
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 47

INVESTIGATION ORDERS AND WARRANTS

SECTION 4: ORDERS FOR THE RETENTION OR RETURN OF PROPERTY

When this Section applies

47.35.—(1) This Section applies where—

- (a) under section 1 of the Police (Property) Act 1897(1), a magistrates' court can—
 - (i) order the return to the owner of property which has come into the possession of the police or the National Crime Agency in connection with an investigation of a suspected offence, or
 - (ii) make such order with respect to such property as the court thinks just, where the owner cannot be ascertained; and
- (b) a Crown Court judge can—
 - (i) order the return of seized property under section 59(4) of the Criminal Justice and Police Act 2001(2), or
 - (ii) order the examination, retention, separation or return of seized property under section 59(5) of the Act.

(2) In this Section, a reference to a person with 'a relevant interest' in seized property means someone from whom the property was seized, or someone with a proprietary interest in the property, or someone who had custody or control of it immediately before it was seized.

Exercise of court's powers

47.36.—(1) The court may determine an application for an order—

- (a) at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and
- (b) in a party's absence, if that party—
 - (i) applied for the order, or
 - (ii) has had at least 10 business days in which to make representations.

(2) The court officer must arrange for the court to hear such an application no sooner than 10 business days after it was served, unless—

(1) 1897 c. 30; section 1 was amended by sections 33 and 36 of, and Part III of Schedule 3 to, the Theft Act 1968 (c. 60), section 58 of the Criminal Justice Act 1972 (c. 71), section 192 of, and Part I of Schedule 5 to, the Consumer Credit Act 1974 (c. 39), the Statute Law (Repeals) Act 1989 (c. 43) and section 4 of the Police (Property) Act 1997 (c. 30).

(2) 2001 c. 16.

- (a) the court directs that no hearing need be arranged; or
 - (b) the court gives other directions for the hearing.
- (3) If the court so directs, the parties to an application may attend a hearing by live link or telephone.
- (4) The court may—
- (a) shorten or extend (even after it has expired) a time limit under this Section;
 - (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.
- (5) A person who wants an extension of time must—
- (a) apply when serving the application or representations for which it is needed; and
 - (b) explain the delay.

Application for an order under section 1 of the Police (Property) Act 1897

47.37.—(1) This rule applies where an applicant wants the court to make an order to which rule 47.35(1)(a) refers.

- (2) The applicant must apply in writing and serve the application on—
- (a) the court officer; and
 - (b) as appropriate—
 - (i) the officer who has the property,
 - (ii) any person who appears to be its owner.
- (3) The application must—
- (a) explain the applicant’s interest in the property (either as a person who claims to be its owner or as an officer into whose possession the property has come);
 - (b) specify the direction that the applicant wants the court to make, and explain why; and
 - (c) include or attach a list of those on whom the applicant has served the application.

[Note. Under section 1 of the Police (Property) Act 1897, the owner of property which has come into the possession of the police or the National Crime Agency in connection with the investigation of a suspected offence can apply to a magistrates’ court for an order for its delivery to the claimant.]

Application for an order under section 59 of the Criminal Justice and Police Act 2001

47.38.—(1) This rule applies where an applicant wants the court to make an order to which rule 47.35(1)(b) refers.

- (2) The applicant must apply in writing and serve the application on—
- (a) the court officer; and
 - (b) as appropriate—
 - (i) the person who for the time being has the seized property,
 - (ii) each person whom the applicant knows or believes to have a relevant interest in the property.
- (3) In each case, the application must—

- (a) explain the applicant’s interest in the property (either as a person with a relevant interest, or as possessor of the property in consequence of its seizure, as appropriate);
 - (b) explain the circumstances of the seizure of the property and identify the power that was exercised to seize it (or which the person seizing it purported to exercise, as appropriate); and
 - (c) include or attach a list of those on whom the applicant has served the application.
- (4) On an application for an order for the return of property under section 59(4) of the Criminal Justice and Police Act 2001, the application must explain why any one or more of these applies—
- (a) there was no power to make the seizure;
 - (b) the property seized is, or contains, an item subject to legal privilege which is not an item that can be retained lawfully in the circumstances listed in section 54(2) of the Act;
 - (c) the property seized is, or contains, excluded or special procedure material which is not material that can be retained lawfully in the circumstances listed in sections 55 and 56 of the Act(3); or
 - (d) the property seized is, or contains, something taken from premises under section 50 of the Act, or from a person under section 51 of the Act, in the circumstances listed in those sections and which cannot lawfully be retained on the conditions listed in the Act.
- (5) On an application for an order for the examination, retention, separation or return of property under section 59(5) of the 2001 Act, the application must—
- (a) specify the direction that the applicant wants the court to make, and explain why;
 - (b) if applicable, specify each requirement of section 53(2) of the Act (examination and return of property) which is not being complied with; and
 - (c) if applicable, explain why the retention of the property by the person who now has it would be justified on the grounds that, even if it were returned, it would immediately become appropriate for that person to get it back under—
 - (i) a warrant for its seizure, or
 - (ii) a production order made under paragraph 4 of Schedule 1 to the Police and Criminal Evidence Act 1984(4), section 20BA of the Taxes Management Act 1970(5) or paragraph 5 of Schedule 5 to the Terrorism Act 2000(6).

[Note. Under section 59 of the Criminal Justice and Police Act 2001, a person with a ‘relevant interest’ (see rule 47.35(2)) in seized property can apply in the circumstances listed in the Act to a Crown Court judge for an order for its return. A person who has the property in consequence of its seizure can apply for an order authorising its retention. Either can apply for an order relating to the examination of the property.]

Application containing information withheld from another party

47.39.—(1) This rule applies where—

- (a) an applicant serves an application to which rule 47.37 (Application for an order under section 1 of the Police (Property) Act 1897) or rule 47.38 (Application for an order under section 59 of the Criminal Justice and Police Act 2001) applies; and

(3) 2001 c. 16; section 55 was amended by sections 456 and 457 of, and paragraphs 1 and 40 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29). Section 56 was amended by article 364 of SI 2001/3649, section 12 of, and paragraph 14 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 189 of Schedule 1 to, S.I. 2009/1941.

(4) 1984 c. 60; paragraph 4 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

(5) 1970 c. 9; section 20BA was inserted by section 149 of the Finance Act 2000 (c. 17).

(6) 2000 c. 11; paragraph 5 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

- (b) the application includes information that the applicant thinks ought not be revealed to another party.
- (2) The applicant must—
 - (a) omit that information from the part of the application that is served on that other party;
 - (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 why the applicant has withheld that information from that other party.
- (3) If the court so directs, any hearing of an application to which this rule applies may be, wholly or in part, in the absence of a party from whom information has been withheld.
- (4) At any hearing of an application to which this rule applies—
 - (a) the general rule is that the court must consider, in the following sequence—
 - (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
 - (ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but
 - (b) the court may direct other arrangements for the hearing.

Representations in response

47.40.—(1) This rule applies where a person wants to make representations about an application under rule 47.37 or rule 47.38.

- (2) Such a person must—
 - (a) serve the representations on—
 - (i) the court officer, and
 - (ii) the applicant and any other party to the application;
 - (b) do so not more than 10 business days after service of the application; and
 - (c) ask for a hearing, if that person wants one.
- (3) Representations in opposition to an application must explain why the grounds on which the applicant relies are not met.
- (4) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—
 - (a) omit that information from the representations served on that other party;
 - (b) mark the information to show that, unless the court otherwise directs, it is only for the court; and
 - (c) with that information include an explanation of why it has been withheld from that other party.

Application to punish for contempt of court

47.41.—(1) This rule applies where a person is accused of disobeying an order under section 59 of the Criminal Justice and Police Act 2001.

- (2) A person who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

[Note. A Crown Court judge has power to punish a person who disobeys an order under section 59 of the 2001 Act as if that were a contempt of the Crown Court: see section 59(9) of the Act.]