
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 47

INVESTIGATION ORDERS AND WARRANTS

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⁽¹⁾, 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—
- (a) under the same conditions in a similar domestic case the investigative measure to be specified in the order would be a search warrant;

(1) [S.I. 2017/730](#).

- (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⁽²⁾, section 348 or 361 of the Proceeds of Crime Act 2002⁽³⁾ or article 9 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014⁽⁴⁾, 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
 - (b) the court must arrange for a record of the making of the statement.
- (8) The court may—

(2) 1984 c. 60.

(3) 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).

(4) S.I. 2014/1893.

- (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⁽⁵⁾ (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

(5) [S.I. 2017/730](#).

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.]