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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 47**

**INVESTIGATION ORDERS AND WARRANTS**

*SECTION 5: ORDERS FOR THE RETENTION OF FINGERPRINTS, ETC.*

**Application to extend retention period**

**47.44.**—(1) This rule applies where a magistrates' court can make an order extending the period for which there may be retained material consisting of—

- (a) fingerprints taken from a person—
    - (i) under a power conferred by Part V of the Police and Criminal Evidence Act 1984<sup>(1)</sup>,
    - (ii) with that person's consent, in connection with the investigation of an offence by the police, or
    - (iii) under a power conferred by Schedule 8 to the Terrorism Act 2000<sup>(2)</sup> in relation to a person detained under section 41 of that Act;
  - (b) a DNA profile derived from a DNA sample so taken; or
  - (c) a sample so taken.
- (2) A chief officer of police who wants the court to make such an order must—
- (a) apply in writing—
    - (i) within the period of 3 months ending on the last day of the retention period, where the application relates to fingerprints or a DNA profile, or
    - (ii) before the expiry of the retention period, where the application relates to a sample;
  - (b) in the application—
    - (i) identify the material,
    - (ii) state when the retention period expires,
    - (iii) give details of any previous such application relating to the material, and
    - (iv) outline the circumstances in which the material was acquired;
  - (c) serve the application on the court officer, in every case; and
  - (d) serve the application on the person from whom the material was taken, where—
    - (i) the application relates to fingerprints or a DNA profile, or
    - (ii) the application is for the renewal of an order extending the retention period for a sample.

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<sup>(1)</sup> 1984 c. 60.

<sup>(2)</sup> 2000 c. 11.

(3) An application to extend the retention period for fingerprints or a DNA profile must explain why that period should be extended.

(4) An application to extend the retention period for a sample must explain why, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—

- (a) disclosure to, or use by, a defendant; or
- (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

(5) On an application to extend the retention period for fingerprints or a DNA profile, the applicant must serve notice of the court's decision on any respondent where—

- (a) the court makes the order sought; and
- (b) the respondent was absent when it was made.

*[Note. See rule 47.42(a). The powers to which rule 47.44 applies may be exercised only by a District Judge (Magistrates' Courts).*

*The time limits for making an application under this rule are prescribed by sections 63F(8) and 63R(8) of the Police and Criminal Evidence Act 1984(3), and by paragraphs 20B(6) and 20G(8) of Schedule 8 to the Terrorism Act 2000(4). They may be neither extended nor shortened.*

*Sections 63D and 63R of the 1984 Act(5), and paragraphs 20A and 20G of Schedule 8 to the 2000 Act(6), provide for the circumstances in which there must be destroyed the material to which this rule applies.*

*Section 63F of the 1984 Act, and paragraph 20B of Schedule 8 to the 2000 Act, provide for the circumstances in which fingerprints and DNA profiles may be retained instead of being destroyed. Under section 63F(7) and paragraph 20B(5), a chief officer of police to whom those provisions apply may apply for an order extending the statutory retention period of 3 years by up to another 2 years.*

*Section 63R of the 1984 Act and paragraph 20G of Schedule 8 to the 2000 Act provide for the circumstances in which samples taken from a person may be retained instead of being destroyed. Under section 63R(6) of the 1984 Act and paragraph 20G(6) of Schedule 8 to the 2000 Act, a chief officer of police to whom those provisions apply may apply for an order to retain a sample for up to 12 months after the date on which it would otherwise have to be destroyed. Under section 63R(9) and paragraph 20G(9), such an order may be renewed, on one or more occasions, for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.]*

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#### **Commencement Information**

- II** Rule 47.44 in force at 5.10.2020, see Preamble

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- (3) 1984 c. 60; section 63F was inserted by section 3 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.
  - (4) 2000 c. 11; paragraph 20B of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) (for certain purposes, and for remaining purposes with effect from a date to be appointed) and amended by section 181 of, and paragraph 125 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Paragraph 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.
  - (5) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9).
  - (6) 2000 c. 11; paragraph 20A of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

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**Changes to legislation:** *There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, Section 47.44. (See end of Document for details)*

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