
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 150

**Act of Adjournal (Criminal Procedure Rules 1996
Amendment) (European Investigation Orders) 2018**

Amendment of the Criminal Procedure Rules 1996

- 2.—(1) The Criminal Procedure Rules 1996(1) are amended in accordance with this paragraph.
(2) After Chapter 66 (Review of Liberation Conditions and Authorisation for Questioning)(2) insert—

“CHAPTER 67

EUROPEAN INVESTIGATION ORDERS

Interpretation of this Chapter

67.1. In this Chapter—

“the 2017 Regulations” means the Criminal Justice (European Investigation Order) Regulations 2017(3);

“account monitoring order” has the meaning given by regulation 45(3) of the 2017 Regulations;

“customer information order” has the meaning given by regulation 44(3) of the 2017 Regulations;

“European investigation order” has—

(a) in rules 67.2 and 67.3, the meaning given by regulation 5; and

(b) in rule 67.6, the meaning given by regulation 25,

of the 2017 Regulations;

“issuing State” has the meaning given by regulation 25 of the 2017 Regulations;

“nominated court” means a court nominated under regulation 35, 36, 37, 38 or 43 of the 2017 Regulations.

Application for a European investigation order

- 67.2.—**(1) An application under regulation 6(3)(b) or (c) (power of a judicial authority to make a European investigation order) of the 2017 Regulations for a European investigation order is to be made in Form 67.2.

(1) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2018/12).
(2) Chapter 66 was inserted by S.S.I. 2018/12.
(3) S.I. 2017/30.

- (2) Where any party presents an application under paragraph (1) after proceedings have been instituted the High Court or sheriff, as the case may be, may—
- (a) dispense, on cause shown, with intimation to any other party and proceed to consider the application;
 - (b) fix a date for hearing the application and order intimation of the diet and application to any other party; or
 - (c) fix a date for hearing the application, order intimation of the diet to any other party and, on special cause shown, dispense meantime with intimation of the schedule of the application.

Variation or revocation of a European investigation order

67.3.—(1) An application to vary or revoke a European investigation order under regulation 10 (variation or revocation of a European investigation order) of the 2017 Regulations is to be made in Form 67.3.

- (2) When an application under paragraph (1) is lodged, the court may either—
- (a) dispense, on cause shown, with intimation to any other party and proceed to consider the application; or
 - (b) order intimation of the application to—
 - (i) the Lord Advocate or the procurator fiscal, as the case may be, and the person affected by the order, where the person who applied for the order is seeking to vary or revoke the order;
 - (ii) the person who applied for the order and the person affected by the order, where the Lord Advocate or the procurator fiscal, as the case may be, is seeking to vary or revoke the order; or
 - (iii) the person who applied for the order and the Lord Advocate or the procurator fiscal, as the case may be, where the person affected by the order is seeking to vary or revoke the order.
- (3) Where the court orders intimation of the application under paragraph (2)(b) it must appoint a hearing on the application.

Citation for proceedings before a nominated court

67.4.—(1) A warrant to cite a person to proceedings before a nominated court is to be made in Form 67.4-A.

(2) The form of postal citation of a person to proceedings before a nominated court is to be made in Form 67.4-B, and the person must complete and return Form 67.4-C to the procurator fiscal.

(3) The form of personal citation of a person to proceedings before a nominated court is to be made in Form 67.4-D.

Proceedings before a nominated court

67.5. In proceedings before a nominated court—

- (a) the procurator fiscal or Crown counsel must participate in any hearing;
- (b) a solicitor or counsel instructed by any party may participate in any hearing;
- (c) any other person may, with the leave of the court, participate in any hearing;
- (d) a shorthand writer may be present to record the proceedings; and

- (e) the proceedings must be in private.

Time periods

67.6.—(1) This rule applies where a court is giving effect to a European investigation order

- (a) by issuing a warrant under regulation 39(1) (search warrants and production orders: giving effect to the European investigation order);
- (b) by making a customer information order under regulation 44 (court’s power to make a customer information order); or
- (c) by making an account monitoring order under regulation 45 (court’s power to make an account monitoring order),

of the 2017 Regulations.

(2) Subject to paragraph (3), the sheriff must give effect to the European investigation order no later than the day after receipt of a nomination notice made under either—

- (a) regulation 38(2) (search warrants and production orders: nominating a court); or
- (b) regulation 43(2) (nominating a court to make a customer information order or an account monitoring order),

of the 2017 Regulations.

(3) The sheriff may, exceptionally, give effect to the European investigation order later than the period prescribed in paragraph (2) but must do so no later than 5 days after receipt of the nomination notice.

(4) Where the day mentioned in paragraph (2) or the last day of the period mentioned in paragraph (3) falls on a Saturday, Sunday or court holiday, such day or period is to extend to and include the next day which is not a Saturday, Sunday or court holiday.

(5) In calculating the period mentioned in paragraph (3), any Saturday, Sunday or court holiday that falls within that period is to be disregarded.

Form of warrant giving effect to European investigation order

67.7. A warrant issued under regulation 39(1) (search warrants and production orders: giving effect to the European investigation order) of the 2017 Regulations is to be made in Form 67.7.

Application to revoke or vary a search warrant or to authorise the release of evidence

67.8.—(1) An application made under regulation 41(1) (power to revoke or vary a search warrant or production order or to authorise the release of evidence seized or produced) of the 2017 Regulations is to be made in Form 67.8.

(2) When an application made under paragraph (1) is lodged, the court may either—

- (a) dispense, on cause shown, with intimation to any other party and proceed to consider the application; or
- (b) order intimation of the application to—
 - (i) the procurator fiscal, where the person affected by the order is seeking the release of evidence or to revoke or vary the search warrant; or
 - (ii) the person affected by the order where the procurator fiscal is seeking the release of evidence or to revoke or vary the search warrant.

(3) Where the court orders intimation of the application under paragraph (2)(b) it must appoint a hearing on the application.

Application to vary or revoke a customer information order or an account monitoring order

67.9.—(1) An application under regulation 48(1) (power to vary or revoke customer information and account monitoring orders) of the 2017 Regulations is to be made in Form 67.9.

(2) When an application made under paragraph (1) is lodged, the court may either—

- (a) dispense, on cause shown, with intimation to any other party and proceed to consider the application; or
- (b) order intimation of the application to either—
 - (i) the procurator fiscal where the person affected by the order is seeking to vary or revoke the order; or
 - (ii) the person affected by the order where the procurator fiscal is seeking to vary or revoke the order.

(3) Where the court orders intimation of the application under paragraph (2)(b) it must appoint a hearing on the application.

Provision of interpreters

67.10.—(1) This rule applies where a court has been nominated under either—

- (a) regulation 35(2) (nominating a court to hear evidence from a person);
- (b) regulation 36(2) (hearing a person through videoconference or other audio visual transmission); or
- (c) regulation 37(2) (hearing a person by telephone conference),

of the 2017 Regulations.

(2) Where it appears to the sheriff clerk that the witness is likely to give evidence in a language other than English, arrangements must be made for a translator to be present at the proceedings to translate what is said into English.

(3) Where it appears to the sheriff clerk that the witness is likely to give evidence in a language other than that in which the proceedings in the issuing State will be conducted, arrangements must be made for a translator to translate what is said into the language in which the proceedings of the issuing State will be conducted.

(4) Where the evidence in proceedings before a nominated court is given in a language other than English, the sheriff must continue proceedings until such time as an interpreter can be present to provide a translation into English.

Court record of proceedings before a nominated court

67.11.—(1) This rule applies where a court has received evidence in proceedings by virtue of a nomination under—

- (a) regulation 35(2) (nominating a court to receive evidence from a person);
- (b) regulation 36(2) (hearing a person through videoconference or other audio visual transmission); or
- (c) regulation 37(2) (hearing a person by telephone conference),

of the 2017 Regulations.

- (2) The sheriff clerk must record in the minute of proceedings—
 - (a) particulars of the proceedings; and
 - (b) without prejudice to the generality of sub-paragraph (a) above—
 - (i) which persons were present;
 - (ii) which of those persons were represented and by whom; and
 - (iii) whether any of those persons were denied the opportunity of cross-examining a witness as to any part of his or her testimony.
- (3) Save as authorised by the Lord Advocate or with the leave of the court, the minute of proceedings mentioned in paragraph (1) above is not open to inspection by any person.
- (4) The sheriff clerk must send to the issuing authority a certified copy of the minute of proceedings.”
- (3) In the appendix after Form 66.4-B (form of authorisation to question a person officially accused)(4) insert the forms set out in the schedule of this Act of Adjournal.