

**2022 No. 231**

**HIGH COURT OF JUSTICIARY**

**SHERIFF COURT**

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)  
(Overseas Production Orders) 2022**

*Made* - - - - - *29th June 2022*

*Laid before the Scottish Parliament* *1st July 2022*

*Coming into force* - - - *19th September 2022*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995(a), section 11(1) of the Crime (Overseas Production Orders) Act 2019(b) and all other powers enabling it to do so.

**Citation and commencement, etc.**

**1.**—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Overseas Production Orders) 2022.

(2) It comes into force on 19th September 2022.

(3) A certified copy is to be inserted in the Books of Adjournal.

**Amendment of the Criminal Procedure Rules 1996**

**2.**—(1) The Criminal Procedure Rules 1996(c) are amended in accordance with this paragraph.

(2) After Chapter 71 (electronic monitoring requirement under the Management of Offenders (Scotland) Act 2019)(d) insert—

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(a) 1995 c. 46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and by S.S.I. 2015/338, and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 (c. 29), section 36A(4) of the Serious Crime Act 2007 (c. 27) and section 32(5) of the Psychoactive Substances Act 2016 (c. 2).

(b) 2019 c. 5. The 2019 Act was amended by section 51 and schedule 5 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(c) 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. 2022/120.

(d) Chapter 71 was inserted by S.S.I. 2022/120.

## “CHAPTER 72 OVERSEAS PRODUCTION ORDERS

### **Interpretation of this Chapter**

#### **72.1.** In this Chapter—

“the 2019 Act” means the Crime (Overseas Production Orders) Act 2019<sup>(a)</sup> and references to terms defined in section 18(1) of that Act (interpretation) have the same meaning here as given there;

“any person affected by the order” includes, where section 12 of the 2019 Act (notice of application for order: journalistic data) applies, those mentioned in section 12(3) other than those whom a judge has directed that notice need not be served on under section 12(4) of that Act;

“equivalent appropriate officer” has the meaning given by section 7(7) of the 2019 Act (equivalent appropriate officer for variation or revocation of order);

“journalistic data” has the meaning given by section 12 of the 2019 Act;

“relevant persons” means the persons who may apply for variation or revocation of an overseas production order under section 7(2)(b) and (d) of the 2019 Act (applicants for variation or revocation of order).

### **Application for an overseas production order**

**72.2.**—(1) An application under section 1 of the 2019 Act (making of overseas production order on application) must be made in Form 72.2.

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

- (a) subject to section 12 of the 2019 Act dispense, on cause shown, with intimation to any other person and proceed to consider the application;
- (b) fix a date for hearing the application and, subject to section 12(4) of the 2019 Act (judicial direction that application need not be served), order intimation of the diet and application to—
  - (i) the person against whom the overseas production order is sought; and
  - (ii) where applicable, the person mentioned in section 12(3)(b) of the 2019 Act (persons on whom application must be served); or
- (c) fix a date for hearing the application and order intimation of the diet and application to the persons mentioned in sub-paragraph (b) and, on special cause shown, dispense meantime with intimation of the schedule of the application.

(3) The proceedings must be in private.

### **Disapplication of effects of notice of application or a non-disclosure requirement**

**72.3.**—(1) An application under sections 8(2)(a) (disapplication of non-disclosure requirement) or 13(2)(a) (disapplication of duty under section 13(1)) of the 2019 Act must be made in Form 72.3.

(2) The court must order intimation of the application to the appropriate officer.

(3) The appropriate officer must, within seven days of intimation of the application, notify the clerk of court in writing whether or not the application is opposed.

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(a) 2019 c. 5.

(4) Where the appropriate officer notifies the clerk of court that the application is not opposed, the court must proceed to dispose of the application and may do so in the absence of the applicant.

(5) Where the appropriate officer notifies the clerk of court that the application will be opposed, the clerk of court must arrange a hearing at which the parties may appear or be represented.

(6) The proceedings must be in private.

(7) The clerk of court must give notice in writing of the decision of the court on an application referred to in paragraph (1) to the applicant and the appropriate officer.

### **Variation or revocation of an overseas production order**

**72.4.**—(1) An application under section 7 of the 2019 Act (variation or revocation of order) must be made in Form 72.4.

(2) When an application under paragraph (1) is lodged, subject to sections 8 (inclusion of non-disclosure requirement in order) and 12 (notice of application for order: journalistic data) where applicable, the court may—

- (a) dispense, on cause shown, with intimation to any relevant persons and proceed to consider the application;
- (b) fix a date for hearing the application and order intimation of the diet and application to—
  - (i) the Lord Advocate and any person affected by the order, where the appropriate officer who applied for the order or an equivalent appropriate officer is seeking to vary or revoke it;
  - (ii) the appropriate officer who applied for the overseas production order or an equivalent appropriate officer and any person affected by the order, where the Lord Advocate or the procurator fiscal, as the case may be, is seeking to vary or revoke it; or
  - (iii) the appropriate officer who applied for the overseas production order or an equivalent appropriate officer, the Lord Advocate and any person (other than the applicant) affected by the order, as the case may be, where a person affected by the order is seeking to vary or revoke it; or
- (c) fix a date for hearing the application and order intimation of the diet and application to the persons specified in sub-paragraph (b) and, on special cause shown, dispense meantime with intimation of the schedule of the application.

(3) The proceedings must be in private.”.

(3) In the appendix, after Form 71.1 (form of order for electronic monitoring under section 1(1) of the Management of Offenders (Scotland) Act 2019)(a) insert Forms 72.2, 72.3 and 72.4 set out in the schedule of this Act of Adjournal.

*CJM SUTHERLAND*  
Lord Justice General  
I.P.D.

Edinburgh  
29th June 2022

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(a) Form 71.1 was inserted by S.S.I. 2022/120.

## SCHEDULE

Paragraph 2(3)

### Form 72.2

Rule 72.2(1)

#### **Form of application for an Overseas Production Order**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE  
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*]

APPLICATION

of

[xxxx]

APPLICANT

for

an OVERSEAS PRODUCTION ORDER

under section 1 of the Crime (Overseas Production Orders) Act 2019

HUMBLY SHEWETH, that:

1. The requirements are met for the making of an overseas production order in terms of section 4 of the 2019 Act *(here state details)*.
- [2. There are reasonable grounds to believe that the electronic data specified or described in the application consists of or includes journalistic data.]
3. The terms of the order sought are *(here state details including specification or description of the electronic data sought, the person or description of person to whom the electronic data specified or described must be produced/access given and the period by the end of which the electronic data specified or described must be produced/access given)*.
4. No electronic data is specified or described where there are reasonable grounds for believing it consists of or includes excepted electronic data.
- [5. The following non-disclosure requirement should be included in the overseas production order *(here state details including why it would be appropriate)* until *(here state details of expiry)*.]

- [6. That information identified in the attached schedule should not be disclosed to the persons specified in Rule 72.2(2)(b) for the following reasons (*here state reasons*).]
- [7. That the court should dispense with intimation for the following reasons (*here state reasons*).]

MAY IT THEREFORE PLEASE YOUR LORDSHIPS:

- (1) To dispense with intimation to (*specify persons*) and to proceed to consider the application;
- [*or*
- (1) To appoint intimation of this application to be made to (*specify persons*);]
- (2) To appoint parties to be heard thereon on;
- (3) Thereafter, on being duly satisfied, to make an overseas production order as set out in the application or to do further and otherwise as to the court shall seem proper.

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

[*or Solicitor for Applicant*

(*Address and telephone number of solicitor*)]

(Place and date)

## Form 72.3

Rule 72.3(1)

**Form of application for the disapplication of a non-disclosure requirement in, or  
the disapplication of the effects of a notice of application for, an Overseas  
Production Order**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE  
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

APPLICATION

of

[xxxx]

APPLICANT

for

Disapplication of a non-disclosure requirement in, or the disapplication of the effects of a notice of  
application for, an OVERSEAS PRODUCTION ORDER

under section 8(2)(a) [*or* 13(2)(a)] of the Crime (Overseas Production Orders) Act 2019

1. There is annexed to this application a copy of the overseas production order [*or*  
application for an overseas production order] which gives rise to a requirement under  
section 8 [*or* effects under section 13] of the 2019 Act which the applicant seeks to  
disapply (*here provide a description/specification of the data sought in the relevant  
application/order if not described in the annexed document*).
2. The applicant seeks disapplication of a section 8 requirement [*or* the effects of section 13]  
as follows (*here explain disapplication sought*) for the following reasons:- (*here state  
reasons*).

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

[*or Solicitor for Applicant*

(*Address and telephone number of solicitor*)]

(Place and date)

## Form 72.4

Rule 72.4(1)

### **Form of application to vary or revoke an Overseas Production Order**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE  
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*]

APPLICATION

of

[xxxx]

APPLICANT

for

Variation or revocation of an OVERSEAS PRODUCTION ORDER

under section 7 of the Crime (Overseas Production Orders) Act 2019

HUMBLY SHEWETH, that:

1. There is annexed to this application a copy of the overseas production order which was made [or varied] by the High Court sitting at *(place)* [or the sheriff at *(place)*] on *(date)*.
2. The overseas production order was made by reference to *(here state designated international co-operation arrangement)*.
3. The applicant seeks to vary the overseas production order as follows *(here state variation sought including specification or description of the electronic data sought, the person or description of person to whom the electronic data specified or described must be produced/access given and the period by the end of which the electronic data specified or described must be produced/access given)* [or to revoke the overseas production order] for the following reasons:- *(here state reasons)*.
- [4. The requirements continue to be met for the making of an overseas production order in terms of section 4 of the 2019 Act *(here state details)* and are fulfilled in relation to the electronic data specified or described at paragraph 3 above.]
- [5. There are reasonable grounds to believe that the electronic data specified or described in the application consists of or includes journalistic data.]

6. No electronic data is specified or described where there are reasonable grounds for believing it consists of or includes excepted electronic data.
- [7. The following non-disclosure requirement should be included in the overseas production order *[or The non-disclosure requirement in the order should be maintained]* (*here state details including why it would be appropriate*) until (*here state details of expiry*).]
- [8. That the information identified in the attached schedule should not be disclosed to the persons specified in Rule 72.4(2)(b) for the following reasons (*here state reasons*).]
- [9. That the court should dispense with intimation for the following reasons:- (*here state reasons*).]

MAY IT THEREFORE PLEASE YOUR LORDSHIPS

- (1) To dispense with intimation to (*specify persons*) and to proceed to consider the application;
- [*or*
- (1) To appoint intimation of this application to be made to (*specify persons*);]
- (2) To appoint parties to be heard thereon;
- (3) Thereafter, on being duly satisfied, to make an order varying the overseas production order by (*here state the terms of the variation sought*) [*or* revoking the overseas enforcement order] [and maintaining the non-disclosure requirement in the overseas production order until expiry on (*here state expiry details*)] or to do further and otherwise as to the court shall seem proper.

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

[*or Solicitor for Applicant*

(*Address and telephone number of solicitor*)]

(Place and date)



## **EXPLANATORY NOTE**

*(This note is not part of the Act of Adjournal)*

This Act of Adjournal inserts a new Chapter 72 into the Criminal Procedure Rules 1996 to make provision for the application, variation and revocation of overseas production orders under the Crime (Overseas Production Orders) Act 2019 (c. 5), with a process to apply for information to be provided to the court and withheld from a respondent or other persons.

It also provides for parties affected by overseas production orders to seek the leave of the court to do something prohibited either by non-disclosure provisions in such orders, or by the effect of the service of notice of applications for overseas productions orders, and applications for variation (see section 7(6) of the Crime (Overseas Production Orders) Act 2019).

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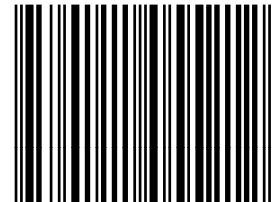




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