
STATUTORY INSTRUMENTS

2014 No. 1610

The Criminal Procedure Rules 2014

PART 6

INVESTIGATION ORDERS AND WARRANTS

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SECTION 1: UNDERSTANDING AND APPLYING THIS PART

When this Part applies

- 6.1.**—(1) Sections 2 and 3 of this Part apply where, for the purposes of a terrorist investigation—
- (a) a Circuit judge can make, vary or discharge—
 - (i) an order for the production of, or for giving access to, material, or for a statement of its location, under paragraphs 5 and 10 of Schedule 5 to the Terrorism Act 2000(1),
 - (ii) an explanation order, under paragraphs 10 and 13 of Schedule 5 to the 2000 Act(2),
 - (iii) a customer information order, under paragraphs 1 and 4 of Schedule 6 to the 2000 Act(3);
 - (b) a Circuit judge can make, and the Crown Court can vary or discharge, an account monitoring order, under paragraphs 2 and 4 of Schedule 6A to the 2000 Act(4).
- (2) Sections 2 and 4 of this Part apply where, for the purposes of an investigation for which Part 8 of the Proceeds of Crime Act 2002 provides, a Crown Court judge can make, and the Crown Court can vary or discharge—
- (a) a production order, under sections 345 and 351 of the 2002 Act(5);
 - (b) an order to grant entry, under sections 347 and 351 of the 2002 Act;
 - (c) a disclosure order, under sections 357 and 362 of the 2002 Act(6);
 - (d) a customer information order, under sections 363 and 369 of the 2002 Act(7);
 - (e) an account monitoring order, under sections 370 and 375 of the 2002 Act(8).
- (3) Rule 6.5 and Section 5 of this Part apply where—
- (a) a justice of the peace can make or discharge an investigation anonymity order, under sections 76 and 80(1) of the Coroners and Justice Act 2009(9);
 - (b) a Crown Court judge can determine an appeal against—
 - (i) a refusal of such an order, under section 79 of the 2009 Act,
 - (ii) a decision on an application to discharge such an order, under section 80(6) of the 2009 Act.

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- (1) 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. Paragraph 10 of Schedule 5 was amended by section 109(1) of, and paragraph 389 of Schedule 8 to, the Courts Act 2003 (c. 39) and it is further 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.
 - (2) 2000 c. 11; paragraph 13 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.
 - (3) 2000 c. 11; paragraph 1 of Schedule 6 was amended by section 3 of, and paragraph 6 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24). Paragraph 4 of Schedule 6 was amended by section 109(1) of, and paragraph 390 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (4) 2000 c. 11; Schedule 6A was inserted by section 3 of, and paragraph 1(1) and (3) of Part 1 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24).
 - (5) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27). Section 351 was amended by sections 74 and 77 of, and paragraphs 103 and 104 of Schedule 8 and paragraphs 1 and 6 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).
 - (6) 2002 c. 29; 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 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).
 - (7) 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 369 was amended by section 74 of, and paragraphs 103 and 111 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).
 - (8) 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 375 was amended by section 74 of, and paragraphs 103 and 112 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).
 - (9) 2009 c. 25.

- (4) Sections 2 and 6 of this Part apply where a justice of the peace can make an order approving—
- (a) the grant or renewal of an authorisation, or the giving or renewal of a notice, under section 23A of the Regulation of Investigatory Powers Act 2000**(10)**;
 - (b) the grant or renewal of an authorisation under section 32A of the 2000 Act**(11)**.
- (5) Rule 6.5 and Section 7 of this Part apply where a justice of the peace can issue a warrant under—
- (a) section 8 of the Police and Criminal Evidence Act 1984**(12)**;
 - (b) section 2 of the Criminal Justice Act 1987**(13)**;
 - (c) other powers to which sections 15 and 16 of the Police and Criminal Evidence Act 1984**(14)** apply.
- (6) Rules 6.4 and 6.5 and Section 8 of this Part apply where—
- (a) a District Judge (Magistrates' Court) can make an order under—
 - (i) section 63F(7) or 63R(6) of the Police and Criminal Evidence Act 1984**(15)**, or
 - (ii) paragraph 20B(5) or 20G(6) of Schedule 8 to the Terrorism Act 2000**(16)**;
 - (b) the Crown Court can determine an appeal under—
 - (i) section 63F(10) of the Police and Criminal Evidence Act 1984, or
 - (ii) paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000.

[Note. In outline, the orders to which these rules apply are—

- (a) *for the purposes of a terrorist investigation under the Terrorism Act 2000—*
 - (i) *an order requiring a person to produce, give access to, or state the location of material,*
 - (ii) *an explanation order, requiring a person to explain material obtained under a production, etc. order,*
 - (iii) *a customer information order, requiring a financial institution to provide information about an account holder,*
 - (iv) *an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution;*
- (b) *for the purposes of an investigation under Part 8 of the Proceeds of Crime Act 2002—*
 - (i) *a production order, requiring a person to produce or give access to material,*
 - (ii) *an order to grant entry, requiring a person to allow entry to premises so that a production order can be enforced,*

(10) 2000 c. 23; section 23A was inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(11) 2000 c. 23; section 32A was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(12) 1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

(13) 1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

(14) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496. Section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), article 8 of S.I. 2005/3496 and sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

(15) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

(16) 2000 c. 11; paragraphs 20B and 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

- (iii) a disclosure order, requiring a person to provide information or documents, or to answer questions,
- (iv) a customer information order, requiring a financial institution to provide information about an account holder,
- (v) an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution;
- (c) under the Coroners and Justice Act 2009, an investigation anonymity order, prohibiting the disclosure of information that identifies, or might identify, a specified person as someone who is, or was, willing to assist the investigation of an offence of murder or manslaughter caused by a gun or knife;
- (d) under the Regulation of Investigatory Powers Act 2000, an order approving a local authority officer's authorisation for the obtaining of information about the use of postal or telecommunications services, or for the use of surveillance or of a 'covert human intelligence source';
- (e) under the Police and Criminal Evidence Act 1984, a warrant authorising entry to, and the search of, premises for material, articles or persons;
- (f) under the Criminal Justice Act 1987, a warrant authorising entry to, and the search of, premises for documents sought by the Director of the Serious Fraud Office;
- (g) under the Police and Criminal Evidence Act 1984 or under the Terrorism Act 2000, an order extending the period during which fingerprints, DNA profiles or samples may be retained by the police.

For all the relevant terms under which these orders can be made, see the provisions listed in rule 6.1.

By section 341 of the Proceeds of Crime Act 2002(17), an investigation under Part 8 of the Act may be—

- (a) an investigation into whether a person has benefited from criminal conduct, or the extent or whereabouts of such benefit ('a confiscation investigation');
- (b) an investigation into whether a person has committed a money laundering offence ('a money laundering investigation');
- (c) an investigation into whether property is recoverable property or associated property (as defined by section 316 of the 2002 Act(18)), or into who holds the property or its extent or whereabouts ('a civil recovery investigation');
- (d) an investigation into the derivation of cash detained under the 2002 Act, or into whether such cash is intended to be used in unlawful conduct ('a detained cash investigation');
- (e) an investigation for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs, etc.) into whether a person is a qualifying offender or has obtained exploitation proceeds from a relevant offence, or into the value of any benefits derived by such a person from such an offence or the amount available ('an exploitation proceeds investigation').

When the relevant provisions of the Courts Act 2003 come into force, a District Judge (Magistrates' Courts) will have the same powers as a Circuit judge under the Terrorism Act 2000.

(17) 2002 c. 29; section 341 was amended by section 75 of the Serious Crime Act 2007 (c. 27) and section 169 of, and paragraphs 1 and 2 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 112 of, and paragraphs 99 and 110 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26) and section 49 of, and paragraphs 1, 2, 24 and 25 of Schedule 19 to, the Crime and Courts Act 2013 (c.22), with effect from dates to be appointed.

(18) 2002 c. 29; section 316 was amended by paragraph 78 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 109 of, and paragraphs 4 and 22 of Schedule 6 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 74 of, and paragraphs 85 and 91 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and article 12 of, and paragraphs 47 and 65 of Schedule 14 to, S.I. 2010/976.

Under section 8 of the Senior Courts Act 1981(19), a High Court judge, a Circuit judge, a Recorder, a qualifying judge advocate and a District Judge (Magistrates' Courts) each may act as a Crown Court judge.

Under section 343 of the Proceeds of Crime Act 2002(20)—

- (a) *any Crown Court judge may make an order to which Section 4 of this Part applies for the purposes of a confiscation investigation or a money laundering investigation;*
- (b) *only a High Court judge may make such an order for the purposes of a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation (and these rules do not apply to an application to such a judge in such a case).*

As well as governing procedure on an application to the Crown Court, under the following provisions rules may govern the procedure on an application to an individual judge—

- (a) *paragraph 10 of Schedule 5, paragraph 4 of Schedule 6 and paragraph 5 of Schedule 6A to the Terrorism Act 2000; and*
- (b) *sections 351, 362, 369 and 375 of the Proceeds of Crime Act 2002.*

Under the Terrorism Act 2000 and under the Proceeds of Crime Act 2002, in some circumstances an individual judge can issue a warrant to search for and seize material. Applications for such warrants are not subject to these rules.

Under section 66 of the Courts Act 2003(21), in criminal cases a High Court judge, a Circuit judge, a Recorder and a qualifying judge advocate each has the powers of a justice of the peace who is a District Judge (Magistrates' Courts).]

Meaning of 'court', 'applicant' and 'respondent'

6.2. In this Part—

- (a) a reference to the 'court' includes a reference to any justice of the peace or judge who can exercise a power to which this Part applies;
- (b) 'applicant' means a person who, or an authority which, can apply for an order or warrant to which this Part applies; and
- (c) 'respondent' means any person—
 - (i) against whom such an order is sought or made, or
 - (ii) on whom an application for such an order is served.

SECTION 2: GENERAL RULES

Exercise of court's powers

6.3.—(1) Subject to paragraphs (2) and (3), the court may determine an application for an order, or to vary or discharge an 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—

(19) 1981 c. 54; section 8 was amended by sections 65 and 109 of, and paragraph 259 of Schedule 8 to, the Courts Act 2003 (c. 39) and paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18). The 1981 Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(20) 2002 c. 29; section 343 was amended by section 77 of, and paragraphs 1 and 3 of Schedule 10 to, the Serious Crime Act 2007 (c. 27) and section 169 of, and paragraphs 1 and 4 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 66 of the Policing and Crime Act 2009 (c. 26), with effect from a date to be appointed.

(21) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18).

- (i) the applicant,
 - (ii) the respondent (if any),
 - (iii) any other person affected by the order.
- (2) The court must not determine such an application in the applicant's absence if—
- (a) the applicant asks for a hearing; or
 - (b) it appears to the court that—
 - (i) the proposed order may infringe legal privilege, within the meaning of section 10 of the Police and Criminal Evidence Act 1984⁽²²⁾ or of section 348 or 361 of the Proceeds of Crime Act 2002⁽²³⁾,
 - (ii) the proposed order may require the production of excluded material, within the meaning of section 11 of the 1984 Act, or
 - (iii) for any other reason the application is so complex or serious as to require the court to hear the applicant.
- (3) The court must not determine such an application in the absence of any respondent or other person affected, 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 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.
- (5) Where the statement required by paragraph (4) 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.

Court's power to vary requirements under this Part

- 6.4.**—(1) The court may—
- (a) shorten or extend (even after it has expired) a time limit under this Part;
 - (b) dispense with a requirement for service under this Part (even after service was required); and
 - (c) consider an application made orally instead of in writing.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application for which it is needed; and

⁽²²⁾ 1984 c. 60.

⁽²³⁾ 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).

- (b) explain the delay.

Documents served on the court officer

- 6.5.**—(1) Unless the court otherwise directs, the court officer may—
- (a) keep a written application; or
 - (b) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.
- (2) Where the court makes an order when the court office is closed, the applicant must, not more than 72 hours later, serve on the court officer—
- (a) a copy of the order; and
 - (b) any written material that was submitted to the court.
- (3) Where the court issues a warrant—
- (a) the applicant must return it to the court officer as soon as practicable after it has been executed, and in any event not more than 3 months after it was issued (unless other legislation otherwise provides); and
 - (b) the court officer must—
 - (i) keep the warrant for 12 months after its return, and
 - (ii) during that period, make it available for inspection by the occupier of the premises to which it relates, if that occupier asks to inspect it.

[Note. See section 16(10) of the Police and Criminal Evidence Act 1984(24).]

SECTION 3: ORDERS UNDER THE TERRORISM ACT 2000

[Note. The rules in Section 2 (general rules) also apply.]

Application for an order under the Terrorism Act 2000

- 6.6.**—(1) This rule applies where an applicant wants the court to make one of the orders listed in rule 6.1(1).
- (2) The applicant must—
- (a) apply in writing;
 - (b) serve the application on—
 - (i) the court officer, and
 - (ii) the respondent (unless the court otherwise directs);
 - (c) identify the respondent;
 - (d) give the information required by whichever of rules 6.7 to 6.10 applies; and
 - (e) serve any order made on the respondent.

[Note. See also rules 6.3 and 6.4, under which the court may—

- (a) exercise its powers in the parties' absence;*
- (b) dispense with a requirement for service; and*
- (c) consider an application made orally.*

Under rule 6.12, an applicant may withhold information from material that is served on a respondent.]

Content of application for a production etc. order

6.7. As well as complying with rule 6.6, an applicant who wants the court to make an order for the production of, or 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) likely to be so 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.

[Note. See paragraphs 5 to 9 of Schedule 5 to the Terrorism Act 2000. The applicant for a production, etc. order must be a constable.

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 likely to have the material within 28 days, 7 days from the date the respondent notifies the applicant of its receipt.]*

Content of application for an explanation order

6.8. As well as complying with rule 6.6, 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—
 - (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 paragraph 13 of Schedule 5 to the Terrorism Act 2000. The applicant for an explanation order must be a constable.

An explanation order can require a lawyer to provide a client's name and address.]

Content of application for a customer information order

6.9. As well as complying with rule 6.6, 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.]

Content of application for an account monitoring order

6.10. As well as complying with rule 6.6, an applicant who wants the court to make an account monitoring order 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) 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. The applicant for an account monitoring order must be a police officer.

'Terrorist property' is defined by section 14 of the Act.]

Application to vary or discharge an order

6.11.—(1) This rule applies where one of the following wants the court to vary or discharge an order listed in rule 6.1(1)—

- (a) an applicant;
 - (b) the respondent; or
 - (c) a person affected by the order.
- (2) That applicant, respondent or person affected must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—

- (i) the court officer, and
- (ii) the respondent, applicant, or any person known to be affected, as applicable;
- (c) explain why it is appropriate for the order to be varied or discharged;
- (d) propose the terms of any variation; and
- (e) ask for a hearing, if one is wanted, and explain why it is needed.

Application containing information withheld from a respondent or other person

- 6.12.**—(1) This rule applies where—
- (a) an applicant serves on a respondent or other person an application for one of the orders listed in rule 6.1(1), or for the variation or discharge of such an order; and
 - (b) the application includes information that the applicant thinks ought not be revealed to that recipient.
- (2) The applicant must—
- (a) omit that information from the part of the application that is served on the respondent or other person;
 - (b) mark the other part, to show that it is only for the court; and
 - (c) in that other part, explain why the applicant has withheld it.
- (3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of the respondent and any other person.
- (4) At a 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 the respondent and any other person, in the presence of them all, and then
 - (ii) further representations by the applicant, in the others' absence; but
 - (b) the court may direct other arrangements for the hearing.

Application to punish for contempt of court

- 6.13.**—(1) This rule applies where a person is accused of disobeying—
- (a) a production etc. order made under paragraph 5 of Schedule 5 to the Terrorism Act 2000;
 - (b) an explanation order made under paragraph 13 of that Schedule; or
 - (c) an account monitoring order made under paragraph 2 of Schedule 6A to that Act.
- (2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See paragraphs 10(1) and 13(5) of Schedule 5, and paragraph 6(1) of Schedule 6A, to the Terrorism Act 2000, and section 45 of the Senior Courts Act 1981(25).

Disobedience to an explanation order or to a customer information order is an offence: see paragraph 14 of Schedule 5, and paragraph 1(3) of Schedule 6, to the 2000 Act.]

(25) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

SECTION 4: ORDERS UNDER THE PROCEEDS OF CRIME ACT 2002

[Note. The rules in Section 2 (general rules) also apply.]

Application for an order under the Proceeds of Crime Act 2002

6.14.—(1) This rule applies where an applicant wants the court to make one of the orders listed in rule 6.1(2).

(2) The applicant must—

- (a) apply in writing;
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) the respondent (unless the court otherwise directs);
- (c) identify—
 - (i) the respondent, and
 - (ii) the person or property the subject of the investigation;
- (d) explain why the applicant thinks the person under investigation has—
 - (i) benefited from criminal conduct, in the case of a confiscation investigation, or
 - (ii) committed a money laundering offence, in the case of a money laundering investigation;
- (e) give the additional information required by whichever of rules 6.15 to 6.19 applies; and
- (f) serve any order made on each respondent.

[Note. See also rules 6.3 and 6.4, under which the court may—

- (a) exercise its powers in the parties' absence;*
- (b) dispense with a requirement for service; and*
- (c) consider an application made orally.*

Under rule 6.21, an applicant may withhold information from material that is served on a respondent.

See also the code of practice for those exercising functions as officers and investigators issued under section 377 of the 2002 Act(26), and the code of practice for prosecutors and others issued under section 377A of that Act(27).]

Content of application for a production order

6.15. As well as complying with rule 6.14, an applicant who wants the court to make an order for the production of, or 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;

(26) 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).

(27) 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).

- (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(28). 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 or a money laundering 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(29).]

Content of application for an order to grant entry

6.16. 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. 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.]

Content of application for a disclosure order

6.17. As well as complying with rule 6.14, 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

(28) 2002 c. 29; sections 345 and 346 were amended by section 75 of the Serious Crime Act 2007 (c. 27), and section 350 was amended by section 77 of, and paragraphs 1 and 5 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

(29) 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) and 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).

- (e) propose the terms of the order.

[Note. See sections 357, 358 and 361 of the Proceeds of Crime Act 2002(30).

A Crown Court judge may make a disclosure order for the purposes of a confiscation investigation only.

The applicant for a disclosure order must be a 'relevant authority' as defined by section 357(7). In relation to a confiscation investigation, under section 357(2A) the applicant must have been asked to apply by an 'appropriate officer' as defined by section 378(1), (4) and (5) of the 2002 Act.

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

Content of application for a customer information order

6.18. As well as complying with rule 6.14, 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(31).

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 Act.

'Customer information' is defined by section 364 of the 2002 Act.]

Content of application for an account monitoring order

6.19. As well as complying with rule 6.14, 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.

(30) 2002 c. 29; section 357 was amended by section 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) and section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(31) 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 364 was amended by section 107 of the Serious Crime Act 2007 (c. 27) and article 2(1) of and paragraph 196 of Schedule 1 to, S.I. 2009/1941.

[Note. See sections 370, 371 and 374 of the Proceeds of Crime Act 2002(32).

A Crown Court judge may make an account monitoring order for the purposes of a confiscation investigation or a money laundering investigation.

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

‘Account information’ is defined by section 370 of the 2002 Act.]

Application to vary or discharge an order

6.20.—(1) This rule applies where one of the following wants the court to vary or discharge an order listed in rule 6.1(2)—

- (a) an applicant;
 - (b) the respondent; or
 - (c) a person affected by the order.
- (2) That applicant, respondent or person affected must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer, and
 - (ii) the respondent, applicant, or any person known to be affected, as applicable;
 - (c) explain why it is appropriate for the order to be varied or discharged;
 - (d) propose the terms of any variation; and
 - (e) ask for a hearing, if one is wanted, and explain why it is needed.

Application containing information withheld from a respondent or other person

6.21.—(1) This rule applies where—

- (a) an applicant serves on a respondent or other person an application for one of the orders listed in rule 6.1(2), or for the variation or discharge of such an order; and
 - (b) the application includes information that the applicant thinks ought not be revealed to that recipient.
- (2) The applicant must—
- (a) omit that information from the part of the application that is served on the respondent or other person;
 - (b) mark the other part, to show that it is only for the court; and
 - (c) in that other part, explain why the applicant has withheld it.
- (3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of the respondent and any other person.
- (4) At a 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 the respondent and any other person, in the presence of them all, and then
 - (ii) further representations by the applicant, in the others’ absence; but

(32) 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).

- (b) the court may direct other arrangements for the hearing.

Application to punish for contempt of court

6.22.—(1) This rule applies where a person is accused of disobeying—

- (a) a production order made under section 345 of the Proceeds of Crime Act 2002⁽³³⁾; or
 (b) an account monitoring order made under section 370 of that Act.

(2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order: See sections 351(7) and 375(6) of the Proceeds of Crime Act 2002, and section 45 of the Senior Courts Act 1981.

Disobedience to a disclosure order or to a customer information order is an offence: see sections 359 and 366 of the 2002 Act.

Under section 342 of the 2002 Act, subject to the exceptions for which that section provides it is an offence to make a disclosure likely to prejudice an investigation or to interfere with documents relevant to it.]

SECTION 5: ORDERS UNDER THE CORONERS AND JUSTICE ACT 2009

[Note. Rule 6.5 (custody of documents) also applies.]

Exercise of court's powers

6.23.—(1) The court may determine an application for an investigation anonymity order, and any appeal against the refusal of such an order—

- (a) at a hearing (which must be in private unless the court otherwise directs); or
 (b) without a hearing.

(2) The court must determine an application to discharge an investigation anonymity order, and any appeal against the decision on such an application—

- (a) at a hearing (which must be in private unless the court otherwise directs); and
 (b) in the presence of the person specified in the order, unless—
 (i) that person applied for the discharge of the order,
 (ii) that person has had an opportunity to make representations, or
 (iii) the court is satisfied that it is not reasonably practicable to communicate with that person.

(3) The court may consider an application or an appeal made orally instead of in writing.

Application for an investigation anonymity order

6.24.—(1) This rule applies where an applicant wants a magistrates' court to make an investigation anonymity order.

(2) The applicant must—

- (a) apply in writing;
 (b) serve the application on the court officer;

(33) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27).

- (c) identify the person to be specified in the order, unless—
 - (i) the applicant wants the court to determine the application at a hearing, or
 - (ii) the court otherwise directs;
 - (d) explain how the proposed order meets the conditions prescribed by section 78 of the Coroners and Justice Act 2009(34);
 - (e) say if the applicant intends to appeal should the court refuse the order;
 - (f) attach any material on which the applicant relies; and
 - (g) propose the terms of the order.
- (3) At any hearing of the application, the applicant must—
- (a) identify to the court the person to be specified in the order, unless—
 - (i) the applicant has done so already, or
 - (ii) the court otherwise directs; and
 - (b) unless the applicant has done so already, inform the court if the applicant intends to appeal should the court refuse the order.

[Note. See section 77 of the Coroners and Justice Act 2009.]

Application to discharge an investigation anonymity order

6.25.—(1) This rule applies where one of the following wants a magistrates' court to discharge an investigation anonymity order—

- (a) an applicant; or
 - (b) the person specified in the order.
- (2) That applicant or the specified person must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer, and as applicable
 - (ii) the applicant for the order, and
 - (iii) the specified person;
 - (c) explain—
 - (i) what material circumstances have changed since the order was made, or since any previous application was made to discharge it, and
 - (ii) why it is appropriate for the order to be discharged; and
 - (d) attach—
 - (i) a copy of the order, and
 - (ii) any material on which the applicant relies.
- (3) A party must inform the court if that party intends to appeal should the court discharge the order.

[Note. See section 80 of the Coroners and Justice Act 2009.]

Appeal

6.26.—(1) This rule applies where one of the following (‘the appellant’) wants to appeal to the Crown Court—

- (a) the applicant for an investigation anonymity order, where a magistrates’ court has refused to make the order;
- (b) a party to an application to discharge such an order, where a magistrates’ court has decided that application.

(2) The appellant must—

- (a) serve on the Crown Court officer a copy of the application to the magistrates’ court; and
- (b) where the appeal concerns a discharge decision, notify each other party,

not more than 21 days after the decision against which the appellant wants to appeal.

(3) The Crown Court must hear the appeal without justices of the peace.

[Note. See sections 79 and 80(6) of the Coroners and Justice Act 2009, and section 74 of the Senior Courts Act 1981(35).]

SECTION 6: ORDERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

[Note. The rules in Section 2 (general rules) also apply.]

Application for approval for authorisation or notice

6.27.—(1) This rule applies where an applicant wants a magistrates’ court to make an order approving—

- (a) under sections 23A and 23B of the Regulation of Investigatory Powers Act 2000(36)—
 - (i) an authorisation to obtain or disclose communications data, under section 22(3) of the 2000 Act(37), or
 - (ii) a notice that requires a postal or telecommunications operator if need be to obtain, and in any case to disclose, communications data, under section 22(4) of the 2000 Act;
- (b) under sections 32A and 32B of the Regulation of Investigatory Powers Act 2000(38), an authorisation for—
 - (i) the carrying out of directed surveillance, under section 28 of the 2000 Act, or
 - (ii) the conduct or use of a covert human intelligence source, under section 29 of the 2000 Act(39).

(2) The applicant must—

- (a) apply in writing and serve the application on the court officer;
- (b) attach the authorisation or notice which the applicant wants the court to approve;
- (c) attach such other material (if any) on which the applicant relies to satisfy the court—

(35) 1981 c. 54; section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12 of the Schedule to S.I. 2004/2035 and section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). The Act’s title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(36) 2000 c. 23; sections 23A and 23B were inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(37) 2000 c. 23; section 22 was amended by section 112 of, and paragraphs 12 and 13 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26).

(38) 2000 c. 23; sections 32A and 32B were inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(39) 2000 c. 23; section 29 was amended by section 8 of the Policing and Crime Act 2009 (c. 26).

- (i) as required by section 23A(3) and (4) of the 2000 Act, in relation to communications data,
- (ii) as required by section 32A(3) and (4) of the 2000 Act, in relation to directed surveillance, or
- (iii) as required by section 32A(5) and (6), and, if relevant, section 43(6A), of the 2000 Act(40), in relation to a covert human intelligence source; and
- (d) propose the terms of the order.

[Note. See also rules 6.3 and 6.4, under which the court may—

- (a) exercise its powers in the parties' absence; and
- (b) consider an application made orally.

Under section 23A(3) to (5) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation or notice concerning communications data (as defined in section 21 of the Act(41)), the court must be satisfied that—

- (a) the person who granted or renewed the authorisation, or who gave or renewed the notice, was entitled to do so;
- (b) the grant, giving or renewal met any prescribed restrictions or conditions;
- (c) at the time the authorisation or notice was granted, given or renewed, as the case may be, there were reasonable grounds for believing that to obtain or disclose the data described in the authorisation or notice was—
 - (i) necessary, for the purpose of preventing or detecting crime or preventing disorder; and
 - (ii) proportionate to what was sought to be achieved by doing so; and
- (d) there remain reasonable grounds for believing those things, at the time the court considers the application.

The Regulation of Investigatory Powers (Communications Data) Order 2010(42) specifies the persons who are entitled to grant, give or renew an authorisation or notice concerning such data, and for what purpose each may do so.

Under section 32A(3) and (4) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation concerning directed surveillance (as defined in section 26 of the Act(43)), the court must be satisfied that—

- (a) the person who granted the authorisation was entitled to do so;
- (b) the grant met any prescribed restrictions or conditions;
- (c) at the time the authorisation was granted there were reasonable grounds for believing that the surveillance described in the authorisation was—
 - (i) necessary, for the purpose of preventing or detecting crime or preventing disorder; and
 - (ii) proportionate to what was sought to be achieved by it; and
- (d) there remain reasonable grounds for believing those things, at the time the court considers the application.

(40) 2000 c. 23; section 43(6A) was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(41) 2000 c. 23; section 21 was amended by section 88 of, and paragraphs 5 and 7 of Schedule 12 to, the Serious Crime Act 2007 (c. 27).

(42) S.I. 2010/480.

(43) 2000 c. 23; section 26 was amended by section 406 of, and paragraph 161 of Schedule 17 to, the Communications Act 2003 (c. 21).

Under section 32A(5) and (6) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation of the conduct or use of a covert human intelligence source (as defined in section 26 of the Act), the court must be satisfied that—

- (a) the person who granted the authorisation was entitled to do so;
- (b) the grant met any prescribed restrictions or conditions;
- (c) at the time the authorisation was granted there were reasonable grounds for believing that the conduct or use of a covert human intelligence source described in the authorisation was—
 - (i) necessary, for the purpose of preventing or detecting crime or preventing disorder; and
 - (ii) proportionate to what was sought to be achieved by it; and
- (d) there remain reasonable grounds for believing those things, at the time the court considers the application.

Under section 43(6A) of the 2000 Act, on an application to approve the renewal of such an authorisation the court in addition must—

- (a) be satisfied that, since the grant or latest renewal of the authorisation, a review has been carried out of the use made of the source, of the tasks given to him or her and of the information obtained; and
- (b) consider the results of that review.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010⁽⁴⁴⁾ specifies the persons who are entitled to grant an authorisation concerning such surveillance or such a source, and for what purpose each may do so.

Under sections 23B(2) and 32B(2) of the 2000 Act, the applicant is not required to give notice of an application to any person to whom the authorisation or notice relates, or to such a person's legal representatives.]

Exercise of court's power to quash an authorisation or notice

6.28.—(1) This rule applies where, under section 23A or 32A of the Regulation of Investigatory Powers Act 2000, a magistrates' court refuses to approve the grant, giving or renewal of an authorisation or notice.

(2) The court must not exercise its power to quash that authorisation or notice unless the applicant has had at least 2 business days from the date of the refusal in which to make representations.

[Note. See sections 23B(3) and 32B(3) of the Regulation of Investigatory Powers Act 2000.]

SECTION 7: SEARCH WARRANTS

[Note. Rule 6.5 (Documents served on the court officer) also applies.]

Exercise of court's powers

6.29.—(1) The court must determine an application for a warrant—

- (a) at a hearing, which must be in private unless the court otherwise directs;
- (b) in the presence of the applicant; and

(44) S.I. 2010/521.

- (c) in the absence of any person affected by the warrant, including any person in occupation or control of premises which the applicant wants to search.
- (2) If the court so directs, the applicant may attend the hearing by live link.
- (3) The court must not determine an application unless satisfied that sufficient time has been allowed for it.
- (4) The court must not determine an application unless the applicant confirms, on oath or affirmation, 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, including any circumstances that might reasonably be considered capable of undermining any of the grounds of the application; and
 - (b) the content of the application is true.
- (5) If the court requires the applicant to answer a question about an application—
 - (a) the applicant's answer must be on oath or affirmation;
 - (b) the court must arrange for a record of the gist of the question and reply; and
 - (c) if the applicant cannot answer to the court's satisfaction, the court may—
 - (i) specify the information the court requires, and
 - (ii) give directions for the presentation of any renewed application.
- (6) Unless to do so would be inconsistent with other legislation, on an application the court may issue—
 - (a) a warrant in respect of specified premises;
 - (b) a warrant in respect of all premises occupied or controlled by a specified person;
 - (c) a warrant in respect of all premises occupied or controlled by a specified person which specifies some of those premises; or
 - (d) more than one warrant—
 - (i) each one in respect of premises specified in the warrant,
 - (ii) each one in respect of all premises occupied or controlled by a person specified in the warrant (whether or not such a warrant also specifies any of those premises), or
 - (iii) at least one in respect of specified premises and at least one in respect of all premises occupied or controlled by a specified person (whether or not such a warrant also specifies any of those premises).

[Note. See section 15 of the Police and Criminal Evidence Act 1984(45) and section 2(4) of the Criminal Justice Act 1987(46).]

Application for warrant under section 8 of the Police and Criminal Evidence Act 1984

6.30.—(1) This rule applies where an applicant wants a magistrates' court to issue a warrant or warrants under section 8 of the Police and Criminal Evidence Act 1984.

- (2) The applicant must—
 - (a) apply in writing;
 - (b) serve the application on—
 - (i) the court officer, or

(45) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496.

(46) 1987 c. 38.

- (ii) if the court office is closed, the court;
- (c) give the court an estimate of how long the court should allow—
 - (i) to read and prepare for the application, and
 - (ii) for the hearing of the application; and
- (d) tell the court when the applicant expects any warrant issued to be executed.
- (3) The application must—
 - (a) specify the offence under investigation (and see paragraph (4));
 - (b) so far as practicable, identify the material sought (and see paragraph (5));
 - (c) specify the premises to be searched (and see paragraphs (6) and (7));
 - (d) state whether the applicant wants the premises to be searched on more than one occasion (and see paragraph (8)); and
 - (e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (9)).
- (4) In relation to the offence under investigation, the application must—
 - (a) state whether that offence is—
 - (i) an indictable offence, or
 - (ii) a relevant offence as defined in section 28D of the Immigration Act 1971⁽⁴⁷⁾; and
 - (b) explain the grounds for believing that the offence has been committed.
- (5) In relation to the material sought, the application must explain the grounds for believing that that material—
 - (a) is likely to be of substantial value to the investigation (whether by itself, or together with other material);
 - (b) is likely to be admissible evidence at trial for the offence under investigation; and
 - (c) does not consist of or include items subject to legal privilege, excluded material or special procedure material.
- (6) In relation to premises which the applicant wants to be searched and can specify, the application must—
 - (a) specify each set of premises;
 - (b) in respect of each set of premises, explain the grounds for believing that material sought is on those premises; and
 - (c) in respect of each set of premises, explain the grounds for believing that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
 - (iii) entry to the premises will not be granted unless a warrant is produced, or
 - (iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (7) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—

⁽⁴⁷⁾ 1971 c. 77; section 28D was inserted by section 131 of the Immigration and Asylum Act 1999 (c. 33) and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

- (a) explain the grounds for believing that—
 - (i) because of the particulars of the offence under investigation it is necessary to search any premises occupied or controlled by a specified person, and
 - (ii) it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched;
 - (b) specify as many sets of premises as is reasonably practicable;
 - (c) in respect of each set of premises, whether specified or not, explain the grounds for believing that material sought is on those premises; and
 - (d) in respect of each specified set of premises, explain the grounds for believing that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
 - (iii) entry to the premises will not be granted unless a warrant is produced, or
 - (iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (8) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—
- (a) explain why it is necessary to search on more than one occasion in order to achieve the purpose for which the applicant wants the court to issue the warrant; and
 - (b) specify any proposed maximum number of occasions.
- (9) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—
- (a) identify those other persons, by function or description; and
 - (b) explain why those persons are required.
- (10) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.
- (11) Where the application includes information that the applicant thinks should be supplied only to the court, the applicant may—
- (a) set out that information in a separate document, marked accordingly; and
 - (b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.
- (12) The application must include—
- (a) a declaration by the applicant that to the best of the applicant’s knowledge and belief—
 - (i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and
 - (ii) the content of the application is true; and
 - (b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.
- (13) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

[Note. The Practice Direction sets out forms of application and warrant for use in connection with this rule.

Under section 8 of the Police and Criminal Evidence Act 1984(48), where there are reasonable grounds for believing that an indictable offence has been committed a constable may apply to a justice of the peace for a warrant authorising a search for evidence on specified premises, or on the premises of a specified person. Under section 8(6) of the 1984 Act, section 8 applies also in relation to relevant offences as defined in section 28D(4) of the Immigration Act 1971 (some of which are not indictable offences).

Under section 23 of the 1984 Act(49), ‘premises’ includes any place, and in particular any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation and any tent or moveable structure.

Under section 16(3) of the 1984 Act(50), entry and search under a warrant must be within 3 months from the date of its issue.

See also the code of practice for the search of premises issued under section 66 of the 1984 Act.]

Application for warrant under section 2 of the Criminal Justice Act 1987

6.31.—(1) This rule applies where an applicant wants a magistrates’ court to issue a warrant or warrants under section 2 of the Criminal Justice Act 1987.

- (2) The applicant must—
- (a) apply in writing;
 - (b) serve the application on—
 - (i) the court officer, or
 - (ii) if the court office is closed, the court;
 - (c) give the court an estimate of how long the court should allow—
 - (i) to read and prepare for the application, and
 - (ii) for the hearing of the application; and
 - (d) tell the court when the applicant expects any warrant issued to be executed.
- (3) The application must—
- (a) describe the investigation being conducted by the Director of the Serious Fraud Office and include—
 - (i) an explanation of what is alleged and why, and
 - (ii) a chronology of relevant events;
 - (b) specify the document, documents or description of documents sought by the applicant (and see paragraphs (4) and (5)); and
 - (c) specify the premises which the applicant wants to be searched (and see paragraph (6)).
- (4) In relation to each document or description of documents sought, the application must—
- (a) explain the grounds for believing that each such document—
 - (i) relates to a matter relevant to the investigation, and
 - (ii) could not be withheld from disclosure or production on grounds of legal professional privilege; and
 - (b) explain the grounds for believing that—

(48) 1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

(49) 1984 c. 60; section 23 was amended by sections 103 and 197 of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

(50) 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

- (i) a person has failed to comply with a notice by the Director to produce the document or documents,
 - (ii) it is not practicable to serve such a notice, or
 - (iii) the service of such a notice might seriously impede the investigation.
- (5) In relation to any document or description of documents which the applicant wants to be preserved but not seized under a warrant, the application must—
- (a) specify the steps for which the applicant wants the court’s authority in order to preserve and prevent interference with the document or documents; and
 - (b) explain why such steps are necessary.
- (6) In respect of each set of premises which the applicant wants to be searched, the application must explain the grounds for believing that a document or description of documents sought by the applicant is on those premises.
- (7) If the court so directs, the applicant must make available to the court material on which is based the information given under paragraph (3).
- (8) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.
- (9) Where the application includes information that the applicant thinks should be supplied only to the court, the applicant may—
- (a) set out that information in a separate document, marked accordingly; and
 - (b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.
- (10) The application must include—
- (a) a declaration by the applicant that to the best of the applicant’s knowledge and belief—
 - (i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and
 - (ii) the content of the application is true; and
 - (b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.
- (11) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

[Note. The Practice Direction sets out forms of application and warrant for use in connection with this rule.

Under section 2 of the Criminal Justice Act 1987(51), where the Director of the Serious Fraud Office is investigating a case of serious or complex fraud a member of that Office may apply to a justice of the peace for a warrant authorising a search of specified premises for documents relating to any matter relevant to the investigation.

Under section 16(3) of the Police and Criminal Evidence Act 1984, entry and search under a warrant must be within 3 months from the date of its issue.]

(51) 1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

Application for warrant under another power to which sections 15 and 16 of the Police and Criminal Evidence Act 1984 apply

- 6.32.**—(1) This rule applies where—
- (a) an applicant wants a magistrates’ court to issue a warrant or warrants under a power to which sections 15 and 16 of the Police and Criminal Evidence Act 1984 apply; and
 - (b) neither rule 6.30 nor rule 6.31 applies.
- (2) The applicant must—
- (a) apply in writing;
 - (b) serve the application on—
 - (i) the court officer, or
 - (ii) if the court office is closed, the court;
 - (c) give the court an estimate of how long the court should allow—
 - (i) to read and prepare for the application, and
 - (ii) for the hearing of the application; and
 - (d) tell the court when the applicant expects any warrant issued to be executed.
- (3) The application must—
- (a) state the legislation which allows the court to issue the warrant (in this rule, described as ‘the main search power’; and see paragraph (4));
 - (b) so far as practicable, identify the articles or persons sought (and see paragraph (5));
 - (c) specify the premises to be searched (and see paragraphs (6) and (7));
 - (d) state whether the applicant wants the premises to be searched on more than one occasion (and see paragraph (8)); and
 - (e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (9)).
- (4) The application must—
- (a) include or attach the terms of the main search power; and
 - (b) explain how the circumstances satisfy any criteria prescribed by the main search power for making the application.
- (5) In relation to the articles or persons sought, the application must explain how they satisfy any criteria prescribed by the main search power about such articles or persons.
- (6) In relation to premises which the applicant wants to be searched and can specify, the application must—
- (a) specify each set of premises; and
 - (b) in respect of each, explain how the circumstances satisfy any criteria prescribed by the main search power—
 - (i) for thinking that the articles or persons sought are on those premises, and
 - (ii) for asserting that the court can exercise its power to authorise the search of those premises.
- (7) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—
- (a) explain how the main search power allows the court to authorise such searching;
 - (b) specify the person who occupies or controls such premises;

- (c) specify as many sets of such premises as is reasonably practicable;
 - (d) explain why—
 - (i) it is necessary to search more premises than those specified, and
 - (ii) it is not reasonably practicable to specify all the premises which the applicant wants to be searched;
 - (e) in respect of each set of premises, whether specified or not, explain how the circumstances satisfy any criteria prescribed by the main search power for thinking that the articles or persons sought are on those premises; and
 - (f) in respect of each specified set of premises, explain how the circumstances satisfy any criteria prescribed by the main search power for asserting that the court can exercise its power to authorise the search of those premises.
- (8) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—
- (a) explain how the main search power allows the court to authorise such searching;
 - (b) explain why the applicant wants the premises to be searched more than once; and
 - (c) specify any proposed maximum number of occasions.
- (9) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—
- (a) identify those other persons, by function or description; and
 - (b) explain why those persons are required.
- (10) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.
- (11) Where the application includes information that the applicant thinks should be supplied only to the court, the applicant may—
- (a) set out that information in a separate document, marked accordingly; and
 - (b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.
- (12) The application must include—
- (a) a declaration by the applicant that to the best of the applicant’s knowledge and belief—
 - (i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and
 - (ii) the content of the application is true; and
 - (b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.
- (13) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

[Note. The Practice Direction sets out forms of application and warrant for use in connection with this rule.

Sections 15 and 16 of the Police and Criminal Evidence Act 1984(52) apply to the issue to a constable under any Act of a warrant authorising the search of specified premises, or the search of premises of a specified person.

(52) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496. Section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39),

Unless other legislation otherwise provides, under section 16(3) of the 1984 Act, entry and search under a warrant must be within 3 months from the date of its issue.]

Information to be included in a warrant

6.33.—(1) A warrant must identify—

- (a) the person or description of persons by whom it may be executed;
- (b) any person who may accompany a person executing the warrant;
- (c) so far as practicable, the material, documents, articles or persons to be sought;
- (d) the legislation under which it was issued;
- (e) the name of the applicant;
- (f) the court that issued it, unless that is otherwise recorded by the court officer;
- (g) the court office for the court that issued it; and
- (h) the date on which it was issued.

(2) A warrant must specify—

- (a) the premises to be searched, where the application specified premises;
- (b) the person in occupation or control of premises to be searched, where the application specified such a person; and
- (c) the number of occasions on which specified premises may be searched, if more than one.

(3) A warrant must include, by signature, initial, or otherwise, an indication that it has been approved by the court that issued it.

(4) Where a warrant comprises more than a single page, each page must include such an indication.

(5) A copy of a warrant must include a prominent certificate that it is such a copy.

[Note. See section 16 of the Police and Criminal Evidence Act 1984.]

SECTION 8: ORDERS FOR THE RETENTION OF FINGERPRINTS, ETC.

[Note. Rule 6.4 (Court's power to vary requirements under this Part) and rule 6.5 (Documents served on the court officer) also apply.]

Exercise of court's powers

6.34.—(1) The court must determine an application under rule 6.35, and an appeal under rule 6.36—

- (a) at a hearing, which must be in private unless the court otherwise directs; and
- (b) in the presence of the applicant or appellant.

(2) The court must not determine such an application or appeal unless any person served under those rules—

- (a) is present; or
- (b) has had an opportunity—
 - (i) to attend, or
 - (ii) to make representations.

Application to extend retention period

6.35.—(1) This rule applies where a magistrates' court can make an order extending the period for which there may be retained material consisting of—

- (a) fingerprints taken from a person—
 - (i) under a power conferred by Part V of the Police and Criminal Evidence Act 1984⁽⁵³⁾,
 - (ii) with that person's consent, in connection with the investigation of an offence by the police, or
 - (iii) under a power conferred by Schedule 8 to the Terrorism Act 2000⁽⁵⁴⁾ in relation to a person detained under section 41 of that Act;
- (b) a DNA profile derived from a DNA sample so taken; or
- (c) a sample so taken.

(2) A chief officer of police who wants the court to make such an order must—

- (a) apply in writing—
 - (i) within the period of 3 months ending on the last day of the retention period, where the application relates to fingerprints or a DNA profile, or
 - (ii) before the expiry of the retention period, where the application relates to a sample;
- (b) in the application—
 - (i) identify the material,
 - (ii) state when the retention period expires,
 - (iii) give details of any previous such application relating to the material, and
 - (iv) outline the circumstances in which the material was acquired;
- (c) serve the application on the court officer, in every case; and
- (d) serve the application on the person from whom the material was taken, where—
 - (i) the application relates to fingerprints or a DNA profile, or
 - (ii) the application is for the renewal of an order extending the retention period for a sample.

(3) An application to extend the retention period for fingerprints or a DNA profile must explain why that period should be extended.

(4) An application to extend the retention period for a sample must explain why, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—

- (a) disclosure to, or use by, a defendant; or
- (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

(5) On an application to extend the retention period for fingerprints or a DNA profile, the applicant must serve notice of the court's decision on any respondent where—

- (a) the court makes the order sought; and
- (b) the respondent was absent when it was made.

⁽⁵³⁾ 1984 c. 60.

⁽⁵⁴⁾ 2000 c. 11.

[Note. See rule 6.1(6)(a). The powers to which rule 6.35 applies may be exercised only by a District Judge (Magistrates' Courts).

The time limits for making an application under this rule are prescribed by sections 63F(8) and 63R(8) of the Police and Criminal Evidence Act 1984(55), and by paragraphs 20B(6) and 20G(8) of Schedule 8 to the Terrorism Act 2000(56). They may be neither extended nor shortened.

Sections 63D and 63R of the 1984 Act(57), and paragraphs 20A and 20G of Schedule 8 to the 2000 Act(58), provide for the circumstances in which there must be destroyed the material to which this rule applies.

Section 63F of the 1984 Act, and paragraph 20B of Schedule 8 to the 2000 Act, provide for the circumstances in which fingerprints and DNA profiles may be retained instead of being destroyed. Under section 63F(7) and paragraph 20B(5), a chief officer of police to whom those provisions apply may apply for an order extending the statutory retention period of 3 years by up to another 2 years.

Section 63R of the 1984 Act and paragraph 20G of Schedule 8 to the 2000 Act provide for the circumstances in which samples taken from a person may be retained instead of being destroyed. Under section 63R(6) of the 1984 Act and paragraph 20G(6) of Schedule 8 to the 2000 Act, a chief officer of police to whom those provisions apply may apply for an order to retain a sample for up to 12 months after the date on which it would otherwise have to be destroyed. Under section 63R(9) and paragraph 20G(9), such an order may be renewed, on one or more occasions, for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.]

Appeal

6.36.—(1) This rule applies where, under rule 6.35, a magistrates' court determines an application relating to fingerprints or a DNA profile and—

- (a) the person from whom the material was taken wants to appeal to the Crown Court against an order extending the retention period; or
- (b) a chief officer of police wants to appeal to the Crown Court against a refusal to make such an order.

(2) The appellant must—

- (a) serve an appeal notice—
 - (i) on the Crown Court officer and on the other party, and
 - (ii) not more than 21 days after the magistrates' court's decision, or, if applicable, service of notice under rule 6.35(5); and
- (b) in the appeal notice, explain, as appropriate, why the retention period should, or should not, be extended.

(3) Rule 63.10 (Constitution of the Crown Court) applies on such an appeal.

[Note. Under section 63F(10) of the Police and Criminal Evidence Act 1984, and under paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000, the person from whom fingerprints were taken, or from whom a DNA profile derives, may appeal to the Crown Court against an

(55) 1984 c. 60; section 63F was inserted by section 3 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

(56) 2000 c. 11; paragraphs 20B and 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

(57) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9).

(58) 2000 c. 11; paragraph 20A of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

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order extending the retention period; and a chief officer of police may appeal to the Crown Court against the refusal of such an order.]