
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 47

INVESTIGATION ORDERS AND WARRANTS

*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(1).

(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(2).

[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(3) 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—

(1) 2002 c. 29; section 336A was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).
(2) 2002 c. 29; section 336D was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).
(3) 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(4) the court must determine the application as soon as reasonably practicable. Under section 336C(5), 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;

(4) 2002 c. 29; section 336B was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

(5) 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.]