

- (a) the absentee has had at least 2 business days in which to make representations; or
- (b) the court is satisfied that—
  - (i) the applicant cannot identify or contact the absentee,
  - (ii) it would prejudice the investigation if the absentee were present,
  - (iii) it would prejudice the investigation to adjourn or postpone the application so as to allow the absentee to attend, or
  - (iv) the absentee has waived the opportunity to attend.

(4) The court officer must arrange for the court to hear such an application no sooner than 2 business days after notice of the application was served, unless—

- (a) the court directs that no hearing need be arranged; or
- (b) the court gives other directions for the hearing.

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(15) 2002 c. 29; section 335 is amended by section 10 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed. Section 336 was amended by paragraphs 168 and 173 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15) and paragraphs 108 and 133 of Schedule 8 to the Crime and Courts Act 2013 (c. 22). It is further amended by section 10 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

- (5) If the court so directs, the parties to an application may attend a hearing by live link or telephone.
- (6) The court must not extend a moratorium period unless the applicant states, in writing or orally, that to the best of the applicant's knowledge and belief—
  - (a) the application discloses all the information that is material to what the court must decide; and
  - (b) the content of the application is true.
- (7) Where the statement required by paragraph (6) is made orally—
  - (a) the statement must be on oath or affirmation, unless the court otherwise directs; and
  - (b) the court must arrange for a record of the making of the statement.
- (8) The court may—
  - (a) shorten or extend (even after it has expired) a time limit imposed by this rule;
  - (b) dispense with a requirement for service under this Section (even after service was required); and
  - (c) consider an application made orally instead of in writing.

#### **Application for extension of moratorium period**

- 47.64.**—(1) This rule applies where an applicant wants the court to extend a moratorium period.
- (2) The applicant must—
    - (a) apply in writing before the date on which the moratorium period otherwise would end;
    - (b) demonstrate that the applicant is entitled to apply as a senior officer within the meaning of section 336D of the Proceeds of Crime Act 2002;
    - (c) serve the application on the court officer;
    - (d) serve notice on each respondent that an application has been made; and
    - (e) serve the application on each respondent to such extent, if any, as the court directs.
  - (3) The application must specify—
    - (a) the disclosure in respect of which the application is made;
    - (b) the date on which the moratorium period began;
    - (c) the date and period of any previous extension of that period; and
    - (d) the date on which that period is due to end.
  - (4) The application must—
    - (a) describe the investigation being carried out in relation to that disclosure; and
    - (b) explain the grounds for believing that—
      - (i) the investigation is being conducted diligently and expeditiously,
      - (ii) further time is needed for conducting the investigation, and
      - (iii) it would be reasonable in all the circumstances for the moratorium period to be extended.
  - (5) A respondent who objects to the application must—

- (a) serve notice of the objection on—
  - (i) the court officer, and
  - (ii) the applicant,
 not more than 2 business days after service of notice of the application; and
- (b) in that notice explain the grounds of the objection.
- (6) The applicant must serve any order made on each respondent.

*[Note. The Practice Direction sets out forms of application and notice of objection for use in connection with this rule.*

*Under section 336D of the Proceeds of Crime Act 2002, ‘senior officer’ means the Director General of the National Crime Agency or an authorised officer of that Agency, a police officer of at least the rank of inspector, an officer of HM Revenue and Customs or an immigration officer of equivalent rank, a senior member of the Financial Conduct Authority, the Director of the Serious Fraud Office or an authorised member of that Office, or an accredited financial investigator.*

*The time limit for making an application is prescribed by section 336A(3) of the Proceeds of Crime Act 2002. It may be neither extended nor shortened. Under section 336B(2) of the Act(16) the court must determine the application as soon as reasonably practicable. Under section 336C(17), where an application is made and not determined before the moratorium period otherwise would expire then that period is extended until (i) the application is determined, or (ii) the expiry of 31 days beginning with the day after the day on which that period expired, whichever occurs first.]*

#### **Application containing information withheld from a respondent**

**47.65.**—(1) This rule applies where an application to extend a moratorium period includes an application to withhold information from a respondent.

- (2) The applicant must—
  - (a) omit that information from any part of the application that is served on the respondent;
  - (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
  - (c) in that other part, explain the grounds for believing that the disclosure of that information would have one or more of the following results—
    - (i) evidence of an offence would be interfered with or harmed,
    - (ii) the gathering of information about the possible commission of an offence would be interfered with,
    - (iii) a person would be interfered with or physically injured,
    - (iv) the recovery of property under this Act would be hindered, or
    - (v) national security would be put at risk.
- (3) At any hearing of an application to which this rule applies—
  - (a) the court must first determine the application to withhold information, in the respondent’s absence and that of any legal representative of the respondent;

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(16) 2002 c. 29; section 336B is inserted by section 10 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(17) 2002 c. 29; section 336C is inserted by section 10 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(b) if the court allows the application to withhold information, then in the following sequence—

(i) the court must consider representations first by the applicant and then by the respondent, in the presence of both, and

(ii) the court may consider further representations by the applicant in the respondent's absence and that of any legal representative of the respondent.

(4) If the court refuses an application to withhold information from the respondent, the applicant may withdraw the application to extend the moratorium period.

*[Note. See section 336B of the Proceeds of Crime Act 2002.]*”;

(w) amend the table of contents to correspond with the amendments made by paragraph (u) of this rule (insertion of Section 9: European investigation orders); and

(x) amend the table of contents to correspond with the other amendments made by this rule.