
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 47

INVESTIGATION ORDERS AND WARRANTS

*SECTION 7: INVESTIGATION APPROVAL ORDERS UNDER
THE REGULATION OF INVESTIGATORY POWERS ACT 2000*

When this Section applies

- 47.51.** This Section applies 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(1); and
 - (b) the grant or renewal of an authorisation under section 32A of the 2000 Act(2).

[Note. Under the Regulation of Investigatory Powers Act 2000, an order may be made 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'.]

Commencement Information

- II** Rule 47.51 in force at 5.10.2020, see Preamble

Exercise of court's powers

47.52.—(1) Rule 47.5 (Investigation orders; Exercise of court's powers) applies, subject to sections 23B(2) and 32B(2) of the Regulation of Investigatory Powers Act 2000(3).

(2) Where a magistrates' court refuses to approve the grant, giving or renewal of an authorisation or notice, 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. Under sections 23B(2) and 32B(2) of the Regulation of Investigatory Powers Act 2000, 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. See also sections 23B(3) and 32B(3) of the 2000 Act.]

(1) 2000 c. 23; section 23A was inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(2) 2000 c. 23; section 32A was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(3) 2000 c. 23; section 23B was inserted by section 37 and section 32B by section 38 of the Protection of Freedoms Act 2012 (c. 9).

Commencement Information

I2 Rule 47.52 in force at 5.10.2020, see Preamble

Application for approval for authorisation or notice

47.53.—(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(4)—
 - (i) an authorisation to obtain or disclose communications data, under section 22(3) of the 2000 Act(5), 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; or
- (b) under sections 32A and 32B of the Regulation of Investigatory Powers Act 2000(6), 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(7).
- (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(8), in relation to a covert human intelligence source; and
 - (d) propose the terms of the order.

[Note. See also rule 47.5, 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(9)), 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;*

(4) 2000 c. 23; sections 23A and 23B were inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).
 (5) 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).
 (6) 2000 c. 23; sections 32A and 32B were inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).
 (7) 2000 c. 23; section 29 was amended by section 8 of the Policing and Crime Act 2009 (c. 26).
 (8) 2000 c. 23; section 43(6A) was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).
 (9) 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).

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

The Regulation of Investigatory Powers (Communications Data) Order 2010⁽¹⁰⁾ 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)⁽¹¹⁾, 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*

⁽¹⁰⁾ S.I. 2010/480.

⁽¹¹⁾ 2000 c. 23; section 26 was amended by section 406 of, and paragraph 161 of Schedule 17 to, the Communications Act 2003 (c. 21).

Changes to legislation: There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, Cross Heading: SECTION 7: INVESTIGATION APPROVAL ORDERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000. (See end of Document for details)

(b) *consider the results of that review.*

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(12) 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.]

Commencement Information

I3 Rule 47.53 in force at 5.10.2020, see Preamble

Changes to legislation:

There are currently no known outstanding effects for the The Criminal Procedure Rules 2020,
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