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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 47**

**INVESTIGATION ORDERS AND WARRANTS**

*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.

(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(1);
- (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(2). 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—*

- (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.]*

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(2) 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).

## **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>(3)</sup>, or
  - (ii) property described in the application is terrorist property within the meaning of section 14 of the 2000 Act<sup>(4)</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.

(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>(5)</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>(6)</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>(7)</sup>, or in

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(3) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

(4) 2000 c. 11.

(5) 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.

(6) 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).

(7) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

- 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—
- (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(8).*

*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(9) 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.*

(8) 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).

(9) 2000 c. 11.

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

*Under section 21A of the 2000 Act(10) 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.

*[Note. See paragraph 13 of Schedule 5 to the Terrorism Act 2000(11). 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—

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(10) 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).

(11) 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).

- (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(12). 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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(12) 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).