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STATUTORY INSTRUMENTS

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**2012 No. 1726**

**The Criminal Procedure Rules 2012**

**PART 6**

**INVESTIGATION ORDERS**

*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(1), and the code of practice for prosecutors and others issued under section 377A of that Act(2).]*

### **Content of application for a production order**

**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;
- (d) explain why the material is likely to be of substantial value to the investigation;
- (e) explain why it is in the public interest for the material to be produced, or for the applicant to be given access to it, having regard to—
  - (i) the benefit likely to accrue to the investigation if it is obtained, and
  - (ii) the circumstances in which the respondent has the material; and
- (f) propose—
  - (i) the terms of the order, and
  - (ii) the period within which it should take effect, if 7 days from the date of the order would not be appropriate.

*[Note. See sections 345 to 350 of the Proceeds of Crime Act 2002(3). 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(4).]*

### **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.

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(1) 2002 c. 29; section 377 was amended by section 74 of, and paragraphs 103 and 114 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(2) 2002 c. 29; section 377A was inserted by section 74 of, and paragraphs 103 and 115 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(3) 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).

(4) 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).

*[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
- (e) propose the terms of the order.

*[Note. See sections 357, 358 and 361 of the Proceeds of Crime Act 2002(5).*

*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(6).*

*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.]*

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(5) 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).

(6) 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.

### **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.

*[Note. See sections 370, 371 and 374 of the Proceeds of Crime Act 2002(7).*

*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

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(7) 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 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 will receive, 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**

**6.22.**—(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(8); 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.]*

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(8) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27).