
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 150

**HIGH COURT OF JUSTICIARY
SHERIFF COURT**

**Act of Adjournal (Criminal Procedure Rules 1996
Amendment) (European Investigation Orders) 2018**

<i>Made</i>	- - - -	<i>10th May 2018</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>14th May 2018</i>
<i>Coming into force</i>	- -	<i>31st May 2018</i>

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995⁽¹⁾ and regulations 39(1), 44(2), 45(2), 61(1), paragraph 5 of schedule 5 and paragraphs 9 and 14 of schedule 6 of the Criminal Justice (European Investigation Order) Regulations 2017⁽²⁾ and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (European Investigation Orders) 2018.

(2) It comes into force on 31st May 2018.

(3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996⁽³⁾ are amended in accordance with this paragraph.

(2) After Chapter 66 (Review of Liberation Conditions and Authorisation for Questioning)⁽⁴⁾ insert—

(1) 1995 c.46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and by S.S.I. 2015/338, and was extended by section 36A(4) of the Serious Crime Act 2007 (c.27), and section 32(5) of the Psychoactive Substances Act 2016 (c.2).

(2) S.I. 2017/730.

(3) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2018/12).

(4) Chapter 66 was inserted by S.S.I. 2018/12.

“CHAPTER 67 EUROPEAN INVESTIGATION ORDERS

Interpretation of this Chapter

67.1. In this Chapter—

“the 2017 Regulations” means the Criminal Justice (European Investigation Order) Regulations 2017(5);

“account monitoring order” has the meaning given by regulation 45(3) of the 2017 Regulations;

“customer information order” has the meaning given by regulation 44(3) of the 2017 Regulations;

“European investigation order” has—

(a) in rules 67.2 and 67.3, the meaning given by regulation 5; and

(b) in rule 67.6, the meaning given by regulation 25, of the 2017 Regulations;

“issuing State” has the meaning given by regulation 25 of the 2017 Regulations;

“nominated court” means a court nominated under regulation 35, 36, 37, 38 or 43 of the 2017 Regulations.

Application for a European investigation order

67.2.—(1) An application under regulation 6(3)(b) or (c) (power of a judicial authority to make a European investigation order) of the 2017 Regulations for a European investigation order is to be made in Form 67.2.

(2) Where any party presents an application under paragraph (1) after proceedings have been instituted the High Court or sheriff, as the case may be, may—

(a) dispense, on cause shown, with intimation to any other party and proceed to consider the application;

(b) fix a date for hearing the application and order intimation of the diet and application to any other party; or

(c) fix a date for hearing the application, order intimation of the diet to any other party and, on special cause shown, dispense meantime with intimation of the schedule of the application.

Variation or revocation of a European investigation order

67.3.—(1) An application to vary or revoke a European investigation order under regulation 10 (variation or revocation of a European investigation order) of the 2017 Regulations is to be made in Form 67.3.

(2) When an application under paragraph (1) is lodged, the court may either—

(a) dispense, on cause shown, with intimation to any other party and proceed to consider the application; or

(b) order intimation of the application to—

- (i) the Lord Advocate or the procurator fiscal, as the case may be, and the person affected by the order, where the person who applied for the order is seeking to vary or revoke the order;
- (ii) the person who applied for the order and the person affected by the order, where the Lord Advocate or the procurator fiscal, as the case may be, is seeking to vary or revoke the order; or
- (iii) the person who applied for the order and the Lord Advocate or the procurator fiscal, as the case may be, where the person affected by the order is seeking to vary or revoke the order.

(3) Where the court orders intimation of the application under paragraph (2)(b) it must appoint a hearing on the application.

Citation for proceedings before a nominated court

67.4.—(1) A warrant to cite a person to proceedings before a nominated court is to be made in Form 67.4-A.

(2) The form of postal citation of a person to proceedings before a nominated court is to be made in Form 67.4-B, and the person must complete and return Form 67.4-C to the procurator fiscal.

(3) The form of personal citation of a person to proceedings before a nominated court is to be made in Form 67.4-D.

Proceedings before a nominated court

67.5. In proceedings before a nominated court—

- (a) the procurator fiscal or Crown counsel must participate in any hearing;
- (b) a solicitor or counsel instructed by any party may participate in any hearing;
- (c) any other person may, with the leave of the court, participate in any hearing;
- (d) a shorthand writer may be present to record the proceedings; and
- (e) the proceedings must be in private.

Time periods

67.6.—(1) This rule applies where a court is giving effect to a European investigation order—

- (a) by issuing a warrant under regulation 39(1) (search warrants and production orders: giving effect to the European investigation order);
- (b) by making a customer information order under regulation 44 (court’s power to make a customer information order); or
- (c) by making an account monitoring order under regulation 45 (court’s power to make an account monitoring order),

of the 2017 Regulations.

(2) Subject to paragraph (3), the sheriff must give effect to the European investigation order no later than the day after receipt of a nomination notice made under either—

- (a) regulation 38(2) (search warrants and production orders: nominating a court); or
- (b) regulation 43(2) (nominating a court to make a customer information order or an account monitoring order),

of the 2017 Regulations.

(3) The sheriff may, exceptionally, give effect to the European investigation order later than the period prescribed in paragraph (2) but must do so no later than 5 days after receipt of the nomination notice.

(4) Where the day mentioned in paragraph (2) or the last day of the period mentioned in paragraph (3) falls on a Saturday, Sunday or court holiday, such day or period is to extend to and include the next day which is not a Saturday, Sunday or court holiday.

(5) In calculating the period mentioned in paragraph (3), any Saturday, Sunday or court holiday that falls within that period is to be disregarded.

Form of warrant giving effect to European investigation order

67.7. A warrant issued under regulation 39(1) (search warrants and production orders: giving effect to the European investigation order) of the 2017 Regulations is to be made in Form 67.7.

Application to revoke or vary a search warrant or to authorise the release of evidence

67.8.—(1) An application made under regulation 41(1) (power to revoke or vary a search warrant or production order or to authorise the release of evidence seized or produced) of the 2017 Regulations is to be made in Form 67.8.

(2) When an application made under paragraph (1) is lodged, the court may either—

(a) dispense, on cause shown, with intimation to any other party and proceed to consider the application; or

(b) order intimation of the application to—

(i) the procurator fiscal, where the person affected by the order is seeking the release of evidence or to revoke or vary the search warrant; or

(ii) the person affected by the order where the procurator fiscal is seeking the release of evidence or to revoke or vary the search warrant.

(3) Where the court orders intimation of the application under paragraph (2)(b) it must appoint a hearing on the application.

Application to vary or revoke a customer information order or an account monitoring order

67.9.—(1) An application under regulation 48(1) (power to vary or revoke customer information and account monitoring orders) of the 2017 Regulations is to be made in Form 67.9.

(2) When an application made under paragraph (1) is lodged, the court may either—

(a) dispense, on cause shown, with intimation to any other party and proceed to consider the application; or

(b) order intimation of the application to either—

(i) the procurator fiscal where the person affected by the order is seeking to vary or revoke the order; or

(ii) the person affected by the order where the procurator fiscal is seeking to vary or revoke the order.

(3) Where the court orders intimation of the application under paragraph (2)(b) it must appoint a hearing on the application.

Provision of interpreters

67.10.—(1) This rule applies where a court has been nominated under either—

- (a) regulation 35(2) (nominating a court to hear evidence from a person);
- (b) regulation 36(2) (hearing a person through videoconference or other audio visual transmission); or
- (c) regulation 37(2) (hearing a person by telephone conference),

of the 2017 Regulations.

(2) Where it appears to the sheriff clerk that the witness is likely to give evidence in a language other than English, arrangements must be made for a translator to be present at the proceedings to translate what is said into English.

(3) Where it appears to the sheriff clerk that the witness is likely to give evidence in a language other than that in which the proceedings in the issuing State will be conducted, arrangements must be made for a translator to translate what is said into the language in which the proceedings of the issuing State will be conducted.

(4) Where the evidence in proceedings before a nominated court is given in a language other than English, the sheriff must continue proceedings until such time as an interpreter can be present to provide a translation into English.

Court record of proceedings before a nominated court

67.11.—(1) This rule applies where a court has received evidence in proceedings by virtue of a nomination under—

- (a) regulation 35(2) (nominating a court to receive evidence from a person);
- (b) regulation 36(2) (hearing a person through videoconference or other audio visual transmission); or
- (c) regulation 37(2) (hearing a person by telephone conference),

of the 2017 Regulations.

(2) The sheriff clerk must record in the minute of proceedings—

- (a) particulars of the proceedings; and
- (b) without prejudice to the generality of sub-paragraph (a) above—
 - (i) which persons were present;
 - (ii) which of those persons were represented and by whom; and
 - (iii) whether any of those persons were denied the opportunity of cross-examining a witness as to any part of his or her testimony.

(3) Save as authorised by the Lord Advocate or with the leave of the court, the minute of proceedings mentioned in paragraph (1) above is not open to inspection by any person.

(4) The sheriff clerk must send to the issuing authority a certified copy of the minute of proceedings.”.

(3) In the appendix after Form 66.4-B (form of authorisation to question a person officially accused)(6) insert the forms set out in the schedule of this Act of Adjournal.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Edinburgh
10th May 2018

CJM SUTHERLAND
Lord Justice General
I.P.D.

SCHEDULE

Paragraph 2(3)

Form 67.2

Rule 67.2(1)

Form of application for a European investigation order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE CLERK and LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE [or PROCURATOR FISCAL] [or A.B.]

APPLICANT

for

a EUROPEAN INVESTIGATION ORDER

under regulation 6 of the Criminal Justice (European Investigation Order) Regulations 2017

HUMBLY SHEWETH, that

1. An offence has been committed [or There are reasonable grounds for suspecting that an offence has been committed], namely (*here state details of offence*).
2. Proceedings in respect of the said offence have been instituted [or The said offence is being investigated].
3. The terms of the order sought are set out in the attached schedule.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) To dispense with intimation to any other party for the following reasons (*here state reasons*) and to proceed to consider the application;

[OR

- (1) To appoint intimation of this application and the attached schedule [or To appoint intimation of this application only for the following reasons (*here state reasons*)]

to be made to

the legal representative of the suspect (*here insert name of suspect*) [or the legal representative of the accused (*here insert name of accused*)] [or the Lord Advocate] [or the prosecutor]

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and to appoint parties to be heard thereon on the earliest practicable date thereafter;]

- (2) On being duly satisfied that it appears:
 - (i) that it is necessary and proportionate to make the order for the purposes of the investigation or proceedings in question;
 - (ii) that the investigative measure to be specified in the order could lawfully have been ordered or undertaken under the same conditions in a similar domestic case;
 - [(iii) (where the order is for an investigative measure in relation to which specific provision is made in Chapter 2 of Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017) the conditions imposed by (here insert relevant provision of Chapter 2) are satisfied;]
- (3) To make a European investigation order as set out in the attached schedule or to do otherwise as to your Lordship[s] seems fit.

ACCORDING TO JUSTICE, etc.

Applicant

or

Solicitor for Applicant

or

Procurator Fiscal

[A. On (here insert date)

In the presence of (here insert name of sheriff)

Sheriff of (here insert sheriffdom) APPEARED

(here insert name of deponent) who having been examined on oath depones that what is contained in the foregoing application is true.

Deponent

Sheriff]

(delete foregoing PARAGRAPH A if no oath required)

B. At (here insert place) on (here insert date) having considered the foregoing application and schedule [and relative oath] makes a European investigation order as craved.

Signed

Sheriff

(court name, address, email and telephone number)

Form 67.3

Rule 67.3(1)

Form of application for variation or revocation of European investigation order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE CLERK and LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE [or PROCURATOR FISCAL] [or A.B.]

APPLICANT

for

VARIATION [or REVOCATION] OF A EUROPEAN INVESTIGATION ORDER

under regulation 10 of the Criminal Justice (European Investigation Order) Regulations 2017

HUMBLY SHEWETH, that:

1. There is annexed to this petition a copy of the European investigation order which was made by the sheriff at (*here insert place*) [or by the High Court sitting at (*here insert place*)] on (*here insert date*).
2. The applicant seeks to vary [or revoke] the European investigation order for the following reasons:- (*here state reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) To dispense with intimation to any other party for the following reasons (*here state reasons*);
- (2) To proceed to consider the application; and

[OR

- (1) To appoint intimation of this application to be made to any person affected by the order [and/or the person who applied for the order] [or the Lord Advocate] [or the prosecutor];
- (2) To appoint parties to be heard thereon on the earliest practicable date thereafter; and]

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- (3) Thereafter to make an order varying [*or* revoking] the European investigation order [*by (here state the terms of the variation sought)*] or to do otherwise as to your Lordship[s] seems fit.

ACCORDING TO JUSTICE, etc.

Applicant

or

Solicitor for Applicant

or

Procurator Fiscal

Form 67.4-A

Rule 67.4(1)

Form of warrant to cite a person to proceedings before a nominated court

WARRANT FOR CITATION

Whereas the High Court of Justiciary [*or* Sheriff Court at (*here insert place*)] has been nominated by the Lord Advocate to receive evidence under regulation 35(2) (nominating a court to receive evidence from a person) of the Criminal Justice (European Investigation Order) Regulations 2017 [*or* under regulation 36 (hearing a person through a videoconference or other audio visual transmission) of the Criminal Justice (European Investigation Order) Regulations 2017] [*or* regulation 37 (hearing a person by telephone conference) of the Criminal Justice European Investigation Order) Regulations 2017], the court grants warrant for the citation of witnesses to proceedings to take place at (*here insert time*) on (*here insert date*) at (*here insert place*).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 67.4-B

Rule 67.4(2)

Form of postal citation to proceedings before a nominated court

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT]

AT (*place*)

CITATION

To: (*here insert name and address*)

Date of citation: (*day after date of posting*)

YOU ARE HEREBY CITED to appear on (*here insert date*) at (*here insert time*) in the High Court of Justiciary [or Sheriff Court] at (*here insert address*) to give evidence in connection with proceedings against (*here insert name of accused*) before (*here insert name of court in issuing state*) [or in connection with an investigation by (*here insert name of issuing authority*)].

You will be required to give your evidence by videoconference or other audio visual transmission to (*here insert name of issuing authority*) [or you will be required to give your evidence by telephone conference to (*here insert name of issuing authority*)].

Please return the enclosed form to the Procurator Fiscal [or solicitor for accused] in the pre-paid envelope provided within 14 days after the date of citation stated at the top of this citation.

IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 67.4-C

Rule 67.4(2)

Form of reply slip to be completed and returned by person cited to appear before a nominated court

To: Procurator Fiscal [*or* solicitor for accused]

(*address to be inserted by person effecting citation*)

From: (*name to be inserted by person effecting citation*)

Date: (*here insert date*)

I, (*name and address of person cited to be inserted by person effecting citation*), acknowledge that I have received the citation to appear to give evidence on (*date to be inserted by person effecting citation*) at (*time to be inserted by person effecting citation*) in the High Court of Justiciary [*or* Sheriff Court] at (*address to be inserted by person effecting citation*).

I shall attend on that date.

OR

I am unable to attend on that date for the following reason[s] [*here insert reason(s)*].

YOU MUST HAVE A LAWFUL EXCUSE FOR NOT ATTENDING. IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

(*signed*)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 67.4-D

Rule 67.4(3)

Form of personal citation to proceedings before a nominated court

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT]

AT (*place*)

CITATION

To: (*here insert name and address*)

Date of citation: (*here insert date of citation*)

YOU ARE HEREBY CITED to appear on (*here insert date*) at (*here insert time*) in the High Court of Justiciary [or Sheriff Court] at (*here insert address*) to give evidence in connection with proceedings against (*here insert name of accused*) before (*here insert name of court in issuing state*) [or in connection with an investigation by (*here insert name of issuing authority*)].

You will be required to give your evidence by videoconference or other audio visual transmission to (*here insert name of issuing authority*) [or you will be required to give your evidence by telephone conference to (*here insert name of issuing authority*)].

IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

(*signed*)

Officer of Law

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Form 67.7

Rule 67.7

Form of warrant under regulation 39(1) of the Criminal Justice (European Investigation Order) Regulations 2017

(Place and date) The sheriff at *(here insert place)*, grants a warrant under regulation 39(1) of the Criminal Justice (European Investigation Order) Regulations 2017 in relation to the attached European investigation order dated *(here insert date)* issued by the court of *(here insert details of court and place)*.

By virtue of regulation 39(1) of the Criminal Justice (European Investigation Order) Regulations 2017, this warrant authorises a constable from Police Scotland to—

- (a) enter the premises to which the European investigation order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates; and
- (b) seize and retain any evidence for which that constable is authorised to search.

(signed)

Sheriff

(court name, address, email and telephone number)

Form 67.8

Rule 67.8(1)

Form of application to revoke or vary a search warrant or to authorise the release of evidence seized

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

APPLICATION

by

PROCURATOR FISCAL [*or A.B.*]

APPLICANT

for

REVOCATION [*or VARIATION*] OF A SEARCH WARRANT [*or AUTHORISATION FOR THE RELEASE OF EVIDENCE SEIZED*]

made under regulation 41 of the Criminal Justice (European Investigation Order) Regulations 2017

HUMBLY SHEWETH, that:

1. On *(here insert date)* the sheriff of *(here insert name of sheriffdom)* at *(here insert place)* issued a search warrant under regulation 39 of the Criminal Justice (European Investigation Order) Regulations 2017.
2. That [A.B.] is affected by the order in the following way: *(here state how applicant is affected).*
3. The applicant seeks to revoke [*or vary*] the said warrant [*or seeks release of the following evidence seized under regulation 40(1) of the said Regulations (here state evidence referred to)*] on the following grounds: *(here narrate grounds)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) To dispense with intimation to any other party for the following reason[s] *(here state reason[s])*; and
- (2) To proceed to consider the application and, on being duly satisfied, to *(here state the terms of the order sought)* or to do otherwise as to the court shall seem proper.

OR

- (1) To appoint intimation of this application to be made to A.B. [*or the Procurator Fiscal*];
- (2) To appoint parties to be heard thereon on the earliest practicable date thereafter; and

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- (3) Thereafter, on being duly satisfied, to (*here state the terms of the order sought*) or to do otherwise as to the court seems fit.

ACCORDING TO JUSTICE, etc.

Applicant

or

Solicitor for Applicant

or

Procurator Fiscal

Form 67.9

Rule 67.9(1)

Form of application for variation or revocation of customer information order or account monitoring order

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* PROCURATOR FISCAL] [*or* A.B.]

APPLICANT

for

VARIATION [*or* REVOCATION] OF A CUSTOMER INFORMATION ORDER

[*or* OF AN ACCOUNT MONITORING ORDER]

made under regulation 48 of the Criminal Justice (European Investigation Order) Regulations 2017

HUMBLY SHEWETH, that:

1. There is annexed to this petition a copy of the customer information order [*or* account monitoring order] which was made by the sheriff at *(here insert place)* on *(here insert date)*.
2. The petitioner seeks to vary [*or* revoke] the customer information order [*or* account monitoring order] for the following reasons:- *(here state reasons)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP:

- (1) To dispense with intimation to any other party for the following reason[s] *(here state reason[s])*; and
- (2) To proceed to consider the application and, on being duly satisfied, to make an order varying [*or* revoking] the customer information order [*or* account monitoring order] [*by* *(here state the terms of the variation sought)*] or to do otherwise as to the court seems fit.

OR

- (1) To appoint intimation of this application to be made to A.B. [*or* the Lord Advocate];
- (2) To appoint parties to be heard thereon on the earliest practicable date thereafter; and

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- (3) Thereafter, on being duly satisfied, to make an order varying [or revoking] the customer information order [or account monitoring order] [by (here state the terms of the variation sought)] or to do otherwise as to the court seems fit.

ACCORDING TO JUSTICE, etc.

(signed)

Applicant

or

Solicitor for Applicant

or

Procurator Fiscal

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal inserts a new Chapter 67 (European Investigation Orders) into the Criminal Procedure Rules 1996 in consequence of the commencement of the Criminal Justice (European Investigation Order) Regulations 2017 (“the 2017 Regulations”).

Paragraph 2(2) inserts the new Chapter.

New rule 67.2 prescribes the form in which an application for a European investigation order is to be made. When an application is lodged after proceedings have been instituted, the court may fix a hearing and order intimation of the diet and of the application to any other party or, alternatively, hear the application without such intimation.

New rule 67.3 makes provision for an application to vary or revoke a European investigation order. New rule 67.3(1) prescribes the form of these applications.

New rule 67.4 prescribes the form of a warrant to be issued when a person is cited to proceedings before a nominated court and also prescribes the form of both postal and personal citation.

New rule 67.5 provides which parties can participate in proceedings before a nominated court.

New rule 67.6 prescribes the time periods within which the nominated court must give effect to a European investigation order.

New rule 67.7 provides the form of search warrants to be issued under regulation 39 of the 2017 Regulations.

New rule 67.8 makes provision for applications to vary or revoke a search warrant or to authorise the release of evidence seized. New rule 67.8(1) prescribes the form for these applications.

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New rule 67.9 makes provision for applications to vary or revoke a customer information order or an account monitoring order. New rule 67.9m(1) prescribes the form for these applications.

New rule 67.10 makes provision for interpreters to be made available in certain specified circumstances.

New rule 67.11 provides for a record of the proceedings to be made and for a copy of the record to be sent to the issuing authority.

The Act of Adjournal comes into force on 31st May 2018.