
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 47

INVESTIGATION ORDERS AND WARRANTS

*SECTION 11: ORDERS FOR ACCESS TO ELECTRONIC DATA
UNDER THE CRIME (OVERSEAS PRODUCTION ORDERS) ACT 2019*

Application for order

- 47.68.**—(1) An applicant who wants the court to make an overseas production order must—
- (a) apply in writing and serve the application on the court officer;
 - (b) demonstrate that the applicant is entitled to apply;
 - (c) give the court an estimate of how long the court should allow—
 - (i) to read the application and prepare for any hearing, and
 - (ii) for any hearing of the application;
 - (d) attach a draft order in the terms proposed by the applicant;
 - (e) serve notice of the application on the respondent and on any other person affected by the order, unless the court otherwise directs; and
 - (f) serve the application on the respondent and on any such other person to such extent, if any, as the court directs.
- (2) A notice served on the respondent and on any other person affected by the order must—
- (a) specify or describe the electronic data in respect of which the application is made; and
 - (b) identify—
 - (i) the power that the applicant invites the court to exercise, and
 - (ii) the conditions for the exercise of that power which the applicant asks the court to find are met.
- (3) The application must—
- (a) specify the designated international co-operation arrangement by reference to which the application is made;
 - (b) identify the respondent;
 - (c) explain the grounds for believing that the respondent operates in, or is based in, a country or territory outside the United Kingdom which is a party to, or participates in, that designated international co-operation arrangement;
 - (d) specify or describe the electronic data in respect of which the order is sought;
 - (e) explain the grounds for believing that the electronic data sought does not consist of or include excepted electronic data;

- (f) briefly describe the investigation for the purposes of which the electronic data is sought and explain—
 - (i) the grounds for believing that an indictable offence has been committed which is under investigation or in respect of which proceedings have begun, or
 - (ii) how the investigation constitutes a terrorist investigation within the meaning of the Terrorism Act 2000;
 - (g) explain the grounds for believing that the respondent has possession or control of all or part of the electronic data sought;
 - (h) explain the grounds for believing that the electronic data sought is likely to be of substantial value to the investigation, or to the proceedings (as the case may be), whether by itself or together with other material;
 - (i) where paragraph (3)(f)(i) applies, explain the grounds for believing that all or part of the electronic data sought is likely to be relevant evidence in respect of the offence concerned;
 - (j) explain the grounds for believing that it is in the public interest for the respondent to produce or give access to the electronic data sought, having regard to—
 - (i) the benefit likely to accrue to the investigation, or to the proceedings (as the case may be), if that data is obtained, and
 - (ii) the circumstances under which the respondent has possession or control of any of that data;
 - (k) specify—
 - (i) the person, or the description of person, to whom the applicant wants the court to order that electronic data must be produced or made accessible, and
 - (ii) the period by the end of which the applicant wants the court to order that that electronic data must be produced or made accessible (which must be a period of 7 days beginning with the day on which the order is served on the respondent, unless the court otherwise directs); and
 - (l) where the applicant wants the court to include a non-disclosure requirement in the order—
 - (i) explain why such a requirement would be appropriate, and
 - (ii) specify or describe when the applicant wants that requirement, if ordered, to expire.
- (4) In the event that an overseas production order is made, the applicant must serve the order on the Secretary of State for service on the respondent.
- (5) Where notice of the application was served on a respondent, in the event that the application is dismissed or abandoned the applicant must—
- (a) promptly so notify that respondent; and
 - (b) where the application is dismissed, promptly inform that respondent if the court nonetheless orders that for a period that respondent must not—
 - (i) conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, or
 - (ii) disclose the making of the application or its contents to any person.

[Note. See sections 1, 2, 4 and 5 of the Crime (Overseas Production Orders) Act 2019.

Under section 8 of the 2019 Act, an overseas production order may include a non-disclosure requirement obliging the respondent not to disclose the making of the order or its contents to any person except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer).

Under section 9 of the Act, an overseas production order may be served only by the Secretary of State.

Under section 12 of the Act, if there are reasonable grounds for believing that the electronic data specified or described in the application consists of or includes journalistic data then unless the judge otherwise directs notice of the application must be served on (a) the person against whom the overseas production order is sought and (b) if different, the person by whom, or on whose behalf, the journalistic data is stored. The criteria for making such a direction correspond with those listed in rule 47.67(3)(b).

Under section 13 of the Act, following service of notice of an application for an overseas production order the respondent must not conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, or disclose the making of the application or its contents to any person, except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer). Those obligations are superseded if an order is made. If the application is abandoned or dismissed, those obligations cease unless, in the event of dismissal, the court otherwise orders.

Section 14 of the Act provides for the means of service of notices and orders.

The Practice Direction sets out forms of application, notice and order for use in connection with this rule.]