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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 PROCEEDS OF CRIME ACT 2002*

**Application for an order under the Proceeds of Crime Act 2002**

**47.17.**—(1) This rule applies where an applicant wants the court to make one of the orders to which rule 47.4(d) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must—

- (a) identify—
  - (i) the respondent, and
  - (ii) the person or property the subject of the investigation;
- (b) in the case of an investigation in the United Kingdom, explain why the applicant thinks that—
  - (i) the person under investigation has benefited from criminal conduct, in the case of a confiscation investigation, or committed a money laundering offence, in the case of a money laundering investigation, or
  - (ii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation, the cash or property involved, or the money held in the frozen account, was obtained through unlawful conduct or is intended to be used in unlawful conduct;
- (c) in the case of an investigation outside the United Kingdom, explain why the applicant thinks that—
  - (i) there is an investigation by an overseas authority which relates to a criminal investigation or to criminal proceedings (including proceedings to remove the benefit of a person's criminal conduct following that person's conviction), and
  - (ii) the investigation is into whether property has been obtained as a result of or in connection with criminal conduct, or into the extent or whereabouts of such property; and
- (d) give the additional information required by whichever of rules 47.18 to 47.22 applies.

*[Note. See also the code of practice for those exercising functions as officers and investigators issued under section 377 of the 2002 Act(1), and the code of practice for prosecutors and others issued under section 377A of that Act(2).]*

### **Content of application for a production order under the Proceeds of Crime Act 2002**

**47.18.** As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make an order for the production of, or for giving access to, material, must—

- (a) describe that material;
- (b) explain why the applicant thinks the material is in the respondent’s possession or control;
- (c) confirm that none of the material is—
  - (i) expected to be subject to legal privilege, or
  - (ii) excluded material;
- (d) explain why the material is likely to be of substantial value to the investigation;
- (e) 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; and
- (f) propose—
  - (i) the terms of the order, and
  - (ii) the period within which it should take effect, if 7 days from the date of the order would not be appropriate.

*[Note. See sections 345 to 350 of the Proceeds of Crime Act 2002(3) and articles 6 to 11 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(4). Under those provisions—*

- (a) ‘*excluded material*’ means the same as under section 11 of the Police and Criminal Evidence Act 1984; and
- (b) ‘*legal privilege*’ is defined by section 348 of the 2002 Act.

*A Crown Court judge may make a production order for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation.*

*The applicant for a production order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act(5) and article 2(1) of the 2014 Order.*

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- (1) 2002 c. 29; section 377 was amended by section 74 of, and paragraphs 103 and 114 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), article 12 of, and paragraphs 47 and 67 of Schedule 14 to, SI 2010/976, sections 15 and 55 of, and paragraphs 108 and 143 of Schedule 8 and paragraphs 14 and 37 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 17 of Schedule 48 to, the Finance Act 2013 (c. 29).
  - (2) 2002 c. 29; section 377A was inserted by section 74 of, and paragraphs 103 and 115 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and amended by article 3 of, and paragraphs 19 and 28 of Schedule 2 to, SI 2014/834.
  - (3) 2002 c. 29; sections 345 and 346 were amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1, 6 and 7 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1, 4 and 5 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 350 was amended by section 77 of, and paragraphs 1 and 5 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 8 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and sections 66 and 112 of, and Schedule 8 to, the Policing and Crime Act 2009 (c. 26).
  - (4) S.I. 2014/1893.
  - (5) 2002 c. 29; section 378 was amended by section 59 of, and paragraphs 168 and 175 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 74, 77 and 80 of, and paragraphs 103 and 116 of Schedule 8 and paragraphs 1 and 13 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), sections 15, 49 and 55 of, and paragraphs 108 and 144 of Schedule 8 and paragraphs 1, 24, 27, 29 and 30 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 18 of Schedule 48 to, the Finance Act 2013 (c. 29).

*The Practice Direction sets out forms of application, notice and order for use in connection with this rule.]*

### **Content of application for an order to grant entry under the Proceeds of Crime Act 2002**

**47.19.** 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 section 347 of the Proceeds of Crime Act 2002 and article 8 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014. The applicant for an order to grant entry must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the Act and article 2(1) of the 2014 Order.]*

### **Content of application for a disclosure order or further information order under the Proceeds of Crime Act 2002**

**47.20.—**(1) As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make a disclosure order must—

- (a) describe in general terms the information that the applicant wants the respondent to provide;
- (b) confirm that none of the information is—
  - (i) expected to be subject to legal privilege, or
  - (ii) excluded material;
- (c) explain why the information is likely to be of substantial value to the investigation;
- (d) 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
- (e) 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 9 to the Proceeds of Crime Act 2002<sup>(6)</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 under Part 7 of the Proceeds of Crime Act 2002 (Money laundering), explain—
  - (i) how the information sought relates to a matter arising from that disclosure,

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(6) 2002 c. 29; Part 1 of Schedule 9 was substituted by articles 2 and 3 of S.I. 2007/3287 and amended by sections 183 and 237 of, and paragraph 2 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 3 of S.I. 2011/2701, article 3 of S.I. 2012/1534, article 3 of S.I. 2012/2299, regulation 46 of, and paragraph 41 of Schedule 2 to, S.I. 2013/3115, section 151 of, and paragraph 81 of Schedule 4 to, the Co-operative and Community Benefit Societies Act 2014 (c. 14), regulation 59 of, and paragraph 23 of Schedule 1 to, S.I. 2015/575, regulation 14 of S.I. 2016/680, regulation 2 of, and paragraph 13 of the Schedule to, S.I. 2017/80, regulation 109 of, and paragraph 6 of Schedule 7 to, S.I. 2017/692 and regulation 50 of, and paragraph 7 of Schedule 4 to, S.I. 2017/701.

- (ii) how the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, 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 7 of the 2002 Act, and an authority in that country which investigates money laundering 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 on the Crown Court officer and on the other party 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 339ZH, 339ZJ, 339ZK, 357, 358 and 361 of the Proceeds of Crime Act 2002(7) and articles 16, 17 and 20 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(8).*

*Where the 2002 Act applies, a Crown Court judge may make a disclosure order for the purposes of a confiscation investigation or a money laundering investigation.*

*The applicant for a disclosure order must be a 'relevant authority' as defined by section 357(7) of the 2002 Act, or an 'appropriate officer' as defined by article 2(1) of the 2014 Order where the Order applies. Under section 362(6) of the Act(9), a relevant authority who under section 357(7)*

(7) 2002 c. 29; sections 339ZH, 339ZJ and 339ZK were inserted by section 12 of the Criminal Finances Act 2017 (c. 22). Section 357 was amended by sections 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 13 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 139 of Schedule 8, paragraphs 1 and 8 of Schedule 19 and paragraphs 14 and 34 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 19 and 27 of Schedule 2 to, SI 2014/834 and section 7(2) of, and paragraph 51 of Schedule 5 to, the Criminal Finances Act 2017 (c. 22). Section 358 was amended by section 169 of, and paragraphs 1 and 14 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), section 49(a) of, and paragraphs 1 and 9 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 7(3) of the Criminal Finances Act 2017 (c. 22). Section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(8) S.I. 2014/1893.

(9) 2002 c. 29; section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 15 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 15 of, and paragraphs 108 and 140 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 7(4) of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

is an ‘appropriate officer’ (as defined by section 378(1), (4) and (5)(10)) may apply only if that person is, or is authorised to do so by, a ‘senior appropriate officer’ (as defined by section 378(2)).

Under section 339ZH(1), (12) the applicant for a further information order must be the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose.

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

Under sections 330, 331 and 332 in Part 7 of the 2002 Act(11) a person engaged in a business in the regulated sector commits an offence where the conditions listed in any of those sections are met and that person does not disclose, in the manner required by the relevant section, knowledge or a suspicion that another person is engaged in money laundering.

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 Proceeds of Crime Act 2002**

**47.21.** As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make a customer information order must—

- (a) explain why customer information about the person under investigation is likely to be of substantial value to that investigation;
- (b) 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
- (c) propose the terms of the order.

[Note. See sections 363, 364, 365 and 368 of the Proceeds of Crime Act 2002(12) and articles 22, 23, 24 and 27 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014.

A Crown Court judge may make a customer information order for the purposes of a confiscation investigation or a money laundering investigation.

The applicant for a customer information order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act and article 2(1) of the 2014 Order.

‘Customer information’ is defined by section 364 of the 2002 Act and article 2(1) of the 2014 Order.

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- (10) 2002 c. 29; section 378 was amended by section 59 of, and paragraphs 168 and 175 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 74, 77 and 80 of, and paragraphs 103 and 116 of Schedule 8 and paragraphs 1 and 13 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), sections 15, 49 and 55 of, and paragraphs 108 and 144 of Schedule 8 and paragraphs 1, 24, 27, 29 and 30 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 18 of Schedule 48 to, the Finance Act 2013 (c. 29). It is further amended by paragraph 25 of Schedule 1, and paragraph 59 of Schedule 5, to the Criminal Finances Act 2017 (c. 22), with effect from dates to be appointed.
  - (11) 2002 c. 29; section 330 was amended by sections 102, 104, 105, 106 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), article 2 of S.I. 2006/308, regulation 3 of, and paragraphs 1 and 2 of Schedule 2 to, S.I. 2007/3398 and section 15 of, and paragraphs 108 and 129 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 331 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 130 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 332 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 131 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).
  - (12) 2002 c. 29; section 363 was amended by section 77 of, and paragraphs 1 and 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 16 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 10 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 364 was amended by section 107 of the Serious Organised Crime and Police Act 2005 (c. 27) and article 2(1) of and paragraph 196 of Schedule 1 to, S.I. 2009/1941.

*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 Proceeds of Crime Act 2002**

**47.22.** As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make an account monitoring order for the provision of account information must—

- (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) when and in what manner the applicant wants the respondent to provide that information;
- (b) explain why the information is likely to be of substantial value to the investigation;
- (c) 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
- (d) propose the terms of the order.

*[Note. See sections 370, 371 and 374 of the Proceeds of Crime Act 2002(13) and articles 29, 30 and 33 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014.*

*Where the 2002 Act applies, a Crown Court judge may make an account monitoring order for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation.*

*The applicant for an account monitoring order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act and article 2(1) of the 2014 Order.*

*‘Account information’ is defined by section 370 of the 2002 Act and article 29(3) of the 2014 Order.*

*The Practice Direction sets out forms of application, notice and order for use in connection with this rule.]*

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(13) 2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 17 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 12 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22).