
STATUTORY INSTRUMENTS

2012 No. 1726

The Criminal Procedure Rules 2012

PART 6

INVESTIGATION ORDERS

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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)**.

(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).

(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.

(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).

[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,*

(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.

(10) 2000 c. 23; section 23A is inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9), with effect from a date to be appointed.

(11) 2000 c. 23; section 32A is inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9), with effect from a date to be appointed.

- (ii) *an order to grant entry, requiring a person to allow entry to premises so that a production order can be enforced,*
- (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'.*

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(12), 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(13)), 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.

Under section 8 of the Senior Courts Act 1981(14), 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.

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- (12) [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](#)), with effect from a date to be appointed.
 - (13) [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](#).
 - (14) [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](#)).

Under section 343 of the Proceeds of Crime Act 2002(15)—

- (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.]

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 to which this Part applies; and
- (c) ‘respondent’ means the person (if any) against whom such an order is sought or made.

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 will be in private unless the court otherwise directs), or without a hearing; and
 - (b) in the absence of—
 - (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(16) or of section 348 or 361 of the Proceeds of Crime Act 2002(17),

(15) 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.

(16) 1984 c. 60.

- (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
 - (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

(17) 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) any written material that was submitted to the court.

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 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

6.13.—(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(18).

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.]

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—

(18) 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).

- (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(19), and the code of practice for prosecutors and others issued under section 377A of that Act(20).]

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(21). 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(22).]

(19) 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).

(20) 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).

(21) 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).

(22) 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).

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
- (e) propose the terms of the order.

[Note. See sections 357, 358 and 361 of the Proceeds of Crime Act 2002(23).

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(24).

(23) 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).

(24) 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.

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.

[Note. See sections 370, 371 and 374 of the Proceeds of Crime Act 2002(25).

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

(25) 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).

- (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 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(26); 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.]

(26) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27).

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 will 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 will 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;
- (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(27);
- (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(28).]

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

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

(28) 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).

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(**29**)—
 - (i) an authorisation to obtain or disclose communications data, under section 22(3) of the 2000 Act(**30**), 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(**31**), 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(**32**).
- (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—
 - (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(**33**), 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(**34**)), 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;*

(29) 2000 c. 23; sections 23A and 23B are inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9), with effect from a date to be appointed.

(30) 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).

(31) 2000 c. 23; sections 32A and 32B are inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9), with effect from a date to be appointed.

(32) 2000 c. 23; section 29 was amended by section 8 of the Policing and Crime Act 2009 (c. 26).

(33) 2000 c. 23; section 43(6A) is inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9), with effect from a date to be appointed.

(34) 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).

- (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(35) 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(36)), 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.*

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.*

(35) S.I. 2010/480.

(36) 2000 c. 23; section 26 was amended by section 406 of, and paragraph 161 of Schedule 17 to, the Communications Act 2003 (c. 21).

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(37) 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.]