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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 47**

**INVESTIGATION ORDERS AND WARRANTS**

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## *SECTION 1: GENERAL RULES*

### **When this Part applies**

**47.1.** This Part applies to the exercise of the powers listed in each of rules 47.4, 47.24, 47.35, 47.42, 47.46, 47.51, 47.54, 47.59, 47.62 and 47.66.

### **Meaning of 'court', 'applicant' and 'respondent'**

**47.2.** In this Part—

- (a) a reference to the 'court' includes a reference to any justice of the peace or judge who can exercise a power to which this Part applies;
- (b) 'applicant' means a person who, or an authority which, can apply for an order or warrant to which this Part applies; and
- (c) 'respondent' means any person—

- (i) against whom such an order is sought or made, or
- (ii) on whom an application for such an order is served.

#### **Documents served on the court officer**

- 47.3.**—(1) Unless the court otherwise directs, the court officer may—
- (a) keep a written application; or
  - (b) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.
- (2) Where the court makes an order when the court office is closed, the applicant must, not more than 72 hours later, serve on the court officer—
- (a) a copy of the order; and
  - (b) any written material that was submitted to the court.
- (3) Where the court issues a warrant—
- (a) the applicant must return it to the court officer as soon as practicable after it has been executed, and in any event not more than 3 months after it was issued (unless other legislation otherwise provides); and
  - (b) the court officer must—
    - (i) keep the warrant for 12 months after its return, and
    - (ii) during that period, make it available for inspection by the occupier of the premises to which it relates, if that occupier asks to inspect it.

*[Note. See section 16(10) of the Police and Criminal Evidence Act 1984(1).]*

### *SECTION 2: INVESTIGATION ORDERS*

#### **When this Section applies**

- 47.4.** This Section applies where—
- (a) a Circuit judge can make, vary or discharge an order for the production of, or for giving access to, material under paragraph 4 of Schedule 1 to the Police and Criminal Evidence Act 1984(2), other than material that consists of or includes journalistic material;
  - (b) for the purposes of a terrorist investigation, a Circuit judge can make, vary or discharge—
    - (i) an order for the production of, or for giving access to, material, or for a statement of its location, under paragraphs 5 and 10 of Schedule 5 to the Terrorism Act 2000(3),
    - (ii) an explanation order, under paragraphs 10 and 13 of Schedule 5 to the 2000 Act(4), or

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(1) 1984 c. 60; section 16(10) was substituted by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).  
(2) 1984 c. 60; paragraph 4 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).  
(3) 2000 c. 11; paragraph 5 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed. Paragraph 10 of Schedule 5 was amended by section 109(1) of, and paragraph 389 of Schedule 8 to, the Courts Act 2003 (c. 39) and it is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.  
(4) 2000 c. 11; paragraph 13 of Schedule 5 was amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 41(3)(d) of the Criminal Finances Act 2017 (c. 22).

- (iii) a customer information order, under paragraphs 1 and 4 of Schedule 6 to the 2000 Act(5);
- (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(6), or
  - (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(7);
- (d) for the purposes of an investigation to which Part 8 of the Proceeds of Crime Act 2002(8) or the Proceeds of Crime Act 2002 (External Investigations) Order 2014(9) applies, a Crown Court judge can make, and the Crown Court can vary or discharge—
  - (i) a production order, under sections 345 and 351 of the 2002 Act(10) or under articles 6 and 12 of the 2014 Order,
  - (ii) an order to grant entry, under sections 347 and 351 of the 2002 Act or under articles 8 and 12 of the 2014 Order,
  - (iii) a disclosure order, under sections 357 and 362 of the 2002 Act(11) or under articles 16 and 21 of the 2014 Order,
  - (iv) a customer information order, under sections 363 and 369 of the 2002 Act(12) or under articles 22 and 28 of the 2014 Order, or
  - (v) an account monitoring order, under sections 370, 373 and 375 of the 2002 Act(13) or under articles 29, 32 and 34 of the 2014 Order;

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- (5) 2000 c. 11; paragraph 1 of Schedule 6 was amended by section 3 of, and paragraph 6 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24). Paragraph 4 of Schedule 6 was amended by section 109(1) of, and paragraph 390 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (6) 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 was amended by section 41(5)(c) of the Criminal Finances Act 2017 (c. 22).
  - (7) 2000 c. 11; Schedule 5A was inserted by Schedule 2 to the Criminal Finances Act 2017 (c. 22).
  - (8) 2002 c. 29.
  - (9) S.I. 2014/1893.
  - (10) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 6 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 4 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 351 was amended by sections 74 and 77 of, and paragraphs 103 and 104 of Schedule 8 and paragraphs 1 and 6 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 9 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 66 and 112 of, and Part 5 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 15 and 55 of, and paragraphs 108 and 136 of Schedule 8 and paragraphs 14 and 30 of Schedule 21 to, the Crime and Courts Act 2013 (c.22) and section 224 of, and paragraphs 1 and 11 of Schedule 48 to, the Finance Act 2013 (c. 29).
  - (11) 2002 c. 29; section 357 was amended by sections 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 13 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 139 of Schedule 8, paragraphs 1 and 8 of Schedule 19 and paragraphs 14 and 34 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 19 and 27 of Schedule 2 to, SI 2014/834. Section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 15 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 15 of, and paragraphs 108 and 140 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).
  - (12) 2002 c. 29; section 363 was amended by section 77 of, and paragraphs 1 and 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 16 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 10 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 369 was amended by section 74 of, and paragraphs 103 and 111 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), sections 15 and 55 of, and paragraphs 108 and 141 of Schedule 8, and paragraphs 14 and 35 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 14 of Schedule 48 to, the Finance Act 2013 (c. 29).
  - (13) 2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 17 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 12 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 375 was amended by section 74 of, and paragraphs 103 and 112 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), sections 15 and 55 of, and paragraphs 108

- (e) in connection with an extradition request, a Circuit judge can make an order for the production of, or for giving access to, material under section 157 of the Extradition Act 2003(14);
- (f) a magistrates' court can make a further information order under section 22B of the Terrorism Act 2000(15) in connection with—
  - (i) an investigation into whether a person is involved in the commission of an offence under any of sections 15 to 18 of the 2000 Act(16),
  - (ii) determining whether such an investigation should be started, or
  - (iii) identifying terrorist property or its movement or use; and
- (g) a magistrates' court can make a further information order under section 339ZH of the Proceeds of Crime Act 2002(17) in connection with—
  - (i) an investigation into whether a person is engaged in money laundering,
  - (ii) determining whether such an investigation should be started, or
  - (iii) an investigation into money laundering by an authority in a country outside the United Kingdom.

*[Note. In outline, the orders to which these rules apply are—*

- (a) *under the Police and Criminal Evidence Act 1984, a production order requiring a person to produce or give access to material, other than material that consists of or includes journalistic material;*
- (b) *for the purposes of a terrorist investigation under the Terrorism Act 2000—*
  - (i) *an order requiring a person to produce, give access to, or state the location of material,*
  - (ii) *an explanation order, requiring a person to explain material obtained under a production, etc. order,*
  - (iii) *a customer information order, requiring a financial institution to provide information about an account holder,*
  - (iv) *an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution;*
- (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;*
- (d) *for the purposes of an investigation to which Part 8 of the Proceeds of Crime Act 2002 or the Proceeds of Crime Act 2002 (External Investigations) Order 2014 applies—*
  - (i) *a production order, requiring a person to produce or give access to material,*
  - (ii) *an order to grant entry, requiring a person to allow entry to premises so that a production order can be enforced,*
  - (iii) *a disclosure order, requiring a person to provide information or documents, or to answer questions,*
  - (iv) *a customer information order, requiring a financial institution to provide information about an account holder,*

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and 142 of Schedule 8 and paragraphs 14 and 36 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 15 of Schedule 48 to, the Finance Act 2013 (c. 29).

(14) 2003 c. 41; section 157 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(15) 2000 c. 11; section 22B was inserted by section 37 of the Criminal Finances Act 2017 (c. 22).

(16) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

(17) 2002 c. 29; section 339ZH was inserted by section 12 of the Criminal Finances Act 2017 (c. 22).

- (v) *an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution;*
- (e) *in connection with extradition proceedings, a production order requiring a person to produce or give access to material;*
- (f) *under the Terrorism Act 2000, a further information order requiring a person to provide information related to a matter arising from a disclosure under section 21A of that Act(18) (Failure to disclose: regulated sector) or under the law of a country outside the United Kingdom which corresponds with Part III of that Act (Terrorist property);*
- (g) *under the Proceeds of Crime Act 2002, a further information order requiring a person to provide information related to a matter arising from a disclosure under Part 7 of that Act (Money laundering) or under the law of a country outside the United Kingdom which corresponds with that Part of that Act.*

*These rules do not apply to an application for a production order under the Police and Criminal Evidence Act 1984 requiring a person to produce or give access to journalistic material: see paragraph 15A of Schedule 1 to the Act(19).*

*For all the relevant terms under which these orders can be made, see the provisions listed in rule 47.4.*

*Under section 8 of the Senior Courts Act 1981(20), a High Court judge, a Circuit judge, a Recorder, a qualifying judge advocate and a District Judge (Magistrates' Courts) each may act as a Crown Court judge.*

*When the relevant provisions of the Courts Act 2003 come into force, a District Judge (Magistrates' Courts) will have the same powers as a Circuit judge under the Police and Criminal Evidence Act 1984 and under the Terrorism Act 2000.*

*Under section 66 of the Courts Act 2003(21), in criminal cases a High Court judge, a Circuit judge, a Recorder and a qualifying judge advocate each has the powers of a justice of the peace who is a District Judge (Magistrates' Courts).*

*By section 341 of the Proceeds of Crime Act 2002(22), an investigation under Part 8 of the Act may be—*

- (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');*
- (b) *an investigation into whether a person has committed a money laundering offence ('a money laundering investigation');*

(18) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2007/3398, section 59 of, and paragraphs 125 and 128 of, the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 67 and 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

(19) 1984 c. 60; paragraph 15A of Schedule 1 was inserted by section 82 of the Deregulation Act 2015 (c. 20).

(20) 1981 c. 54; section 8 was amended by sections 65 and 109 of, and paragraph 259 of Schedule 8 to, the Courts Act 2003 (c. 39) and paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18). The 1981 Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(21) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18) and sections 17 and 21 of, and paragraphs 83 and 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(22) 2002 c. 29; section 341 was amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 2 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 112 of, and paragraphs 99 and 110 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26), section 49 of, and paragraphs 1, 2, 24 and 25 of Schedule 19 to, the Crime and Courts Act 2013 (c.22) and sections 38 and 85 of, and paragraph 55 of Schedule 4 to, the Serious Crime Act 2015 (c. 9).



- (c) *an investigation into whether property is recoverable property or associated property (as defined by section 316 of the 2002 Act(23)), or into who holds the property or its extent or whereabouts ('a civil recovery investigation');*
- (d) *an investigation into the derivation of cash detained under the 2002 Act, or into whether such cash is intended to be used in unlawful conduct ('a detained cash investigation');*
- (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');*
- (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');*
- (g) *an investigation for the purposes of Part 7 of the Coroners and Justice Act 2009(24) (criminal memoirs, etc.) into whether a person is a qualifying offender or has obtained exploitation proceeds from a relevant offence, or into the value of any benefits derived by such a person from such an offence or the amount available ('an exploitation proceeds investigation').*

*Under section 343 of the Proceeds of Crime Act 2002(25)—*

- (a) *any Crown Court judge may make an order to which this Section applies for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation;*
- (b) *only a High Court judge may make such an order for the purposes of a civil recovery investigation or an exploitation proceeds investigation (and these rules do not apply to an application to such a judge in such a case).*

*As well as governing procedure on an application to the Crown Court, under the following provisions rules may govern the procedure on an application to an individual judge—*

- (a) *paragraph 15A of Schedule 1 to the Police and Criminal Evidence Act 1984;*
- (b) *paragraph 10 of Schedule 5, paragraph 14 of Schedule 5A, paragraph 4 of Schedule 6 and paragraph 5 of Schedule 6A to the Terrorism Act 2000; and*
- (c) *sections 351, 362, 369, 375 and 446 of the Proceeds of Crime Act 2002.]*

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

**47.5.—**(1) Subject to paragraphs (2), (3) and (4), the court may determine an application for an order, or to vary or discharge an 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),

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(23) 2002 c. 29; section 316 was amended by paragraph 78 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 109 of, and paragraphs 4 and 22 of Schedule 6 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 74 of, and paragraphs 85 and 91 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), article 12 of, and paragraphs 47 and 65 of Schedule 14 to, S.I. 2010/976, sections 15 and 48 of, and paragraphs 108 and 121 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), article 3 of, and paragraphs 19 and 25 of Schedule 2 to, SI 2014/834, section 85 of, and paragraph 54 of Schedule 4 to, the Serious Crime Act 2015 (c. 9) and article 8 of SI 2015/798.

(24) 2009 c. 25.

(25) 2002 c. 29; section 343 was amended by section 77 of, and paragraphs 1 and 3 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 4 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and sections 66 and 112 of, and Part 5 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26).

- (iii) any other person affected by the order.
- (2) The court must not determine such an application in the applicant's absence if—
  - (a) the applicant asks for a hearing; or
  - (b) it appears to the court that—
    - (i) the proposed order may infringe legal privilege, within the meaning of section 10 of the Police and Criminal Evidence Act 1984<sup>(26)</sup>, section 348 or 361 of the Proceeds of Crime Act 2002<sup>(27)</sup> or article 9 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014<sup>(28)</sup>,
    - (ii) the proposed order may require the production of excluded material, within the meaning of section 11 of the 1984 Act, or
    - (iii) for any other reason the application is so complex or serious as to require the court to hear the applicant.
- (3) The court must not determine such an application in the absence of any respondent or other person affected, 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 must not determine such an application in the absence of any respondent who, if the order sought by the applicant were made, would be required to produce or give access to journalistic material, unless that respondent has waived the opportunity to attend.
- (5) The court officer must arrange for the court to hear such an application no sooner than 2 business days after it was served, unless—
  - (a) the court directs that no hearing need be arranged; or
  - (b) the court gives other directions for the hearing.
- (6) The court must not determine an application unless satisfied that sufficient time has been allowed for it.
- (7) If the court so directs, the parties to an application may attend a hearing by live link or telephone.
- (8) 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.
- (9) Where the statement required by paragraph (8) 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.

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<sup>(26)</sup> 1984 c. 60.

<sup>(27)</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>(28)</sup> S.I. 2014/1893.

- (10) The court may—
  - (a) shorten or extend (even after it has expired) a time limit under this Section;
  - (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.
- (11) A person who wants an extension of time must—
  - (a) apply when serving the application for which it is needed; and
  - (b) explain the delay.

**Application for order: general rules**

- 47.6.**—(1) This rule applies to each application for an order to which this Section applies.
- (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, for example as a constable or under legislation that applies to other officers;
    - (c) give the court an estimate of how long the court should allow—
      - (i) to read the application and prepare for any hearing, and
      - (ii) for any hearing of the application;
    - (d) attach a draft order in the terms proposed by the applicant;
    - (e) serve notice of the application on the respondent, unless the court otherwise directs; and
    - (f) serve the application on the respondent to such extent, if any, as the court directs.
  - (3) A notice served on the respondent must—
    - (a) specify the material or information in respect of which the application is made; and
    - (b) identify—
      - (i) the power that the applicant invites the court to exercise, and
      - (ii) the conditions for the exercise of that power which the applicant asks the court to find are met.
  - (4) The applicant must serve any order made on the respondent.

**Application containing information withheld from a respondent or other person**

- 47.7.**—(1) This rule applies where an application includes information that the applicant thinks ought to be revealed only to the court.
- (2) The application must—
    - (a) identify that information; and
    - (b) explain why that information ought not to be served on the respondent or another person.
  - (3) At a hearing of an application to which this rule applies—
    - (a) the general rule is that the court must consider, 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 vary or discharge an order**

**47.8.**—(1) This rule applies where one of the following wants the court to vary or discharge an order to which a rule in this Section refers—

- (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 to punish for contempt of court**

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

- (a) a production order made under paragraph 4 of Schedule 1 to the Police and Criminal Evidence Act 1984;
- (b) a production etc. order made under paragraph 5 of Schedule 5 to the Terrorism Act 2000;
- (c) an explanation order made under paragraph 13 of that Schedule;
- (d) an account monitoring order made under paragraph 2 of Schedule 6A to that Act;
- (e) a production order made under section 345 of the Proceeds of Crime Act 2002 or article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014;
- (f) an account monitoring order made under section 370 of the 2002 Act or article 29 of the 2014 Order; or
- (g) a production order made under section 157 of the Extradition Act 2003.

(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 48 (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; sections 351(7) and 375(6) of the Proceeds of Crime Act 2002 and articles 12(6) and 34(5) of the Proceeds of Crime Act 2002 (External Investigations) Order 2014; and section 45 of the Senior Courts Act 1981(29).*

*A Circuit judge has power to punish a person who disobeys a production order under the Police and Criminal Evidence Act 1984 as if that were a contempt of the Crown Court: see paragraph 15 of Schedule 1 to the Act(30).*

(29) 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).

(30) 1984 c. 60; paragraph 15 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

*Disobedience to an explanation order, to a disclosure order or to a customer information order under the Terrorism Act 2000 is an offence: see paragraph 14 of Schedule 5, paragraph 11 of Schedule 5A and paragraph 1(3) of Schedule 6, to the Act.*

*Disobedience to a disclosure order or to a customer information order under the Proceeds of Crime Act 2002 or under the Proceeds of Crime Act 2002 (External Investigations) Order 2014 is an offence: see sections 359 and 366 of the Act and articles 18 and 25 of the Order. Under section 342 of the Act(31) and under article 5 of the Order, subject to the exceptions for which those provide it is an offence to make a disclosure likely to prejudice an investigation or to interfere with documents relevant to it.*

*If a person fails to comply with a further information order under the Terrorism Act 2000 or under the Proceeds of Crime Act 2002 the magistrates' court may order that person to pay an amount not exceeding £5,000, which order may be enforced as if the sum due had been adjudged to be paid by a conviction: see section 22B(8), (9) of the Terrorism Act 2000(32) and section 339ZH((8), (9) of the Proceeds of Crime Act 2002(33).]*

#### ORDERS UNDER THE POLICE AND CRIMINAL EVIDENCE ACT 1984

##### **Application for a production order under the Police and Criminal Evidence Act 1984**

**47.10.**—(1) This rule applies where an applicant wants the court to make an order to which rule 47.4(a) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must, in every case—

- (a) specify the offence under investigation (and see paragraph (3)(a));
- (b) describe the material sought;
- (c) identify the respondent;
- (d) specify the premises on which the material is believed to be, or explain why it is not reasonably practicable to do so;
- (e) explain the grounds for believing that the material is on the premises specified, or (if applicable) on unspecified premises of the respondent;
- (f) specify the set of access conditions on which the applicant relies (and see paragraphs (3) and (4)); and
- (g) propose—
  - (i) the terms of the order, and
  - (ii) the period within which it should take effect.

(3) Where the applicant relies on paragraph 2 of Schedule 1 to the Police and Criminal Evidence Act 1984(34) ('the first set of access conditions': general power to gain access to special procedure material), the application must—

- (a) specify the indictable offence under investigation;
- (b) explain the grounds for believing that the offence has been committed;

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(31) 2002 c. 29; section 342 was amended by section 77 of, and paragraphs 1 and 2 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), regulation 3 of, and paragraphs 1 and 8 of Schedule 2 to, S.I. 2007/3398 and section 169 of, and paragraphs 1 and 3 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25).

(32) 2000 c. 11; section 22B was inserted by section 37 of the Criminal Finances Act 2017 (c. 22).

(33) 2002 c. 29; section 339ZH was inserted by section 12 of the Criminal Finances Act 2017 (c. 22).

(34) 1984 c. 60; paragraph 2 of Schedule 1 was amended by sections 111 and 113 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15).

- (c) explain the grounds for believing that the material sought—
  - (i) is likely to be of substantial value to the investigation (whether by itself, or together with other material),
  - (ii) is likely to be admissible evidence at trial for the offence under investigation, and
  - (iii) does not consist of or include items subject to legal privilege or excluded material;
- (d) explain what other methods of obtaining the material—
  - (i) have been tried without success, or
  - (ii) have not been tried because they appeared bound to fail; and
- (e) explain why it is in the public interest for the respondent to produce the material, having regard to—
  - (i) the benefit likely to accrue to the investigation if the material is obtained, and
  - (ii) the circumstances under which the respondent holds the material.

(4) Where the applicant relies on paragraph 3 of Schedule 1 to the Police and Criminal Evidence Act 1984<sup>(35)</sup> ('the second set of access conditions': use of search warrant power to gain access to excluded or special procedure material), the application must—

- (a) state the legislation under which a search warrant could have been issued, had the material sought not been excluded or special procedure material (in this paragraph, described as 'the main search power');
- (b) include or attach the terms of the main search power;
- (c) explain how the circumstances would have satisfied any criteria prescribed by the main search power for the issue of a search warrant; and
- (d) explain why the issue of such a search warrant would have been appropriate.

*[Note. See paragraphs 1 to 4 of Schedule 1 to the Police and Criminal Evidence Act 1984<sup>(36)</sup>. The applicant for an order must be a constable. Sections 10, 11 and 14 of the 1984 Act<sup>(37)</sup> define 'items subject to legal privilege', 'excluded material' and 'special procedure material'. The period within which an order takes effect must be specified in the order and, unless the court considers a longer period appropriate, must be 7 days from the date of the order.*

*See also the code of practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises issued under section 66 of the Police and Criminal Evidence Act 1984<sup>(38)</sup>.*

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

## ORDERS UNDER THE TERRORISM ACT 2000

### Application for an order under the Terrorism Act 2000

**47.11.**—(1) This rule applies where an applicant wants the court to make one of the orders to which rule 47.4(b) and (c) refers.

<sup>(35)</sup> 1984 c. 60; paragraph 3 of Schedule 1 was amended by section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

<sup>(36)</sup> 1984 c. 60; paragraphs 1 and 4 of Schedule 1 were amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

<sup>(37)</sup> 1984 c. 60; section 14 was amended by section 1177 of, and paragraph 193 of Schedule 1 to, the Corporation Tax Act 2010 (c. 4).

<sup>(38)</sup> 1984 c. 60; section 66 was amended by section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 110 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 115 of, and paragraph 21 of Schedule 9 to, the Protection of Freedoms Act 2012 (c. 9).

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must—

- (a) specify the offence under investigation;
- (b) explain how the investigation constitutes a terrorist investigation or terrorist financing investigation, as appropriate, within the meaning of the Terrorism Act 2000<sup>(39)</sup>;
- (c) identify the respondent; and
- (d) give the information required by whichever of rules 47.12 to 47.16 applies.

### **Content of application for a production etc. order under the Terrorism Act 2000**

**47.12.**—(1) As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make an order for the production of, or for giving 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) expected to come into existence and then to be in the respondent’s possession, custody or power 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.

(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.

*[Note. See paragraphs 5 to 9 of Schedule 5 to the Terrorism Act 2000<sup>(40)</sup>. 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—*

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<sup>(39)</sup> 2000 c. 11.

<sup>(40)</sup> 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) and section 41 of the Criminal Finances Act 2017 (c. 22).



- (a) *to produce to an appropriate officer within a specified period for seizure and retention any material which that person has in his or her possession, custody or power and to which the application relates; to give an appropriate officer access to any such material within a specified period; and to state to the best of that person's knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his or her possession, custody or power within the period specified; or*
- (b) *where such material is expected to come into existence within the period of 28 days beginning with the date of the order; to notify a named appropriate officer as soon as is reasonably practicable after any material to which the application relates comes into that person's possession, custody or power; and then to produce that material to an appropriate officer; to give an appropriate officer access to it; and to state to the best of that person's knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his or her possession, custody or power within that period of 28 days.*

*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 expected to have the material within 28 days, 7 days from the date the respondent notifies the applicant of its receipt.*

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

### **Content of application for a disclosure order or further information order under the Terrorism Act 2000**

**47.13.**—(1) 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>(41)</sup>, or
  - (ii) property described in the application is terrorist property within the meaning of section 14 of the 2000 Act<sup>(42)</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.

<sup>(41)</sup> 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

<sup>(42)</sup> 2000 c. 11.



(2) As well as complying with rule 47.6, an applicant who wants the court to make a further information order must—

- (a) identify the respondent from whom the information is sought and explain—
  - (i) whether the respondent is the person who made the disclosure to which the information relates or is otherwise carrying on a business in the regulated sector within the meaning of Part 1 of Schedule 3A to the 2000 Act<sup>(43)</sup>, and
  - (ii) why the applicant thinks that the information is in the possession, or under the control, of the respondent;
- (b) specify or describe the information that the applicant wants the respondent to provide;
- (c) where the information sought relates to a disclosure of information by someone under section 21A of the 2000 Act<sup>(44)</sup> (Failure to disclose: regulated sector), explain—
  - (i) how the information sought relates to a matter arising from that disclosure,
  - (ii) how the information would assist in investigating whether a person is involved in the commission of an offence under any of sections 15 to 18 of that Act<sup>(45)</sup>, or in determining whether an investigation of that kind should be started, or in identifying terrorist property or its movement or use, and
  - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (d) where the information sought relates to a disclosure made under a requirement of the law of a country outside the United Kingdom which corresponds with Part III of the 2000 Act (Terrorist property), and an authority in that country which investigates offences corresponding with sections 15 to 18 of that Act has asked the National Crime Agency for information in connection with that disclosure, explain—
  - (i) how the information sought relates to a matter arising from that disclosure,
  - (ii) why the information is likely to be of substantial value to the authority that made the request in determining any matter in connection with the disclosure, and
  - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (e) confirm that none of the information is expected to be subject to legal privilege; and
- (f) propose the terms of the order, including—
  - (i) how the respondent must provide the information required, and
  - (ii) the date by which the information must be provided.

(3) Rule 47.8 (Application to vary or discharge an order) does not apply to a further information order.

(4) Paragraph (5) applies where a party to an application for a further information order wants to appeal to the Crown Court from the decision of the magistrates' court.

(5) The appellant must—

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(43) 2000 c. 11; Part 1 of Schedule 3A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24), substituted by article 2 of S.I. 2007/3288 and amended by articles 3 and 6 of, and paragraph 25 of Schedule 1 to, S.I. 2008/948, sections 183 and 237 of, and paragraph 1 of Schedule 18 and Part 29 of Schedule 25 to, the Localism Act 2011 (c. 20), regulation 79 of, and paragraph 3 of Schedule 4 to, S.I. 2011/99, article 2 of S.I. 2011/2701, article 2 of S.I. 2012/2299, article 2 of S.I. 2012/1534, regulation 46 of, and paragraph 40 of Schedule 2 to, S.I. 2013/3115, section 151 of, and paragraph 73 of Schedule 4 to, the Co-operative and Community Benefit Societies Act 2014 (c. 14), regulation 59 of, and paragraph 21 of Schedule 1 to, S.I. 2015/575, regulation 12 of S.I. 2016/680, regulation 2 of, and paragraph 11 of the Schedule to, S.I. 2017/80, regulation 109 of, and paragraph 4 of Schedule 7 to, S.I. 2017/692 and regulation 50 of, and paragraph 6 of Schedule 4 to, S.I. 2017/701.

(44) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2007/3398, section 59 of, and paragraphs 125 and 128 of, the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 67 and 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

(45) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

- (a) serve an appeal notice—
    - (i) on the Crown Court officer and on the other party,
    - (ii) not more than 15 business days after the magistrates’ court’s decision; and
  - (b) in the appeal notice, explain, as appropriate, why the Crown Court should (as the case may be) make, discharge or vary a further information order.
- (6) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

*[Note. See sections 22B, 22D and 22E of, and Schedule 5A to, the Terrorism Act 2000(46).*

*Under paragraph 9(6) of Schedule 5A to the 2000 Act 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.*

*Under section 22B(12) of the 2000 Act the applicant for a further information order must be ‘a law enforcement officer’, as defined by section 22B(14), who is, or who is authorised to apply by, a ‘senior law enforcement officer’, defined by section 22B(14) as a police officer of at least the rank of superintendent, the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose.*

*Section 14 of the 2000 Act(47) 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.*

*Under section 21A of the 2000 Act(48) a person engaged in a business in the regulated sector commits an offence where the conditions listed in that section are met and that person does not disclose, in the manner required by that section, knowledge or a suspicion that another person has committed or attempted to commit an offence under any of sections 15 to 18 in Part III of the Act. Part III of the Act also contains other disclosure provisions.*

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

### **Content of application for an explanation order under the Terrorism Act 2000**

**47.14.** As well as complying with rules 47.6 and 47.11, 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 the terms of the order.

(46) 2000 c. 11; sections 22B, 22D and 22E were inserted by section 37 to the Criminal Finances Act 2017 (c. 22). Schedule 5A was inserted by Schedule 2 to the Criminal Finances Act 2017 (c. 22).

(47) 2000 c. 11.

(48) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2007/3398, section 59 of, and paragraphs 125 and 128 of, the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 67 and 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

*[Note. See paragraph 13 of Schedule 5 to the Terrorism Act 2000(49). 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.*

*An explanation 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.]*

### **Content of application for a customer information order under the Terrorism Act 2000**

**47.15.** As well as complying with rules 47.6 and 47.11, 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.*

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

### **Content of application for an account monitoring order under the Terrorism Act 2000**

**47.16.** As well as complying with rules 47.6 and 47.11, 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(50). The applicant for an account monitoring order may be a police officer or a counter-terrorism financial investigator.*

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

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

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(49) 2000 c. 11; paragraph 13 of Schedule 5 was amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 41(3)(d) of the Criminal Finances Act 2017 (c. 22).

(50) 2000 c. 11; Schedule 6A was inserted by section 3 of, and paragraph 1(1) and (3) of Part 1 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by section 41(1), (5) of the Criminal Finances Act 2017 (c. 22).

*ORDERS UNDER THE PROCEEDS OF CRIME ACT 2002***Application for an order under the Proceeds of Crime Act 2002**

**47.17.**—(1) This rule applies where an applicant wants the court to make one of the orders to which rule 47.4(d) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must—

- (a) identify—
  - (i) the respondent, and
  - (ii) the person or property the subject of the investigation;
- (b) in the case of an investigation in the United Kingdom, explain why the applicant thinks that—
  - (i) the person under investigation has benefited from criminal conduct, in the case of a confiscation investigation, or committed a money laundering offence, in the case of a money laundering investigation, or
  - (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;
- (c) in the case of an investigation outside the United Kingdom, explain why the applicant thinks that—
  - (i) there is an investigation by an overseas authority which relates to a criminal investigation or to criminal proceedings (including proceedings to remove the benefit of a person’s criminal conduct following that person’s conviction), and
  - (ii) the investigation is into whether property has been obtained as a result of or in connection with criminal conduct, or into the extent or whereabouts of such property; and
- (d) give the additional information required by whichever of rules 47.18 to 47.22 applies.

*[Note. See also the code of practice for those exercising functions as officers and investigators issued under section 377 of the 2002 Act(51), and the code of practice for prosecutors and others issued under section 377A of that Act(52).]*

**Content of application for a production order under the Proceeds of Crime Act 2002**

**47.18.** As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make an order for the production of, or for giving access to, material, must—

- (a) describe that material;
- (b) explain why the applicant thinks the material is in the respondent’s possession or control;
- (c) confirm that none of the material is—
  - (i) expected to be subject to legal privilege, or
  - (ii) excluded material;

(51) 2002 c. 29; section 377 was amended by section 74 of, and paragraphs 103 and 114 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), article 12 of, and paragraphs 47 and 67 of Schedule 14 to, SI 2010/976, sections 15 and 55 of, and paragraphs 108 and 143 of Schedule 8 and paragraphs 14 and 37 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 17 of Schedule 48 to, the Finance Act 2013 (c. 29).

(52) 2002 c. 29; section 377A was inserted by section 74 of, and paragraphs 103 and 115 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and amended by article 3 of, and paragraphs 19 and 28 of Schedule 2 to, SI 2014/834.

- (d) explain why the material is likely to be of substantial value to the investigation;
- (e) 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; and
- (f) 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 sections 345 to 350 of the Proceeds of Crime Act 2002(53) and articles 6 to 11 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(54). Under those provisions—*

- (a) ‘excluded material’ means the same as under section 11 of the Police and Criminal Evidence Act 1984; and
- (b) ‘legal privilege’ is defined by section 348 of the 2002 Act.

*A Crown Court judge may make a production order for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation.*

*The applicant for a production order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act(55) and article 2(1) of the 2014 Order.*

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

### **Content of application for an order to grant entry under the Proceeds of Crime Act 2002**

**47.19.** 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.

*[Note. See section 347 of the Proceeds of Crime Act 2002 and article 8 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014. The applicant for an order to grant entry must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the Act and article 2(1) of the 2014 Order.]*

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(53) 2002 c. 29; sections 345 and 346 were amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1, 6 and 7 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1, 4 and 5 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 350 was amended by section 77 of, and paragraphs 1 and 5 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 8 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and sections 66 and 112 of, and Schedule 8 to, the Policing and Crime Act 2009 (c. 26).

(54) S.I. 2014/1893.

(55) 2002 c. 29; section 378 was amended by section 59 of, and paragraphs 168 and 175 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 74, 77 and 80 of, and paragraphs 103 and 116 of Schedule 8 and paragraphs 1 and 13 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), sections 15, 49 and 55 of, and paragraphs 108 and 144 of Schedule 8 and paragraphs 1, 24, 27, 29 and 30 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 18 of Schedule 48 to, the Finance Act 2013 (c. 29).

## **Content of application for a disclosure order or further information order under the Proceeds of Crime Act 2002**

**47.20.**—(1) As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make a disclosure order must—

- (a) describe in general terms the information that the applicant wants the respondent to provide;
- (b) confirm that none of the information is—
  - (i) expected to be subject to legal privilege, or
  - (ii) excluded material;
- (c) explain why the information is likely to be of substantial value to the investigation;
- (d) 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
- (e) propose the terms of the order.

(2) As well as complying with rule 47.6, an applicant who wants the court to make a further information order must—

- (a) identify the respondent from whom the information is sought and explain—
  - (i) whether the respondent is the person who made the disclosure to which the information relates or is otherwise carrying on a business in the regulated sector within the meaning of Part 1 of Schedule 9 to the Proceeds of Crime Act 2002<sup>(56)</sup>, and
  - (ii) why the applicant thinks that the information is in the possession, or under the control, of the respondent;
- (b) specify or describe the information that the applicant wants the respondent to provide;
- (c) where the information sought relates to a disclosure of information under Part 7 of the Proceeds of Crime Act 2002 (Money laundering), explain—
  - (i) how the information sought relates to a matter arising from that disclosure,
  - (ii) how the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and
  - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (d) where the information sought relates to a disclosure made under a requirement of the law of a country outside the United Kingdom which corresponds with Part 7 of the 2002 Act, and an authority in that country which investigates money laundering has asked the National Crime Agency for information in connection with that disclosure, explain—
  - (i) how the information sought relates to a matter arising from that disclosure,
  - (ii) why the information is likely to be of substantial value to the authority that made the request in determining any matter in connection with the disclosure, and
  - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (e) confirm that none of the information is expected to be subject to legal privilege; and

<sup>(56)</sup> 2002 c. 29; Part 1 of Schedule 9 was substituted by articles 2 and 3 of S.I. 2007/3287 and amended by sections 183 and 237 of, and paragraph 2 of Schedule 18 and Part 29 of Schedule 25 to, the Localism Act 2011 (c. 20), regulation 79 of, and paragraph 3 of Schedule 4 to, S.I. 2011/99, article 3 of S.I. 2011/2701, article 3 of S.I. 2012/1534, article 3 of S.I. 2012/2299, regulation 46 of, and paragraph 41 of Schedule 2 to, S.I. 2013/3115, section 151 of, and paragraph 81 of Schedule 4 to, the Co-operative and Community Benefit Societies Act 2014 (c. 14), regulation 59 of, and paragraph 23 of Schedule 1 to, S.I. 2015/575, regulation 14 of S.I. 2016/680, regulation 2 of, and paragraph 13 of the Schedule to, S.I. 2017/80, regulation 109 of, and paragraph 6 of Schedule 7 to, S.I. 2017/692 and regulation 50 of, and paragraph 7 of Schedule 4 to, S.I. 2017/701.



- (f) propose the terms of the order, including—
  - (i) how the respondent must provide the information required, and
  - (ii) the date by which the information must be provided.
- (3) Rule 47.8 (Application to vary or discharge an order) does not apply to a further information order.
- (4) Paragraph (5) applies where a party to an application for a further information order wants to appeal to the Crown Court from the decision of the magistrates' court.
- (5) The appellant must—
  - (a) serve an appeal notice on the Crown Court officer and on the other party not more than 15 business days after the magistrates' court's decision; and
  - (b) in the appeal notice, explain, as appropriate, why the Crown Court should (as the case may be) make, discharge or vary a further information order.
- (6) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

*[Note. See sections 339ZH, 339ZJ, 339ZK, 357, 358 and 361 of the Proceeds of Crime Act 2002(57) and articles 16, 17 and 20 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(58).*

*Where the 2002 Act applies, a Crown Court judge may make a disclosure order for the purposes of a confiscation investigation or a money laundering investigation.*

*The applicant for a disclosure order must be a 'relevant authority' as defined by section 357(7) of the 2002 Act, or an 'appropriate officer' as defined by article 2(1) of the 2014 Order where the Order applies. Under section 362(6) of the Act(59), a relevant authority who under section 357(7) is an 'appropriate officer' (as defined by section 378(1), (4) and (5)(60)) may apply only if that person is, or is authorised to do so by, a 'senior appropriate officer' (as defined by section 378(2)).*

*Under section 339ZH(1), (12) the applicant for a further information order must be the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose.*

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

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(57) 2002 c. 29; sections 339ZH, 339ZJ and 339ZK were inserted by section 12 of the Criminal Finances Act 2017 (c. 22). Section 357 was amended by sections 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 13 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 139 of Schedule 8, paragraphs 1 and 8 of Schedule 19 and paragraphs 14 and 34 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 19 and 27 of Schedule 2 to, SI 2014/834 and section 7(2) of, and paragraph 51 of Schedule 5 to, the Criminal Finances Act 2017 (c. 22). Section 358 was amended by section 169 of, and paragraphs 1 and 14 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), section 49(a) of, and paragraphs 1 and 9 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 7(3) of the Criminal Finances Act 2017 (c. 22). Section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(58) S.I. 2014/1893.

(59) 2002 c. 29; section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 15 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 15 of, and paragraphs 108 and 140 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 7(4) of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(60) 2002 c. 29; section 378 was amended by section 59 of, and paragraphs 168 and 175 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 74, 77 and 80 of, and paragraphs 103 and 116 of Schedule 8 and paragraphs 1 and 13 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), sections 15, 49 and 55 of, and paragraphs 108 and 144 of Schedule 8 and paragraphs 1, 24, 27, 29 and 30 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 18 of Schedule 48 to, the Finance Act 2013 (c. 29). It is further amended by paragraph 25 of Schedule 1, and paragraph 59 of Schedule 5, to the Criminal Finances Act 2017 (c. 22), with effect from dates to be appointed.

*Under sections 330, 331 and 332 in Part 7 of the 2002 Act(61) a person engaged in a business in the regulated sector commits an offence where the conditions listed in any of those sections are met and that person does not disclose, in the manner required by the relevant section, knowledge or a suspicion that another person is engaged in money laundering.*

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

### **Content of application for a customer information order under the Proceeds of Crime Act 2002**

**47.21.** As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make a customer information order must—

- (a) explain why customer information about the person under investigation is likely to be of substantial value to that investigation;
- (b) 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
- (c) propose the terms of the order.

*[Note. See sections 363, 364, 365 and 368 of the Proceeds of Crime Act 2002(62) and articles 22, 23, 24 and 27 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014.*

*A Crown Court judge may make a customer information order for the purposes of a confiscation investigation or a money laundering investigation.*

*The applicant for a customer information order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act and article 2(1) of the 2014 Order.*

*‘Customer information’ is defined by section 364 of the 2002 Act and article 2(1) of the 2014 Order.*

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

### **Content of application for an account monitoring order under the Proceeds of Crime Act 2002**

**47.22.** As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make an account monitoring order for the provision of account information 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

(61) 2002 c. 29; section 330 was amended by sections 102, 104, 105, 106 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), article 2 of S.I. 2006/308, regulation 3 of, and paragraphs 1 and 2 of Schedule 2 to, S.I. 2007/3398 and section 15 of, and paragraphs 108 and 129 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 331 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 130 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 332 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 131 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

(62) 2002 c. 29; section 363 was amended by section 77 of, and paragraphs 1 and 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 16 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 10 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 364 was amended by section 107 of the Serious Organised Crime and Police Act 2005 (c. 27) and article 2(1) of and paragraph 196 of Schedule 1 to, S.I. 2009/1941.



- (iii) when and in what manner the applicant wants the respondent to provide that information;
- (b) explain why the information is likely to be of substantial value to the investigation;
- (c) 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
- (d) propose the terms of the order.

*[Note. See sections 370, 371 and 374 of the Proceeds of Crime Act 2002(63) and articles 29, 30 and 33 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014.*

*Where the 2002 Act applies, a Crown Court judge may make an account monitoring order for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation.*

*The applicant for an account monitoring order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act and article 2(1) of the 2014 Order.*

*‘Account information’ is defined by section 370 of the 2002 Act and article 29(3) of the 2014 Order.*

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

#### ORDERS UNDER THE EXTRADITION ACT 2003

##### **Application for a production order under the Extradition Act 2003**

**47.23.**—(1) This rule applies where an applicant wants the court to make an order to which rule 47.4(e) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must—

- (a) identify the person whose extradition is sought;
- (b) specify the extradition offence of which that person is accused;
- (c) identify the respondent; and
- (d) describe the special procedure or excluded material sought.

(3) In relation to the person whose extradition is sought, the application must explain the grounds for believing that—

- (a) that person has committed the offence for which extradition is sought;
- (b) that offence is an extradition offence; and
- (c) that person is in the United Kingdom or is on the way to the United Kingdom.

(4) In relation to the material sought, the application must—

- (a) specify the premises on which the material is believed to be;
- (b) explain the grounds for believing that—
  - (i) the material is on those premises,
  - (ii) the material consists of or includes special procedure or excluded material, and

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**(63)** 2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 17 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 12 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22).

- (iii) the material would be likely to be admissible evidence at a trial in England and Wales for the offence for which extradition is sought;
- (c) explain what other methods of obtaining the material—
  - (i) have been tried without success, or
  - (ii) have not been tried because they appeared bound to fail; and
- (d) explain why it is in the public interest for the respondent to produce or give access to the material.
- (5) The application must propose—
  - (a) the terms of the order, and
  - (b) the period within which it should take effect.

*[Note. See sections 157 and 158 of the Extradition Act 2003(64). Under those provisions—*

- (c) ‘special procedure material’ means the same as under section 14 of the Police and Criminal Evidence Act 1984; and
- (d) ‘excluded material’ means the same as under section 11 of the 1984 Act.

*The applicant for a production order must be a constable.*

*The period within which an order takes effect must be specified in the order and, unless the court considers a longer period appropriate, must be 7 days from the date of the order.]*

### SECTION 3: INVESTIGATION WARRANTS

#### When this Section applies

- 47.24.** This Section applies where—
- (a) a justice of the peace can issue a warrant under—
    - (i) section 8 of the Police and Criminal Evidence Act 1984(65), or
    - (ii) section 2 of the Criminal Justice Act 1987(66);
  - (b) a Circuit judge can issue a warrant under—
    - (i) paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984(67),
    - (ii) paragraph 11 of Schedule 5 to the Terrorism Act 2000(68), or
    - (iii) section 160 of the Extradition Act 2003(69);
  - (c) a Crown Court judge can issue a warrant under—

(64) 2003 c. 41; section 157 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(65) 1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

(66) 1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

(67) 1984 c. 60; paragraph 12 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

(68) 2000 c. 11; paragraph 11 of Schedule 5 was amended by section 26 of the Terrorism Act 2006 (c. 11) and section 82 of the Deregulation Act 2015 (c. 20). It is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(69) 2003 c. 41; section 160 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

- (i) section 352 of the Proceeds of Crime Act 2002(70), or
- (ii) article 13 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(71); and
- (d) a court to which these Rules apply can issue a warrant to search for and seize articles or persons under a power not listed in paragraphs (a), (b) or (c).

*[Note. In outline, the warrants to which these rules apply are—*

- (a) *under the Police and Criminal Evidence Act 1984, a warrant authorising entry to, and the search of, premises for material, articles or persons;*
- (b) *under the Criminal Justice Act 1987, a warrant authorising entry to, and the search of, premises for documents sought by the Director of the Serious Fraud Office;*
- (c) *under the Terrorism Act 2000, a warrant authorising entry to, and the search of, premises for material sought for the purposes of a terrorist investigation;*
- (d) *under the Proceeds of Crime Act 2002 or under the Proceeds of Crime Act 2002 (External Investigations) Order 2014, a warrant authorising entry to, and the search of, premises for material sought for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation or an external investigation;*
- (e) *under the Extradition Act 2003, a warrant authorising entry to, and the search of, premises for material sought in connection with the prosecution of a person whose extradition has been requested;*
- (f) *under other Acts, comparable warrants.*

*For all the relevant terms under which such warrants can be issued, see the provisions listed in this rule.*

*Under section 8 of the Senior Courts Act 1981(72), a High Court judge, a Circuit judge, a Recorder, a qualifying judge advocate and a District Judge (Magistrates' Courts) each may act as a Crown Court judge.*

*When the relevant provisions of the Courts Act 2003 come into force, a District Judge (Magistrates' Courts) will have the same powers as a Circuit judge under the Police and Criminal Evidence Act 1984 and under the Terrorism Act 2000.*

*Under section 66 of the Courts Act 2003(73), in criminal cases a High Court judge, a Circuit judge, a Recorder and a qualifying judge advocate each has the powers of a justice of the peace who is a District Judge (Magistrates' Courts).*

*As well as governing procedure on an application to a magistrates' court or the Crown Court, under the following provisions rules may govern the procedure on an application to an individual Circuit or Crown Court judge—*

- (a) *paragraph 15A of Schedule 1 to the Police and Criminal Evidence Act 1984(74);*

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(70) 2002 c. 29; section 352 was amended by sections 74, 76, 77 and 80 of, and paragraphs 103 and 105 of Schedule 8 and paragraphs 1 and 7 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 10 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 137 of Schedule 8, paragraphs 1 and 6 of Schedule 19 and paragraphs 14 and 31 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22), section 224 of, and paragraphs 1 and 12 of Schedule 48 to, the Finance Act 2013 (c. 29), article 3 of, and paragraphs 19 and 26 of Schedule 2 to, SI 2014/834 and section 82 of the Deregulation Act 2015 (c. 20).

(71) S.I. 2014/1893.

(72) 1981 c. 54; section 8 was amended by sections 65 and 109 of, and paragraph 259 of Schedule 8 to, the Courts Act 2003 (c. 39) and paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18). The 1981 Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(73) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18) and sections 17 and 21 of, and paragraphs 83 and 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(74) 1984 c. 60; paragraph 15A of Schedule 1 was inserted by section 82 of the Deregulation Act 2015 (c. 20).

- (b) *paragraph 11 of Schedule 5 to the Terrorism Act 2000;*
- (c) *section 352 of the Proceeds of Crime Act 2002; and*
- (d) *section 160 of the Extradition Act 2003.]*

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

- 47.25.**—(1) The court must determine an application for a warrant—
- (a) at a hearing, which must be in private unless the court otherwise directs;
  - (b) in the presence of the applicant; and
  - (c) in the absence of any person affected by the warrant, including any person in occupation or control of premises which the applicant wants to search.
- (2) If the court so directs, the applicant may attend the hearing by live link or telephone.
- (3) The court must not determine an application unless satisfied that sufficient time has been allowed for it.
- (4) The court must not determine an application unless the applicant confirms, on oath or affirmation, 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, including any circumstances that might reasonably be considered capable of undermining any of the grounds of the application; and
  - (b) the content of the application is true.
- (5) If the court requires the applicant to answer a question about an application—
- (a) the applicant's answer must be on oath or affirmation;
  - (b) the court must arrange for a record of the gist of the question and reply; and
  - (c) if the applicant cannot answer to the court's satisfaction, the court may—
    - (i) specify the information the court requires, and
    - (ii) give directions for the presentation of any renewed application.
- (6) Unless to do so would be inconsistent with other legislation, on an application the court may issue—
- (a) a warrant in respect of specified premises;
  - (b) a warrant in respect of all premises occupied or controlled by a specified person;
  - (c) a warrant in respect of all premises occupied or controlled by a specified person which specifies some of those premises; or
  - (d) more than one warrant—
    - (i) each one in respect of premises specified in the warrant,
    - (ii) each one in respect of all premises occupied or controlled by a person specified in the warrant (whether or not such a warrant also specifies any of those premises), or
    - (iii) at least one in respect of specified premises and at least one in respect of all premises occupied or controlled by a specified person (whether or not such a warrant also specifies any of those premises).

*[Note. See section 15 of the Police and Criminal Evidence Act 1984(75) and section 2(4) of the Criminal Justice Act 1987(76). Not all the powers to which the rules in this Section apply permit*

(75) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496.

(76) 1987 c. 38.

*the issue of a warrant in respect of all premises occupied or controlled by a specified person: see, for example, rule 47.32 (Application for warrant under section 352 of the Proceeds of Crime Act 2002).]*

### **Application for warrant: general rules**

- 47.26.**—(1) This rule applies to each application to which this Section applies.
- (2) The applicant must—
- (a) apply in writing;
  - (b) serve the application on—
    - (i) the court officer, or
    - (ii) if the court office is closed, the court;
  - (c) demonstrate that the applicant is entitled to apply, for example as a constable or under legislation that applies to other officers;
  - (d) give the court an estimate of how long the court should allow—
    - (i) to read and prepare for the application, and
    - (ii) for the hearing of the application; and
  - (e) tell the court when the applicant expects any warrant issued to be executed.
- (3) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.
- (4) Where the application includes information that the applicant thinks should not be supplied under rule 5.7 (Supply to a party of information or documents from records or case materials) to a person affected by a warrant, the applicant may—
- (a) set out that information in a separate document, marked accordingly; and
  - (b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.
- (5) The application must include—
- (a) a declaration by the applicant that to the best of the applicant’s knowledge and belief—
    - (i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and
    - (ii) the content of the application is true; and
  - (b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.
- (6) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

### **Information to be included in a warrant**

- 47.27.**—(1) A warrant must identify—
- (a) the person or description of persons by whom it may be executed;
  - (b) any person who may accompany a person executing the warrant;
  - (c) so far as practicable, the material, documents, articles or persons to be sought;
  - (d) the legislation under which it was issued;
  - (e) the name of the applicant;

- (f) the court that issued it, unless that is otherwise recorded by the court officer;
  - (g) the court office for the court that issued it; and
  - (h) the date on which it was issued.
- (2) A warrant must specify—
- (a) either—
    - (i) the premises to be searched, where the application was for authority to search specified premises, or
    - (ii) the person in occupation or control of premises to be searched, where the application was for authority to search any premises occupied or controlled by that person; and
  - (b) the number of occasions on which specified premises may be searched, if more than one.
- (3) A warrant must include, by signature, initial, or otherwise, an indication that it has been approved by the court that issued it.
- (4) Where a warrant comprises more than a single page, each page must include such an indication.
- (5) A copy of a warrant must include a prominent certificate that it is such a copy.

*[Note. See sections 15 and 16 of the Police and Criminal Evidence Act 1984(77). Not all the powers to which the rules in this Section apply permit the issue of a warrant in respect of all premises occupied or controlled by a specified person: see, for example, rule 47.32 (Application for warrant under section 352 of the Proceeds of Crime Act 2002).]*

#### **Application for warrant under section 8 of the Police and Criminal Evidence Act 1984**

- 47.28.**—(1) This rule applies where an applicant wants a magistrates’ court to issue a warrant or warrants under section 8 of the Police and Criminal Evidence Act 1984(78).
- (2) As well as complying with rule 47.26, the application must—
- (a) specify the offence under investigation (and see paragraph (3));
  - (b) so far as practicable, identify the material sought (and see paragraph (4));
  - (c) specify the premises to be searched (and see paragraphs (5) and (6));
  - (d) state whether the applicant wants the premises to be searched on more than one occasion (and see paragraph (7)); and
  - (e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (8)).
- (3) In relation to the offence under investigation, the application must—
- (a) state whether that offence is—
    - (i) an indictable offence, or
    - (ii) a relevant offence as defined in section 28D of the Immigration Act 1971(79); and
  - (b) explain the grounds for believing that the offence has been committed.

(77) 1984 c. 60; section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 8 of S.I. 2005/3496.

(78) 1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

(79) 1971 c. 77; section 28D was inserted by section 131 of the Immigration and Asylum Act 1999 (c. 33) and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(4) In relation to the material sought, the application must explain the grounds for believing that that material—

- (a) is likely to be of substantial value to the investigation (whether by itself, or together with other material);
- (b) is likely to be admissible evidence at trial for the offence under investigation; and
- (c) does not consist of or include items subject to legal privilege, excluded material or special procedure material.

(5) In relation to premises which the applicant wants to be searched and can specify, the application must—

- (a) specify each set of premises;
- (b) in respect of each set of premises, explain the grounds for believing that material sought is on those premises; and
- (c) in respect of each set of premises, explain the grounds for believing that—
  - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
  - (iii) entry to the premises will not be granted unless a warrant is produced, or
  - (iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(6) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—

- (a) explain the grounds for believing that—
  - (i) because of the particulars of the offence under investigation it is necessary to search any premises occupied or controlled by a specified person, and
  - (ii) it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched;
- (b) specify as many sets of premises as is reasonably practicable;
- (c) in respect of each set of premises, whether specified or not, explain the grounds for believing that material sought is on those premises; and
- (d) in respect of each specified set of premises, explain the grounds for believing that—
  - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
  - (iii) entry to the premises will not be granted unless a warrant is produced, or
  - (iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(7) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—

- (a) explain why it is necessary to search on more than one occasion in order to achieve the purpose for which the applicant wants the court to issue the warrant; and
- (b) specify any proposed maximum number of occasions.



(8) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—

- (a) identify those other persons, by function or description; and
- (b) explain why those persons are required.

*[Note. Under section 8 of the Police and Criminal Evidence Act 1984, where there are reasonable grounds for believing that an indictable offence has been committed a constable may apply to a justice of the peace for a warrant authorising a search for evidence on specified premises, or on the premises of a specified person. Under section 8(6) of the 1984 Act, section 8 applies also in relation to relevant offences as defined in section 28D(4) of the Immigration Act 1971 (some of which are not indictable offences).*

*Under section 23 of the 1984 Act(80), ‘premises’ includes any place, and in particular any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation and any tent or moveable structure.*

*Under section 16(3) of the 1984 Act(81), entry and search under a warrant must be within 3 months from the date of its issue.*

*See also the code of practice for the search of premises issued under section 66 of the 1984 Act(82).*

*The Practice Direction sets out forms of application and warrant for use in connection with this rule.]*

### **Application for warrant under section 2 of the Criminal Justice Act 1987**

**47.29.**—(1) This rule applies where an applicant wants a magistrates’ court to issue a warrant or warrants under section 2 of the Criminal Justice Act 1987(83).

- (2) As well as complying with rule 47.26, the application must—
  - (a) describe the investigation being conducted by the Director of the Serious Fraud Office and include—
    - (i) an explanation of what is alleged and why, and
    - (ii) a chronology of relevant events;
  - (b) specify the document, documents or description of documents sought by the applicant (and see paragraphs (3) and (4)); and
  - (c) specify the premises which the applicant wants to be searched (and see paragraph (5)).
- (3) In relation to each document or description of documents sought, the application must—
  - (a) explain the grounds for believing that each such document—
    - (i) relates to a matter relevant to the investigation, and
    - (ii) could not be withheld from disclosure or production on grounds of legal professional privilege; and

(80) 1984 c. 60; section 23 was amended by sections 103 and 197 of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

(81) 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

(82) 1984 c. 60; section 66 was amended by section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 110 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 115 of, and paragraph 21 of Schedule 9 to, the Protection of Freedoms Act 2012 (c. 9).

(83) 1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).



- (b) explain the grounds for believing that—
  - (i) a person has failed to comply with a notice by the Director to produce the document or documents,
  - (ii) it is not practicable to serve such a notice, or
  - (iii) the service of such a notice might seriously impede the investigation.

(4) In relation to any document or description of documents which the applicant wants to be preserved but not seized under a warrant, the application must—

- (a) specify the steps for which the applicant wants the court’s authority in order to preserve and prevent interference with the document or documents; and
- (b) explain why such steps are necessary.

(5) In respect of each set of premises which the applicant wants to be searched, the application must explain the grounds for believing that a document or description of documents sought by the applicant is on those premises.

(6) If the court so directs, the applicant must make available to the court material on which is based the information given under paragraph (2).

*[Note. Under section 2 of the Criminal Justice Act 1987, where the Director of the Serious Fraud Office is investigating a case of serious or complex fraud a member of that Office may apply to a justice of the peace for a warrant authorising a search of specified premises for documents relating to any matter relevant to the investigation. Under section 66 of the Courts Act 2003(84), a Circuit judge can exercise the power to issue a warrant.*

*Under section 16(3) of the Police and Criminal Evidence Act 1984, entry and search under a warrant must be within 3 months from the date of its issue.*

*The Practice Direction sets out forms of application and warrant for use in connection with this rule.]*

### **Application for warrant under paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984**

**47.30.**—(1) This rule applies where an applicant wants a Circuit judge to issue a warrant or warrants under paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984(85).

- (2) As well as complying with rule 47.26, the application must—
  - (a) specify the offence under investigation (and see paragraph (3)(a));
  - (b) specify the set of access conditions on which the applicant relies (and see paragraphs (3) and (4));
  - (c) so far as practicable, identify the material sought;
  - (d) specify the premises to be searched (and see paragraphs (6) and (7)); and
  - (e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (8)).

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(84) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18) and sections 17 and 21 of, and paragraphs 83 and 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(85) 1984 c. 60; paragraph 12 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

(3) Where the applicant relies on paragraph 2 of Schedule 1 to the Police and Criminal Evidence Act 1984<sup>(86)</sup> ('the first set of access conditions': general power to gain access to special procedure material), the application must—

- (a) specify the indictable offence under investigation;
- (b) explain the grounds for believing that the offence has been committed;
- (c) explain the grounds for believing that the material sought—
  - (i) is likely to be of substantial value to the investigation (whether by itself, or together with other material),
  - (ii) is likely to be admissible evidence at trial for the offence under investigation, and
  - (iii) does not consist of or include items subject to legal privilege or excluded material;
- (d) explain what other methods of obtaining the material—
  - (i) have been tried without success, or
  - (ii) have not been tried because they appeared bound to fail; and
- (e) explain why it is in the public interest to obtain the material, having regard to—
  - (i) the benefit likely to accrue to the investigation if the material is obtained, and
  - (ii) the circumstances under which the material is held.

(4) Where the applicant relies on paragraph 3 of Schedule 1 to the Police and Criminal Evidence Act 1984<sup>(87)</sup> ('the second set of access conditions': use of search warrant power to gain access to excluded or special procedure material), the application must—

- (a) state the legislation under which a search warrant could have been issued, had the material sought not been excluded or special procedure material (in this paragraph, described as 'the main search power');
- (b) include or attach the terms of the main search power;
- (c) explain how the circumstances would have satisfied any criteria prescribed by the main search power for the issue of a search warrant; and
- (d) explain why the issue of such a search warrant would have been appropriate.

(5) Where the applicant relies on the second set of access conditions and on an assertion that a production order made under paragraph 4 of Schedule 1 to the 1984 Act in respect of the material sought has not been complied with—

- (a) the application must—
  - (i) identify that order and describe its terms, and
  - (ii) specify the date on which it was served; but
- (b) the application need not comply with paragraphs (6) or (7).

(6) In relation to premises which the applicant wants to be searched and can specify, the application must (unless paragraph (5) applies)—

- (a) specify each set of premises;
- (b) in respect of each set of premises, explain the grounds for believing that material sought is on those premises; and
- (c) in respect of each set of premises, explain the grounds for believing that—

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<sup>(86)</sup> 1984 c. 60; paragraph 2 of Schedule 1 was amended by sections 111 and 113 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15).

<sup>(87)</sup> 1984 c. 60; paragraph 3 of Schedule 1 was amended by section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

- (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
  - (iii) the material sought contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued, or
  - (iv) service of notice of an application for a production order under paragraph 4 of Schedule 1 to the 1984 Act may seriously prejudice the investigation.
- (7) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must (unless paragraph (5) applies)—
- (a) explain the grounds for believing that—
    - (i) because of the particulars of the offence under investigation it is necessary to search any premises occupied or controlled by a specified person, and
    - (ii) it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched;
  - (b) specify as many sets of premises as is reasonably practicable;
  - (c) in respect of each set of premises, whether specified or not, explain the grounds for believing that material sought is on those premises; and
  - (d) in respect of each specified set of premises, explain the grounds for believing that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
    - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
    - (iii) the material sought contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued, or
    - (iv) service of notice of an application for a production order under paragraph 4 of Schedule 1 to the 1984 Act<sup>(88)</sup> may seriously prejudice the investigation.
- (8) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—
- (a) identify those other persons, by function or description; and
  - (b) explain why those persons are required.

*[Note. Under paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984, where the conditions listed in that paragraph and, if applicable, in paragraphs 12A and 14 of that Schedule<sup>(89)</sup> are fulfilled a constable may apply to a Circuit judge for a warrant authorising a search for evidence consisting of special procedure material or, in some cases, excluded material on specified premises or on the premises of a specified person.*

*Under section 16(3) of the 1984 Act<sup>(90)</sup>, entry and search under a warrant must be within 3 months from the date of its issue.*

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<sup>(88)</sup> 1984 c. 60; paragraph 4 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

<sup>(89)</sup> 1984 c. 60; paragraph 12A of Schedule 1 was inserted by section 113 of the Serious Organised Crime and Police Act 2005 (c. 15). Paragraph 14 of Schedule 1 was amended by sections 113 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15).

<sup>(90)</sup> 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

*See also the code of practice for the search of premises issued under section 66 of the 1984 Act. The Practice Direction sets out forms of application and warrant for use in connection with this rule.]*

### **Application for warrant under paragraph 11 of Schedule 5 to the Terrorism Act 2000**

**47.31.**—(1) This rule applies where an applicant wants a Circuit judge to issue a warrant or warrants under paragraph 11 of Schedule 5 to the Terrorism Act 2000<sup>(91)</sup>.

(2) As well as complying with rule 47.26, the application must—

- (a) specify the offence under investigation;
- (b) explain how the investigation constitutes a terrorist investigation within the meaning of the Terrorism Act 2000;
- (c) so far as practicable, identify the material sought (and see paragraph (4));
- (d) specify the premises to be searched (and see paragraph (5)); and
- (e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (6)).

(3) Where the applicant relies on an assertion that a production order made under paragraph 5 of Schedule 5 to the 2000 Act<sup>(92)</sup> in respect of material on the premises has not been complied with—

- (a) the application must—
  - (i) identify that order and describe its terms, and
  - (ii) specify the date on which it was served; but
- (b) the application need not comply with paragraphs (4) or (5)(b).

(4) In relation to the material sought, unless paragraph (3) applies the application must explain the grounds for believing that—

- (a) the material consists of or includes excluded material or special procedure material but does not include items subject to legal privilege;
- (b) the material is likely to be of substantial value to a terrorist investigation (whether by itself, or together with other material); and
- (c) it is not appropriate to make an order under paragraph 5 of Schedule 11 to the 2000 Act in relation to the material because—
  - (i) it is not practicable to communicate with any person entitled to produce the material,
  - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to premises to which the application for the warrant relates, or
  - (iii) a terrorist investigation may be seriously prejudiced unless a constable can secure immediate access to the material.

(5) In relation to the premises which the applicant wants to be searched, the application must—

- (a) specify—
  - (i) where paragraph (3) applies, the respondent and any premises to which the production order referred, or

<sup>(91)</sup> 2000 c. 11; paragraph 11 of Schedule 5 was amended by section 26 of the Terrorism Act 2006 (c. 11) and section 82 of the Deregulation Act 2015 (c. 20). It is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

<sup>(92)</sup> 2000 c. 11; paragraph 5 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

- (ii) in any other case, one or more sets of premises, or any premises occupied or controlled by a specified person (which may include one or more specified sets of premises);
  - (b) unless paragraph (3) applies, in relation to premises which the applicant wants to be searched but cannot specify, explain why—
    - (i) it is necessary to search any premises occupied or controlled by the specified person, and
    - (ii) it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched; and
  - (c) explain the grounds for believing that material sought is on those premises.
- (6) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—
- (a) identify those other persons, by function or description; and
  - (b) explain why those persons are required.

*[Note. Under paragraph 11 of Schedule 5 to the Terrorism Act 2000, where the conditions listed in that paragraph and in paragraph 12 of that Schedule(93) are fulfilled a constable may apply to a Circuit judge for a warrant authorising a search for material consisting of excluded material or special procedure material on specified premises or on the premises of a specified person.*

*Under section 16(3) of the 1984 Act, entry and search under a warrant must be within 3 months from the date of its issue.*

*See also the code of practice for the search of premises issued under section 66 of the 1984 Act.*

*The Practice Direction sets out forms of application and warrant for use in connection with this rule.]*

### **Application for warrant under section 352 of the Proceeds of Crime Act 2002**

- 47.32.**—(1) This rule applies where an applicant wants a Crown Court judge to issue a warrant or warrants under—
- (a) section 352 of the Proceeds of Crime Act 2002(94); or
  - (b) article 13 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(95).
- (2) As well as complying with rule 47.26, the application must—
- (a) explain whether the investigation is a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation, a frozen funds investigation or an external investigation;
  - (b) in the case of an investigation in the United Kingdom, explain why the applicant suspects that—

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(93) 2000 c. 11; paragraph 12 of Schedule 5 was amended by Section 26 of the Terrorism Act 2006 (c. 11). It is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(94) 2002 c. 29; section 352 was amended by sections 74, 76, 77 and 80 of, and paragraphs 103 and 105 of Schedule 8 and paragraphs 1 and 7 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 10 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 137 of Schedule 8, paragraphs 1 and 6 of Schedule 19 and paragraphs 14 and 31 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22), section 224 of, and paragraphs 1 and 12 of Schedule 48 to, the Finance Act 2013 (c. 29), article 3 of, and paragraphs 19 and 26 of Schedule 2 to, SI 2014/834 and section 82 of the Deregulation Act 2015 (c. 20).

(95) S.I. 2014/1893.

- (i) the person under investigation has benefited from criminal conduct, in the case of a confiscation investigation, or committed a money laundering offence, in the case of a money laundering investigation, or
  - (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;
- (c) in the case of an investigation outside the United Kingdom, explain why the applicant believes that—
- (i) there is an investigation by an overseas authority which relates to a criminal investigation or to criminal proceedings (including proceedings to remove the benefit of a person’s criminal conduct following that person’s conviction), and
  - (ii) the investigation is into whether property has been obtained as a result of or in connection with criminal conduct, or into the extent or whereabouts of such property;
- (d) indicate what material is sought (and see paragraphs (4) and (5));
- (e) specify the premises to be searched (and see paragraph (6)); and
- (f) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (7)).
- (3) Where the applicant relies on an assertion that a production order made under sections 345 and 351 of the 2002 Act<sup>(96)</sup> or under articles 6 and 12 of the 2014 Order has not been complied with—
- (a) the application must—
    - (i) identify that order and describe its terms,
    - (ii) specify the date on which it was served, and
    - (iii) explain the grounds for believing that the material in respect of which the order was made is on the premises specified in the application for the warrant; but
  - (b) the application need not comply with paragraphs (4) or (5).
- (4) Unless paragraph (3) applies, in relation to the material sought the application must—
- (a) specify the material; or
  - (b) give a general description of the material and explain the grounds for believing that it relates to the person, cash, property or money under investigation and—
    - (i) in the case of a confiscation investigation, relates to the question whether that person has benefited from criminal conduct, or to any question about the extent or whereabouts of that benefit,
    - (ii) in the case of a money laundering investigation, relates to the question whether that person has committed a money laundering offence,
    - (iii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation into the derivation of cash, property or money, relates to the question whether that cash, property or money is recoverable property,

(96) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 6 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 4 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 351 was amended by sections 74 and 77 of, and paragraphs 103 and 104 of Schedule 8 and paragraphs 1 and 6 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 9 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 66 and 112 of, and Part 5 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 15 and 55 of, and paragraphs 108 and 136 of Schedule 8 and paragraphs 14 and 30 of Schedule 21 to, the Crime and Courts Act 2013 (c.22) and section 224 of, and paragraphs 1 and 11 of Schedule 48 to, the Finance Act 2013 (c. 29).

- (iv) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation into the intended use of cash, property or money, relates to the question whether that cash, property or money is intended by any person to be used in unlawful conduct, or
- (v) in the case of an investigation outside the United Kingdom, relates to that investigation.

(5) Unless paragraph (3) applies, in relation to the material sought the application must explain also the grounds for believing that—

- (a) the material consists of or includes special procedure material but does not include excluded material or privileged material;
- (b) the material is likely to be of substantial value to the investigation (whether by itself, or together with other material); and
- (c) it is in the public interest for the material to be obtained, having regard to—
  - (i) other potential sources of information, and
  - (ii) the benefit likely to accrue to the investigation if the material is obtained.

(6) In relation to the premises which the applicant wants to be searched, unless paragraph (3) applies the application must—

- (a) explain the grounds for believing that material sought is on those premises;
- (b) if the application specifies the material sought, explain the grounds for believing that it is not appropriate to make a production order under sections 345 and 351 of the 2002 Act or under articles 6 and 12 of the 2014 Order because—
  - (i) it is not practicable to communicate with any person against whom the production order could be made,
  - (ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises, or
  - (iii) the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material; and
- (c) if the application gives a general description of the material sought, explain the grounds for believing that—
  - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (ii) entry to the premises will not be granted unless a warrant is produced, or
  - (iii) the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate access to them.

(7) In relation to any set of premises which the applicant wants to be searched by those executing the warrant with other persons authorised by the court, the application must—

- (a) identify those other persons, by function or description; and
- (b) explain why those persons are required.

*[Note. Under section 352 of the Proceeds of Crime Act 2002 where there is a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation, an ‘appropriate officer’ within the meaning of that section may apply to a Crown Court judge for a warrant authorising a search for*



*special procedure material on specified premises, on the conditions listed in that section and in section 353 of the Act*(97).

*Under article 13 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014, where there is an external investigation an ‘appropriate officer’ within the meaning of that article may apply to a Crown Court judge for a warrant authorising a search for special procedure material on specified premises, on the conditions listed in that article and in article 14 of the Order.*

*Under section 16(3) of the 1984 Act*(98), *as applied by article 3 of the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015*(99), *entry and search under a warrant must be within 3 months from the date of its issue.*

*See also the code of practice for the search of premises issued under section 66 of the 1984 Act.*

*The Practice Direction sets out forms of application and warrant for use in connection with this rule.]*

### **Application for warrant under section 160 of the Extradition Act 2003**

**47.33.**—(1) This rule applies where an applicant wants a Circuit judge to issue a warrant or warrants under section 160 of the Extradition Act 2003(100).

(2) As well as complying with rule 47.26, the application must—

- (a) identify the person whose extradition is sought (and see paragraph (3));
- (b) specify the extradition offence of which that person is accused;
- (c) specify the material, or description of material, sought (and see paragraph (4)); and
- (d) specify the premises to be searched (and see paragraph (5)).

(3) In relation to the person whose extradition is sought, the application must explain the grounds for believing that—

- (a) that person has committed the offence for which extradition is sought;
- (b) that offence is an extradition offence; and
- (c) that person is in the United Kingdom or is on the way to the United Kingdom.

(4) In relation to the material sought, the application must explain the grounds for believing that—

- (a) the material consists of or includes special procedure or excluded material; and
- (b) the material would be likely to be admissible evidence at a trial in England and Wales for the offence for which extradition is sought.

(5) In relation to the premises which the applicant wants to search, the application must explain the grounds for believing that—

- (a) material sought is on those premises; and
- (b) one or more of the following conditions is satisfied, namely—
  - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(97) 2002 c. 29; section 353 was amended by sections 74, 76, 77 and 80 of, and paragraphs 103 and 106 of Schedule 8 and paragraphs 1 and 8 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 11 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 138 of Schedule 8, paragraphs 1 and 7 of Schedule 19 and paragraphs 14 and 32 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22), section 224 of, and paragraphs 1 and 13 of Schedule 48 to, the Finance Act 2013 (c. 29) and section 38 of the Serious Crime Act 2015 (c. 9) and paragraph 48 of Schedule 5 to the Criminal Finances Act 2017 (c. 22).

(98) 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

(99) S.I. 2015/759.

(100) 2003 c. 41; section 160 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).



- (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought, or
- (iii) the material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.

(6) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—

- (a) identify those other persons, by function or description; and
- (b) explain why those persons are required.

*[Note. Under section 160 of the Extradition Act 2003, where a person's extradition is sought a constable may apply to a Circuit judge for a warrant authorising a search for special procedure material or excluded material on specified premises, on the conditions listed in that section.*

*Under section 16(3) of the 1984 Act, entry and search under a warrant must be within 3 months from the date of its issue.*

*See also the code of practice for the search of premises issued under section 66 of the 1984 Act.]*

#### **Application for warrant under any other power**

**47.34.**—(1) This rule applies—

- (a) where an applicant wants a court to issue a warrant or warrants under a power (in this rule, 'the relevant search power') to which rule 47.24(d) (other powers) refers; but
- (b) subject to any inconsistent provision in legislation that applies to the relevant search power.

(2) As well as complying with rule 47.26, the application must—

- (a) demonstrate the applicant's entitlement to apply;
- (b) identify the relevant search power (and see paragraph (3));
- (c) so far as practicable, identify the articles or persons sought (and see paragraph (4));
- (d) specify the premises to be searched (and see paragraphs (5) and (6));
- (e) state whether the applicant wants the premises to be searched on more than one occasion, if the relevant search power allows (and see paragraph (7)); and
- (f) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants, if the relevant search power allows (and see paragraph (8)).

(3) The application must—

- (a) include or attach the terms of the relevant search power; and
- (b) explain how the circumstances satisfy the criteria prescribed by that power for making the application.

(4) In relation to the articles or persons sought, the application must explain how they satisfy the criteria prescribed by the relevant search power about such articles or persons.

(5) In relation to premises which the applicant wants to be searched and can specify, the application must—

- (a) specify each set of premises; and
- (b) in respect of each, explain how the circumstances satisfy any criteria prescribed by the relevant search power—
  - (i) for asserting that the articles or persons sought are on those premises, and

- (ii) for asserting that the court can exercise its power to authorise the search of those particular premises.
- (6) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—
- (a) explain how the relevant search power allows the court to authorise such searching;
  - (b) specify the person who occupies or controls such premises;
  - (c) specify as many sets of such premises as is reasonably practicable;
  - (d) explain why—
    - (i) it is necessary to search more premises than those specified, and
    - (ii) it is not reasonably practicable to specify all the premises which the applicant wants to be searched;
  - (e) in respect of each set of premises, whether specified or not, explain how the circumstances satisfy any criteria prescribed by the relevant search power for asserting that the articles or persons sought are on those premises; and
  - (f) in respect of each specified set of premises, explain how the circumstances satisfy any criteria prescribed by the relevant search power for asserting that the court can exercise its power to authorise the search of those premises.
- (7) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—
- (a) explain how the relevant search power allows the court to authorise such searching;
  - (b) explain why the applicant wants the premises to be searched more than once; and
  - (c) specify any proposed maximum number of occasions.
- (8) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—
- (a) identify those other persons, by function or description; and
  - (b) explain why those persons are required.

*[Note. See, among other provisions, sections 15 and 16 of the Police and Criminal Evidence Act 1984(101), which apply to an application by a constable under any Act for a warrant authorising the search of specified premises, or the search of premises of a specified person, and to the execution of such a warrant. Unless other legislation otherwise provides, under section 16(3) of the 1984 Act entry and search under a warrant must be within 3 months from the date of its issue.*

*The Practice Direction sets out forms of application and warrant for use in connection with this rule.]*

#### SECTION 4: ORDERS FOR THE RETENTION OR RETURN OF PROPERTY

##### **When this Section applies**

**47.35.**—(1) This Section applies where—

(101) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496. Section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 8 of S.I. 2005/3496.

- (a) under section 1 of the Police (Property) Act 1897(102), a magistrates' court—
  - (i) order the return to the owner of property which has come into the possession of the police or the National Crime Agency in connection with an investigation of a suspected offence, or
  - (ii) make such order with respect to such property as the court thinks just, where the owner cannot be ascertained; and
- (b) a Crown Court judge can—
  - (i) order the return of seized property under section 59(4) of the Criminal Justice and Police Act 2001(103), or
  - (ii) order the examination, retention, separation or return of seized property under section 59(5) of the Act.

(2) In this Section, a reference to a person with 'a relevant interest' in seized property means someone from whom the property was seized, or someone with a proprietary interest in the property, or someone who had custody or control of it immediately before it was seized.

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

- 47.36.**—(1) The court may determine an application for an order—
- (a) at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and
  - (b) in a party's absence, if that party—
    - (i) applied for the order, or
    - (ii) has had at least 10 business days in which to make representations.
- (2) The court officer must arrange for the court to hear such an application no sooner than 10 business days after it was served, unless—
- (a) the court directs that no hearing need be arranged; or
  - (b) the court gives other directions for the hearing.
- (3) If the court so directs, the parties to an application may attend a hearing by live link or telephone.
- (4) The court may—
- (a) shorten or extend (even after it has expired) a time limit under this Section;
  - (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.
- (5) A person who wants an extension of time must—
- (a) apply when serving the application or representations for which it is needed; and
  - (b) explain the delay.

#### **Application for an order under section 1 of the Police (Property) Act 1897**

**47.37.**—(1) This rule applies where an applicant wants the court to make an order to which rule 47.35(1)(a) refers.

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(102) 1897 c. 30; section 1 was amended by sections 33 and 36 of, and Part III of Schedule 3 to, the Theft Act 1968 (c. 60), section 58 of the Criminal Justice Act 1972 (c. 71), section 192 of, and Part I of Schedule 5 to, the Consumer Credit Act 1974 (c. 39), the Statute Law (Repeals) Act 1989 (c. 43) and section 4 of the Police (Property) Act 1997 (c. 30).

(103) 2001 c. 16.

- (2) The applicant must apply in writing and serve the application on—
  - (a) the court officer; and
  - (b) as appropriate—
    - (i) the officer who has the property,
    - (ii) any person who appears to be its owner.
- (3) The application must—
  - (a) explain the applicant’s interest in the property (either as a person who claims to be its owner or as an officer into whose possession the property has come);
  - (b) specify the direction that the applicant wants the court to make, and explain why; and
  - (c) include or attach a list of those on whom the applicant has served the application.

*[Note. Under section 1 of the Police (Property) Act 1897, the owner of property which has come into the possession of the police or the National Crime Agency in connection with the investigation of a suspected offence can apply to a magistrates’ court for an order for its delivery to the claimant.]*

#### **Application for an order under section 59 of the Criminal Justice and Police Act 2001**

**47.38.**—(1) This rule applies where an applicant wants the court to make an order to which rule 47.35(1)(b) refers.

- (2) The applicant must apply in writing and serve the application on—
  - (a) the court officer; and
  - (b) as appropriate—
    - (i) the person who for the time being has the seized property,
    - (ii) each person whom the applicant knows or believes to have a relevant interest in the property.
- (3) In each case, the application must—
  - (a) explain the applicant’s interest in the property (either as a person with a relevant interest, or as possessor of the property in consequence of its seizure, as appropriate);
  - (b) explain the circumstances of the seizure of the property and identify the power that was exercised to seize it (or which the person seizing it purported to exercise, as appropriate); and
  - (c) include or attach a list of those on whom the applicant has served the application.
- (4) On an application for an order for the return of property under section 59(4) of the Criminal Justice and Police Act 2001, the application must explain why any one or more of these applies—
  - (a) there was no power to make the seizure;
  - (b) the property seized is, or contains, an item subject to legal privilege which is not an item that can be retained lawfully in the circumstances listed in section 54(2) of the Act;
  - (c) the property seized is, or contains, excluded or special procedure material which is not material that can be retained lawfully in the circumstances listed in sections 55 and 56 of the Act(104); or

(104)2001 c. 16; section 55 was amended by sections 456 and 457 of, and paragraphs 1 and 40 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29). Section 56 was amended by article 364 of SI 2001/3649, section 12 of, and paragraph 14 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 189 of Schedule 1 to, S.I. 2009/1941.

- (d) the property seized is, or contains, something taken from premises under section 50 of the Act, or from a person under section 51 of the Act, in the circumstances listed in those sections and which cannot lawfully be retained on the conditions listed in the Act.
- (5) On an application for an order for the examination, retention, separation or return of property under section 59(5) of the 2001 Act, the application must—
  - (a) specify the direction that the applicant wants the court to make, and explain why;
  - (b) if applicable, specify each requirement of section 53(2) of the Act (examination and return of property) which is not being complied with; and
  - (c) if applicable, explain why the retention of the property by the person who now has it would be justified on the grounds that, even if it were returned, it would immediately become appropriate for that person to get it back under—
    - (i) a warrant for its seizure, or
    - (ii) a production order made under paragraph 4 of Schedule 1 to the Police and Criminal Evidence Act 1984(105), section 20BA of the Taxes Management Act 1970(106) or paragraph 5 of Schedule 5 to the Terrorism Act 2000(107).

*[Note. Under section 59 of the Criminal Justice and Police Act 2001, a person with a ‘relevant interest’ (see rule 47.35(2)) in seized property can apply in the circumstances listed in the Act to a Crown Court judge for an order for its return. A person who has the property in consequence of its seizure can apply for an order authorising its retention. Either can apply for an order relating to the examination of the property.]*

#### **Application containing information withheld from another party**

- 47.39.**—(1) This rule applies where—
- (a) an applicant serves an application to which rule 47.37 (Application for an order under section 1 of the Police (Property) Act 1897) or rule 47.38 (Application for an order under section 59 of the Criminal Justice and Police Act 2001) applies; and
  - (b) the application includes information that the applicant thinks ought not be revealed to another party.
- (2) The applicant must—
- (a) omit that information from the part of the application that is served on that other party;
  - (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 why the applicant has withheld that information from that other party.
- (3) If the court so directs, any hearing of an application to which this rule applies may be, wholly or in part, in the absence of a party from whom information has been withheld.
- (4) At any hearing of an application to which this rule applies—
- (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the applicant and then by each other party, in all the parties’ presence, and then

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(105) 1984 c. 60; paragraph 4 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

(106) 1970 c. 9; section 20BA was inserted by section 149 of the Finance Act 2000 (c. 17).

(107) 2000 c. 11; paragraph 5 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

- (ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but
- (b) the court may direct other arrangements for the hearing.

### Representations in response

**47.40.**—(1) This rule applies where a person wants to make representations about an application under rule 47.37 or rule 47.38.

(2) Such a person must—

(a) serve the representations on—

(i) the court officer, and

(ii) the applicant and any other party to the application;

(b) do so not more than 10 business days after service of the application; and

(c) ask for a hearing, if that person wants one.

(3) Representations in opposition to an application must explain why the grounds on which the applicant relies are not met.

(4) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

### Application to punish for contempt of court

**47.41.**—(1) This rule applies where a person is accused of disobeying an order under section 59 of the Criminal Justice and Police Act 2001.

(2) A person who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

*[Note. A Crown Court judge has power to punish a person who disobeys an order under section 59 of the 2001 Act as if that were a contempt of the Crown Court: see section 59(9) of the Act.]*

## SECTION 5: ORDERS FOR THE RETENTION OF FINGERPRINTS, ETC.

### When this Section applies

**47.42.** This Section applies where—

(a) a District Judge (Magistrates' Court) can make an order under—

(i) section 63F(7) or 63R(6) of the Police and Criminal Evidence Act 1984(108), or

(ii) paragraph 20B(5) or 20G(6) of Schedule 8 to the Terrorism Act 2000(109); and

(108) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

(109) 2000 c. 11; paragraph 20B of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) (for certain purposes, and for remaining purposes with effect from a date to be appointed) and amended by section 181 of, and paragraph 125 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014

- (b) the Crown Court can determine an appeal under—
  - (i) section 63F(10) of the Police and Criminal Evidence Act 1984, or
  - (ii) paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000.

*[Note. Under the Police and Criminal Evidence Act 1984 or under the Terrorism Act 2000, an order may be made extending the period during which fingerprints, DNA profiles or samples may be retained by the police.]*

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

**47.43.**—(1) The court must determine an application under rule 47.44, and an appeal under rule 47.45—

- (a) at a hearing, which must be in private unless the court otherwise directs; and
- (b) in the presence of the applicant or appellant.

(2) The court must not determine such an application or appeal unless any person served under those rules—

- (a) is present; or
- (b) has had an opportunity—
  - (i) to attend, or
  - (ii) to make representations.

### **Application to extend retention period**

**47.44.**—(1) This rule applies where a magistrates' court can make an order extending the period for which there may be retained material consisting of—

- (a) fingerprints taken from a person—
  - (i) under a power conferred by Part V of the Police and Criminal Evidence Act 1984(**110**),
  - (ii) with that person's consent, in connection with the investigation of an offence by the police, or
  - (iii) under a power conferred by Schedule 8 to the Terrorism Act 2000(**111**) in relation to a person detained under section 41 of that Act;
- (b) a DNA profile derived from a DNA sample so taken; or
- (c) a sample so taken.

(2) A chief officer of police who wants the court to make such an order must—

- (a) apply in writing—
  - (i) within the period of 3 months ending on the last day of the retention period, where the application relates to fingerprints or a DNA profile, or
  - (ii) before the expiry of the retention period, where the application relates to a sample;
- (b) in the application—
  - (i) identify the material,
  - (ii) state when the retention period expires,

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(c. 12). Paragraph 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

(110) 1984 c. 60.

(111) 2000 c. 11.



- (iii) give details of any previous such application relating to the material, and
- (iv) outline the circumstances in which the material was acquired;
- (c) serve the application on the court officer, in every case; and
- (d) serve the application on the person from whom the material was taken, where—
  - (i) the application relates to fingerprints or a DNA profile, or
  - (ii) the application is for the renewal of an order extending the retention period for a sample.
- (3) An application to extend the retention period for fingerprints or a DNA profile must explain why that period should be extended.
- (4) An application to extend the retention period for a sample must explain why, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
  - (a) disclosure to, or use by, a defendant; or
  - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (5) On an application to extend the retention period for fingerprints or a DNA profile, the applicant must serve notice of the court's decision on any respondent where—
  - (a) the court makes the order sought; and
  - (b) the respondent was absent when it was made.

*[Note. See rule 47.42(a). The powers to which rule 47.44 applies may be exercised only by a District Judge (Magistrates' Courts).*

*The time limits for making an application under this rule are prescribed by sections 63F(8) and 63R(8) of the Police and Criminal Evidence Act 1984(112), and by paragraphs 20B(6) and 20G(8) of Schedule 8 to the Terrorism Act 2000(113). They may be neither extended nor shortened.*

*Sections 63D and 63R of the 1984 Act(114), and paragraphs 20A and 20G of Schedule 8 to the 2000 Act(115), provide for the circumstances in which there must be destroyed the material to which this rule applies.*

*Section 63F of the 1984 Act, and paragraph 20B of Schedule 8 to the 2000 Act, provide for the circumstances in which fingerprints and DNA profiles may be retained instead of being destroyed. Under section 63F(7) and paragraph 20B(5), a chief officer of police to whom those provisions apply may apply for an order extending the statutory retention period of 3 years by up to another 2 years.*

*Section 63R of the 1984 Act and paragraph 20G of Schedule 8 to the 2000 Act provide for the circumstances in which samples taken from a person may be retained instead of being destroyed. Under section 63R(6) of the 1984 Act and paragraph 20G(6) of Schedule 8 to the 2000 Act, a chief officer of police to whom those provisions apply may apply for an order to retain a sample*

(112) 1984 c. 60; section 63F was inserted by section 3 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

(113) 2000 c. 11; paragraph 20B of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) (for certain purposes, and for remaining purposes with effect from a date to be appointed) and amended by section 181 of, and paragraph 125 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Paragraph 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

(114) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9).

(115) 2000 c. 11; paragraph 20A of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

*for up to 12 months after the date on which it would otherwise have to be destroyed. Under section 63R(9) and paragraph 20G(9), such an order may be renewed, on one or more occasions, for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.]*

## **Appeal**

**47.45.**—(1) This rule applies where, under rule 47.44, a magistrates' court determines an application relating to fingerprints or a DNA profile and—

- (a) the person from whom the material was taken wants to appeal to the Crown Court against an order extending the retention period; or
  - (b) a chief officer of police wants to appeal to the Crown Court against a refusal to make such an order.
- (2) The appellant must—
- (a) serve an appeal notice—
    - (i) on the Crown Court officer and on the other party, and
    - (ii) not more than 15 business days after the magistrates' court's decision, or, if applicable, service of notice under rule 47.44(5); and
  - (b) in the appeal notice, explain, as appropriate, why the retention period should, or should not, be extended.
- (3) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

*[Note. Under section 63F(10) of the Police and Criminal Evidence Act 1984, and under paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000, the person from whom fingerprints were taken, or from whom a DNA profile derives, may appeal to the Crown Court against an order extending the retention period; and a chief officer of police may appeal to the Crown Court against the refusal of such an order.]*

## **SECTION 6: INVESTIGATION ANONYMITY ORDERS UNDER THE CORONERS AND JUSTICE ACT 2009**

### **When this Section applies**

**47.46.** This Section applies where—

- (a) a justice of the peace can make or discharge an investigation anonymity order, under sections 76 and 80(1) of the Coroners and Justice Act 2009(**116**); and
- (b) a Crown Court judge can determine an appeal against—
  - (i) a refusal of such an order, under section 79 of the 2009 Act, or
  - (ii) a decision on an application to discharge such an order, under section 80(6) of the 2009 Act.

*[Note. Under the Coroners and Justice Act 2009, an investigation anonymity order may be made prohibiting the disclosure of information that identifies, or might identify, a specified person as someone who is, or was, willing to assist the investigation of an offence of murder or manslaughter caused by a gun or knife.]*

**Exercise of court's powers**

**47.47.**—(1) The court may determine an application for an investigation anonymity order, and any appeal against the refusal of such an order—

- (a) at a hearing (which must be in private unless the court otherwise directs); or
- (b) without a hearing.

(2) The court must determine an application to discharge an investigation anonymity order, and any appeal against the decision on such an application—

- (a) at a hearing (which must be in private unless the court otherwise directs); and
- (b) in the presence of the person specified in the order, unless—
  - (i) that person applied for the discharge of the order,
  - (ii) that person has had an opportunity to make representations, or
  - (iii) the court is satisfied that it is not reasonably practicable to communicate with that person.

(3) The court may consider an application or an appeal made orally instead of in writing.

**Application for an investigation anonymity order**

**47.48.**—(1) This rule applies where an applicant wants a magistrates' court to make an investigation anonymity order.

(2) The applicant must—

- (a) apply in writing;
- (b) serve the application on the court officer;
- (c) identify the person to be specified in the order, unless—
  - (i) the applicant wants the court to determine the application at a hearing, or
  - (ii) the court otherwise directs;
- (d) explain how the proposed order meets the conditions prescribed by section 78 of the Coroners and Justice Act 2009(117);
- (e) say if the applicant intends to appeal should the court refuse the order;
- (f) attach any material on which the applicant relies; and
- (g) propose the terms of the order.

(3) At any hearing of the application, the applicant must—

- (a) identify to the court the person to be specified in the order, unless—
  - (i) the applicant has done so already, or
  - (ii) the court otherwise directs; and
- (b) unless the applicant has done so already, inform the court if the applicant intends to appeal should the court refuse the order.

*[Note. See section 77 of the Coroners and Justice Act 2009.]*

**Application to discharge an investigation anonymity order**

**47.49.**—(1) This rule applies where one of the following wants a magistrates' court to discharge an investigation anonymity order—

- (a) an applicant; or
  - (b) the person specified in the order.
- (2) That applicant or the specified person 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 as applicable
    - (ii) the applicant for the order, and
    - (iii) the specified person;
  - (c) explain—
    - (i) what material circumstances have changed since the order was made, or since any previous application was made to discharge it, and
    - (ii) why it is appropriate for the order to be discharged; and
  - (d) attach—
    - (i) a copy of the order, and
    - (ii) any material on which the applicant relies.
- (3) A party must inform the court if that party intends to appeal should the court discharge the order.

*[Note. See section 80 of the Coroners and Justice Act 2009.]*

## **Appeal**

**47.50.**—(1) This rule applies where one of the following ('the appellant') wants to appeal to the Crown Court—

- (a) the applicant for an investigation anonymity order, where a magistrates' court has refused to make the order; or
  - (b) a party to an application to discharge such an order, where a magistrates' court has decided that application.
- (2) The appellant must—
- (a) serve on the Crown Court officer a copy of the application to the magistrates' court; and
  - (b) where the appeal concerns a discharge decision, notify each other party,
- not more than 15 business days after the decision against which the appellant wants to appeal.

- (3) The Crown Court must hear the appeal without justices of the peace.

*[Note. See sections 79 and 80(6) of the Coroners and Justice Act 2009, and section 74 of the Senior Courts Act 1981(118).]*

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**(118)** 1981 c. 54; section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12 of the Schedule to S.I. 2004/2035 and section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). 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).

**SECTION 7: INVESTIGATION APPROVAL ORDERS UNDER  
THE REGULATION OF INVESTIGATORY POWERS ACT 2000**

**When this Section applies**

- 47.51.** This Section applies where a justice of the peace can make an order approving—
- (a) the grant or renewal of an authorisation, or the giving or renewal of a notice, under section 23A of the Regulation of Investigatory Powers Act 2000(**119**); and
  - (b) the grant or renewal of an authorisation under section 32A of the 2000 Act(**120**).

*[Note. Under the Regulation of Investigatory Powers Act 2000, an order may be made approving a local authority officer's authorisation for the obtaining of information about the use of postal or telecommunications services, or for the use of surveillance or of a 'covert human intelligence source'.]*

**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(**121**).

(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.]*

**Application for approval for authorisation or notice**

**47.53.**—(1) This rule applies where an applicant wants a magistrates' court to make an order approving—

- (a) under sections 23A and 23B of the Regulation of Investigatory Powers Act 2000(**122**)—
  - (i) an authorisation to obtain or disclose communications data, under section 22(3) of the 2000 Act(**123**), or
  - (ii) a notice that requires a postal or telecommunications operator if need be to obtain, and in any case to disclose, communications data, under section 22(4) of the 2000 Act; or
- (b) under sections 32A and 32B of the Regulation of Investigatory Powers Act 2000(**124**), an authorisation for—
  - (i) the carrying out of directed surveillance, under section 28 of the 2000 Act, or
  - (ii) the conduct or use of a covert human intelligence source, under section 29 of the 2000 Act(**125**).

(119) 2000 c. 23; section 23A was inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(120) 2000 c. 23; section 32A was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(121) 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).

(122) 2000 c. 23; sections 23A and 23B were inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(123) 2000 c. 23; section 22 was amended by section 112 of, and paragraphs 12 and 13 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26).

(124) 2000 c. 23; sections 32A and 32B were inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(125) 2000 c. 23; section 29 was amended by section 8 of the Policing and Crime Act 2009 (c. 26).

- (2) The applicant must—
- (a) apply in writing and serve the application on the court officer;
  - (b) attach the authorisation or notice which the applicant wants the court to approve;
  - (c) attach such other material (if any) on which the applicant relies to satisfy the court—
    - (i) as required by section 23A(3) and (4) of the 2000 Act, in relation to communications data,
    - (ii) as required by section 32A(3) and (4) of the 2000 Act, in relation to directed surveillance, or
    - (iii) as required by section 32A(5) and (6), and, if relevant, section 43(6A), of the 2000 Act(126), in relation to a covert human intelligence source; and
  - (d) propose the terms of the order.

*[Note. See also rule 47.5, under which the court may—*

- (a) *exercise its powers in the parties' absence; and*
- (b) *consider an application made orally.*

*Under section 23A(3) to (5) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation or notice concerning communications data (as defined in section 21 of the Act(127)), the court must be satisfied that—*

- (a) *the person who granted or renewed the authorisation, or who gave or renewed the notice, was entitled to do so;*
- (b) *the grant, giving or renewal met any prescribed restrictions or conditions;*
- (c) *at the time the authorisation or notice was granted, given or renewed, as the case may be, there were reasonable grounds for believing that to obtain or disclose the data described in the authorisation or notice was—*
  - (i) *necessary, for the purpose of preventing or detecting crime or preventing disorder; and*
  - (ii) *proportionate to what was sought to be achieved by doing so; and*
- (d) *there remain reasonable grounds for believing those things, at the time the court considers the application.*

*The Regulation of Investigatory Powers (Communications Data) Order 2010(128) specifies the persons who are entitled to grant, give or renew an authorisation or notice concerning such data, and for what purpose each may do so.*

*Under section 32A(3) and (4) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation concerning directed surveillance (as defined in section 26 of the Act(129)), the court must be satisfied that—*

- (a) *the person who granted the authorisation was entitled to do so;*
- (b) *the grant met any prescribed restrictions or conditions;*
- (c) *at the time the authorisation was granted there were reasonable grounds for believing that the surveillance described in the authorisation was—*

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(126) 2000 c. 23; section 43(6A) was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(127) 2000 c. 23; section 21 was amended by section 88 of, and paragraphs 5 and 7 of Schedule 12 to, the Serious Crime Act 2007 (c. 27).

(128) S.I. 2010/480.

(129) 2000 c. 23; section 26 was amended by section 406 of, and paragraph 161 of Schedule 17 to, the Communications Act 2003 (c. 21).

- (i) *necessary, for the purpose of preventing or detecting crime or preventing disorder, and*
- (ii) *proportionate to what was sought to be achieved by it; and*
- (d) *there remain reasonable grounds for believing those things, at the time the court considers the application.*

*Under section 32A(5) and (6) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation of the conduct or use of a covert human intelligence source (as defined in section 26 of the Act), the court must be satisfied that—*

- (a) *the person who granted the authorisation was entitled to do so;*
- (b) *the grant met any prescribed restrictions or conditions;*
- (c) *at the time the authorisation was granted there were reasonable grounds for believing that the conduct or use of a covert human intelligence source described in the authorisation was—*
  - (i) *necessary, for the purpose of preventing or detecting crime or preventing disorder, and*
  - (ii) *proportionate to what was sought to be achieved by it; and*
- (d) *there remain reasonable grounds for believing those things, at the time the court considers the application.*

*Under section 43(6A) of the 2000 Act, on an application to approve the renewal of such an authorisation the court in addition must—*

- (a) *be satisfied that, since the grant or latest renewal of the authorisation, a review has been carried out of the use made of the source, of the tasks given to him or her and of the information obtained; and*
- (b) *consider the results of that review.*

*The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(130) specifies the persons who are entitled to grant an authorisation concerning such surveillance or such a source, and for what purpose each may do so.*

*Under sections 23B(2) and 32B(2) of the 2000 Act, 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.]*

## *SECTION 8: ORDERS FOR ACCESS TO DOCUMENTS, ETC. UNDER THE CRIMINAL APPEAL ACT 1995*

### **When this Section applies**

**47.54.** This Section applies where the Crown Court can order a person to give the Criminal Cases Review Commission access to a document or other material under section 18A of the Criminal Appeal Act 1995(131).

*[Note. Under section 18A of the Criminal Appeal Act 1995, on an application by the Criminal Cases Review Commission the court may order that the Commission be given access to a document or material in a person's possession or control if the court thinks that that document or material may assist the Commission in the exercise of any of their functions.]*

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(130) S.I. 2010/521.

(131) 1995 c. 35; section 18A was inserted by section 1 of the Criminal Cases Review Commission (Information) Act 2016 (c. 17).



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

**47.55.**—(1) Subject to paragraphs (2), (3) and (4), the court may determine an application by the Criminal Cases Review Commission for an 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 Commission,
  - (ii) the respondent, and
  - (iii) any other person affected by the order.

(2) The court must not determine such an application in the Commission's absence if—

- (a) the Commission asks for a hearing; or
- (b) it appears to the court that the application is so complex or serious as to require the court to hear the Commission.

(3) The court must not determine such an application in the absence of any respondent or other person affected, 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 Commission cannot identify or contact the absentee,
  - (ii) it would prejudice the exercise of the Commission's functions to adjourn or postpone the application so as to allow the absentee to attend, or
  - (iii) the absentee has waived the opportunity to attend.

(4) The court must not determine such an application in the absence of any respondent who, if the order sought by the Commission were made, would be required to produce or give access to journalistic material, unless that respondent has waived the opportunity to attend.

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

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

(6) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(7) If the court so directs, the parties to an application may attend a hearing by live link or telephone.

(8) The court must not make an order unless an officer of the Commission states, in writing or orally, that to the best of that officer'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.

(9) Where the statement required by paragraph (8) 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.

(10) The court may shorten or extend (even after it has expired) a time limit under this Section.

**Application for an order for access**

**47.56.**—(1) Where the Criminal Cases Review Commission wants the court to make an order for access to a document or other material, the Commission must—

- (a) apply in writing and serve the application on the court officer;
  - (b) give the court an estimate of how long the court should allow—
    - (i) to read the application and prepare for any hearing, and
    - (ii) for any hearing of the application;
  - (c) attach a draft order in the terms proposed by the Commission; and
  - (d) serve the application and draft order on the respondent.
- (2) The application must—
- (a) identify the respondent;
  - (b) describe the document, or documents, or other material sought;
  - (c) explain the reasons for thinking that—
    - (i) what is sought is in the respondent’s possession or control, and
    - (ii) access to what is sought may assist the Commission in the exercise of any of their functions; and
  - (d) explain the Commission’s proposals for—
    - (i) the manner in which the respondent should give access, and
    - (ii) the period within which the order should take effect.
- (3) The Commission must serve any order made on the respondent.

*[Note. Under section 18A(3) of the Criminal Appeal Act 1995, the court may give directions for the manner in which access to a document or other material must be given, and may direct that the Commission must be allowed to take away such a document or material, or to make copies. Under section 18A(4) of the Act, the court may direct that the respondent must not destroy, damage or alter a document or other material before the direction is withdrawn by the court.]*

**Application containing information withheld from a respondent or other person**

- 47.57.**—(1) This rule applies where—
- (a) the Criminal Cases Review Commission serves an application under rule 47.56 (Application for an order for access); and
  - (b) the application includes information that the Commission thinks ought not be revealed to a recipient.
- (2) The Commission must—
- (a) omit that information from the part of the application that is served on that recipient;
  - (b) mark the other part, to show that it is only for the court; and
  - (c) in that other part, explain why the Commission has withheld it from that recipient.
- (3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of that recipient and any other person.
- (4) At a hearing of an application to which this rule applies—
- (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the Commission and then by the other parties, in the presence of them all, and then

- (ii) further representations by the Commission, in the others' absence; but
- (b) the court may direct other arrangements for the hearing.

### **Application to punish for contempt of court**

**47.58.**—(1) This rule applies where a person is accused of disobeying an order for access made under section 18A of the Criminal Appeal Act 1995.

(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 48 (Contempt of court).

*[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See section 45 of the Senior Courts Act 1981(132).]*

## *SECTION 9: EUROPEAN INVESTIGATION ORDERS*

### **When this Section applies**

**47.59.**—(1) 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(133), and
  - (ii) vary or revoke such an order under regulation 10 of the 2017 Regulations; but
- (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.]*

### **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), and
    - (iii) any other person affected by the order.
- (2) The court must not determine such an application in the applicant's absence if—

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(132) 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).

(133) S.I. 2017/730.

- (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(**134**), section 348 or 361 of the Proceeds of Crime Act 2002(**135**) or article 9 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**136**), 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; and
  - (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
    - (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

**(134)** 1984 c. 60.**(135)** 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).**(136)** S.I. 2014/1893.

- (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; and
  - (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; and
  - (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(137) (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; and
- (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, and
    - (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; and
  - (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.]*

#### 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(**138**).

(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(**139**).

*[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(**140**) 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 47.64 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—

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**(138)**2002 c. 29; section 336A was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

**(139)**2002 c. 29; section 336D was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

**(140)**2002 c. 29; section 335 was amended by section 10 of the Criminal Finances Act 2017 (c. 22). Section 336 was amended by paragraphs 168 and 173 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraphs 108 and 133 of Schedule 8 to the Crime and Courts Act 2013 (c. 22) and section 10 of the Criminal Finances Act 2017 (c. 22).



- (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, and
  - (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.
- (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 applicantnot 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(141) the court must determine the application as soon as reasonably practicable. Under section 336C(142), 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;

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(141) 2002 c. 29; section 336B was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

(142) 2002 c. 29; section 336C was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

- (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; and
  - (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.]*

**SECTION 11: ORDERS FOR ACCESS TO ELECTRONIC DATA  
UNDER THE CRIME (OVERSEAS PRODUCTION ORDERS) ACT 2019**

**When this Section applies**

**47.66.**—(1) This Section applies where the Crown Court can make an overseas production order under section 1 of the Crime (Overseas Production Orders) Act 2019(**143**).

(2) In this Section, a reference to a person affected by such an order includes a person by whom or on whose behalf there is stored any journalistic data specified or described in the application for that order.

*[Note. Under section 1 of the Crime (Overseas Production Orders) Act 2019, on an application by an appropriate officer (defined by section 2 of the Act) a Crown Court judge may order a person (in these rules, 'the respondent') to produce or give access to electronic data (by section 3, 'data stored electronically'), other than excepted such data, where, among other criteria listed in sections 1 and 4 of the Act, the judge is satisfied that—*

- (a) *there are reasonable grounds for believing that—*
  - (i) *an indictable offence has been committed and proceedings in respect of the offence have been instituted or the offence is being investigated, or*
  - (ii) *the order is sought for the purposes of a terrorist investigation within the meaning of the Terrorism Act 2000; and*

- (b) *there are reasonable grounds for believing that the respondent operates in, or is based in, a country or territory outside the United Kingdom which is a party to, or which participates in, a designated international co-operation arrangement.*

*Section 3 of the 2019 Act defines ‘excepted electronic data’ as data stored electronically that is (a) an item subject to legal privilege, or (b) a personal record within the meaning of section 3(7) (medical, etc. records) which (i) was created in circumstances giving rise to a continuing obligation of confidence to an individual who can be identified from that record, or (ii) is held subject to a restriction on disclosure, or an obligation of secrecy, contained in an enactment. Where the respondent against whom an overseas production order is sought is a telecommunications operator, within the meaning of the Investigatory Powers Act 2016, ‘excepted electronic data’ also includes communications data within the meaning of the 2016 Act. Where the investigation in aid of which an overseas production order is sought is a terrorist investigation other than a terrorist financing investigation within the meaning of the Terrorism Act 2000, ‘excepted electronic data’ does not include a confidential personal record.*

*Section 12 of the Act defines ‘journalistic data’ as electronic data that (a) was created or acquired for the purposes of journalism and (b) is stored by or on behalf of a person who created or acquired it for those purposes.]*

### **Exercise of court’s powers**

**47.67.**—(1) Subject to paragraphs (2), (3) and (4), the court may determine an application under rule 47.68 for an overseas production order, or an application under rule 47.69 to vary or revoke an 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, and
    - (iii) any other person affected by the order.
- (2) The court must not determine such an application in the applicant’s absence if—
- (a) the applicant asks for a hearing; or
  - (b) it appears to the court that—
    - (i) the proposed order may require the production of excepted electronic data, within the meaning of section 3 of the Crime (Overseas Production Orders) Act 2019, or
    - (ii) for any other reason the application is so complex or serious as to require the court to hear the applicant.
- (3) The court must not determine such an application in the absence of any respondent or other person affected 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) where journalistic data is sought, it would prejudice the investigation of another indictable offence or another terrorist 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

(v) the absentee has waived the opportunity to attend.

(4) The court must not determine such an application in the absence of any respondent who, if the order sought by the applicant were made, would be required to produce or give access to journalistic data, unless that respondent has waived the opportunity to attend.

(5) 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.

(6) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(7) If the court so directs, the parties to an application may attend a hearing by live link or telephone.

(8) The court must not make, vary or revoke 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.

(9) Where the statement required by paragraph (8) 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.

(10) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Section;
- (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.

(11) A person who wants an extension of time must—

- (a) apply when serving the application for which it is needed; and
- (b) explain the delay.

### **Application for order**

**47.68.**—(1) An applicant who wants the court to make an overseas production order must—

- (a) apply in writing and serve the application on the court officer;
- (b) demonstrate that the applicant is entitled to apply;
- (c) give the court an estimate of how long the court should allow—
  - (i) to read the application and prepare for any hearing, and
  - (ii) for any hearing of the application;
- (d) attach a draft order in the terms proposed by the applicant;
- (e) serve notice of the application on the respondent and on any other person affected by the order, unless the court otherwise directs; and
- (f) serve the application on the respondent and on any such other person to such extent, if any, as the court directs.

(2) A notice served on the respondent and on any other person affected by the order must—

- (a) specify or describe the electronic data in respect of which the application is made; and
- (b) identify—
  - (i) the power that the applicant invites the court to exercise, and
  - (ii) the conditions for the exercise of that power which the applicant asks the court to find are met.
- (3) The application must—
  - (a) specify the designated international co-operation arrangement by reference to which the application is made;
  - (b) identify the respondent;
  - (c) explain the grounds for believing that the respondent operates in, or is based in, a country or territory outside the United Kingdom which is a party to, or participates in, that designated international co-operation arrangement;
  - (d) specify or describe the electronic data in respect of which the order is sought;
  - (e) explain the grounds for believing that the electronic data sought does not consist of or include excepted electronic data;
  - (f) briefly describe the investigation for the purposes of which the electronic data is sought and explain—
    - (i) the grounds for believing that an indictable offence has been committed which is under investigation or in respect of which proceedings have begun, or
    - (ii) how the investigation constitutes a terrorist investigation within the meaning of the Terrorism Act 2000;
  - (g) explain the grounds for believing that the respondent has possession or control of all or part of the electronic data sought;
  - (h) explain the grounds for believing that the electronic data sought is likely to be of substantial value to the investigation, or to the proceedings (as the case may be), whether by itself or together with other material;
  - (i) where paragraph (3)(f)(i) applies, explain the grounds for believing that all or part of the electronic data sought is likely to be relevant evidence in respect of the offence concerned;
  - (j) explain the grounds for believing that it is in the public interest for the respondent to produce or give access to the electronic data sought, having regard to—
    - (i) the benefit likely to accrue to the investigation, or to the proceedings (as the case may be), if that data is obtained, and
    - (ii) the circumstances under which the respondent has possession or control of any of that data;
  - (k) specify—
    - (i) the person, or the description of person, to whom the applicant wants the court to order that electronic data must be produced or made accessible, and
    - (ii) the period by the end of which the applicant wants the court to order that that electronic data must be produced or made accessible (which must be a period of 7 days beginning with the day on which the order is served on the respondent, unless the court otherwise directs); and
  - (l) where the applicant wants the court to include a non-disclosure requirement in the order—
    - (i) explain why such a requirement would be appropriate, and
    - (ii) specify or describe when the applicant wants that requirement, if ordered, to expire.

(4) In the event that an overseas production order is made, the applicant must serve the order on the Secretary of State for service on the respondent.

(5) Where notice of the application was served on a respondent, in the event that the application is dismissed or abandoned the applicant must—

- (a) promptly so notify that respondent; and
- (b) where the application is dismissed, promptly inform that respondent if the court nonetheless orders that for a period that respondent must not—
  - (i) conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, or
  - (ii) disclose the making of the application or its contents to any person.

*[Note. See sections 1, 2, 4 and 5 of the Crime (Overseas Production Orders) Act 2019.*

*Under section 8 of the 2019 Act, an overseas production order may include a non-disclosure requirement obliging the respondent not to disclose the making of the order or its contents to any person except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer).*

*Under section 9 of the Act, an overseas production order may be served only by the Secretary of State.*

*Under section 12 of the Act, if there are reasonable grounds for believing that the electronic data specified or described in the application consists of or includes journalistic data then unless the judge otherwise directs notice of the application must be served on (a) the person against whom the overseas production order is sought and (b) if different, the person by whom, or on whose behalf, the journalistic data is stored. The criteria for making such a direction correspond with those listed in rule 47.67(3)(b).*

*Under section 13 of the Act, following service of notice of an application for an overseas production order the respondent must not conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, or disclose the making of the application or its contents to any person, except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer). Those obligations are superseded if an order is made. If the application is abandoned or dismissed, those obligations cease unless, in the event of dismissal, the court otherwise orders.*

*Section 14 of the Act provides for the means of service of notices and orders.*

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

#### **Application to vary or revoke an order**

**47.69.**—(1) The orders to which this rule applies are—

- (a) an overseas production order;
- (b) an order under section 8(4) of the Crime (Overseas Production Orders) Act 2019 maintaining an unexpired non-disclosure requirement;
- (c) an order under section 13(3) of the 2019 Act maintaining a duty not to conceal, destroy, alter or dispose of electronic data, and not to disclose the making or content of an application for an overseas production order; and
- (d) an order under section 13(4)(b) of the Act maintaining a duty not to conceal, destroy, alter or dispose of electronic data.



- (2) This rule applies where one of the following wants the court to vary, to further vary or to revoke an order listed in paragraph (1)—
- (a) the applicant for that order, or an equivalent appropriate officer;
  - (b) the respondent;
  - (c) another person affected by the order; or
  - (d) the Secretary of State.
- (3) The applicant for the variation or revocation 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) as applicable, the applicant for the order, the respondent, any other person known to be affected and the Secretary of State; and
  - (c) ask for a hearing, if one is wanted, and explain why it is needed.
- (4) Where the applicant wants the court to vary, or further vary, an overseas production order, the application must—
- (a) specify or describe the electronic data in respect of which the varied order is sought (which may include electronic data not specified or described in the original order);
  - (b) satisfy or, as the case may be, continue to satisfy, the requirements of rule 47.68(3)(a) and (c) to (i) (which may be done by reference to the original application); and
  - (c) meet the requirements of rule 47.68(3)(j).
- (5) Where the applicant wants the court to revoke an overseas production order, the application must—
- (a) explain why revocation is appropriate;
  - (b) if the applicant wants the court, despite revocation, to maintain the requirement that for a period the respondent must not conceal, destroy, alter or dispose of any of the electronic data specified or described in the order—
    - (i) explain why it would be appropriate to maintain that requirement, and
    - (ii) specify or describe when the applicant wants that requirement, if maintained, to expire; and
  - (c) if the order includes an unexpired non-disclosure requirement that the applicant wants the court, despite revocation, to maintain—
    - (i) explain why it would be appropriate to maintain that requirement, and
    - (ii) specify or describe when the applicant wants that requirement, if maintained, to expire.
- (6) Where the applicant wants the court to vary, to further vary or to revoke an order under section 8(4), section 13(3) or section 13(4)(b) of the 2019 Act the application must—
- (a) explain—
    - (i) what material circumstances have changed since the order was made, and
    - (ii) why the order should be varied or revoked, as the case may be, as a result; and
  - (b) if applicable, specify the variation proposed.

*[Note. See sections 7, 11(1) and 18(2) of the Crime (Overseas Production Orders) Act 2019.*

*Under section 8(4) of the 2019 Act, where the court revokes an overseas production order which includes an unexpired non-disclosure requirement the court may order that the respondent is to remain subject to that requirement for a defined period.*

*Under section 13(3) of the Act, where the court dismisses an application for an overseas production order then the duty under section 13(1)(a) not to conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, and under section 13(1)(b) not to disclose the making of the application or its contents to any person except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer), ceases to apply unless the court orders that a person served with notice of the application is to remain subject to that duty for a defined period.*

*Under section 13(4)(b) of the Act, where the court revokes an overseas production order before it is served then the duty under section 13(1)(a) not to conceal, destroy, alter or dispose of any of the electronic data specified or described in the application for the order ceases to apply unless the court orders that a person served with notice of the application is to remain subject to that duty for a defined period.]*

#### **Application containing information withheld from a respondent or other person**

**47.70.**—(1) This rule applies where an application under rule 47.68 or 47.69 includes information that the applicant thinks ought to be revealed only to the court.

- (2) The application must—
  - (a) identify that information; and
  - (b) explain why that information ought not to be served on the respondent or another person.
- (3) At a hearing of an application to which this rule applies—
  - (a) the general rule is that the court must consider, 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**

**47.71.**—(1) This rule applies where a person is accused of disobeying an order made by the court under the Crime (Overseas Production Orders) Act 2019.

(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 48 (Contempt of court).

*[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order: see section 45 of the Senior Courts Act 1981(144). Under section 11(4) of the Crime (Overseas Production Orders) Act 2019, an order made by a judge under the Act has effect as if it were an order of the Crown Court.]*

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(144) 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).