

**CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION XI  
OTHER PROCEEDINGS**

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**CrimPR Part 47 Investigation orders and warrants**

**CPD XI Other proceedings 47A: INVESTIGATION ORDERS AND WARRANTS**

- 47A.1 Powers of entry, search and seizure, and powers to obtain banking and other confidential information, are among the most intrusive that investigators can exercise. Every application must be carefully scrutinised with close attention paid to what the relevant statutory provision requires of the applicant and to what it permits. CrimPR Part 47 must be followed, and the prescribed forms (retaining the Notes for Guidance section) must be used. These are designed to prompt applicants, and the courts, to deal with all of the relevant criteria.
- 47A.2 The issuing of a warrant or the making of such an order is never to be treated as a formality and it is therefore essential that the judge or magistrate considering the application is given, and must take, sufficient time for the purpose. The prescribed forms require the applicant to provide a time estimate, and listing officers and justices' legal advisers should take account of these.
- 47A.3 Applicants for orders and warrants owe the court duties of candour and truthfulness. On any application made without notice to the respondent, and so on all applications for search warrants, the duty of frank and complete disclosure is especially onerous. The applicant must draw the court's attention to any information that is unfavourable to the application. The existence of unfavourable information will not necessarily lead to the application being refused; it will be a matter for the court what

weight to place on each piece of information. As Hughes LJ made clear in *Re Stanford International Limited*<sup>1</sup> "In effect a prosecutor seeking an *ex parte* order must put on his defence hat and ask himself what, if he was representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge". This is, as Aitkins LJ recognised, "a heavy burden but a vital safeguard. Full details must be given<sup>2</sup>."

47A.4 Where an applicant supplements an application with additional oral or written information, on questioning by the court or otherwise, it is essential that the court keeps an adequate record. What is needed will depend upon the circumstances. The Rules require that a record of the 'gist' be retained. The purpose of such a record is to allow the sufficiency of the court's reasons for its decision subsequently to be assessed. The gravity of such decisions requires that their exercise should be susceptible to scrutiny and to explanation by reference to all of the information that was taken into account.

47A.5 The forms that accompany CrimPR Part 47 provide for the most frequently encountered applications. The included Notes for Guidance summarise for the applicant and the court the relevant criteria for making and considering an application. However, there are some hundreds of powers of entry, search and seizure, supplied by a corresponding number of legislative provisions. In any criminal matter, if there is no form designed for the particular warrant or order sought, the forms should still be used, as far as is practicable, and adapted as necessary. The applicant should pay particular attention to the specific legislative requirements for the granting of such an application to ensure that the court has all of the necessary information, and, if the court might be unfamiliar with the legislation, should provide a copy of the relevant provisions. Applicants must comply with the duties of candour and truthfulness, and include in their application the declarations required by the Rules and must make disclosure of any unfavourable information to the court.

#### **CPD XI Other proceedings 47B: INVESTIGATION ORDERS AND WARRANTS IN THE CROWN COURT**

47B.1 This section covers applications made under:

- (i) Schedule 1 Police and Criminal Evidence Act 1984 (PACE);
- (ii) Section 2 Criminal Justice Act 1987;
- (iii) Drug Trafficking Act 1994;
- (iv) Part 8 of the Proceeds of Crime act 2002;

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<sup>1</sup> [2010] EWCA Civ 137 at para 159

<sup>2</sup> *R (on the Application of S, F and L) v Chief Constable of the British Transport Police and Southwark Crown Court* [2013] EWHC 2189 (Admin) at [45 (d)].

- (v) Section 5 Coroners and Justice Act 2009
- (vi) Terrorism Act 2000.

It does NOT cover applications under the Extradition Act 2003.

### **Crown Court Centres**

47B.2 Investigators must give careful consideration to which Crown Court centre is most appropriate to hear the application. In all cases, the application must explain the rationale for choosing the particular court centre. Relevant considerations will usually be:

- where any subsequent proceedings are likely to be commenced;
- where a main suspect has some geographical connection; and/or
- where, in broad terms, the offending has taken place.

A court centre should not be chosen simply because it is most convenient or proximate to the investigators location. Any dispute over the proper venue for an application should be determined by the relevant Presiding Judges.

47B.3 Where the investigation is complex, lengthy and/or involves multiple suspects all applications should be made to one court centre. To ensure consistency, all subsequent applications arising out of the same or any connected investigation should be made to the same court centre and, where practicable, the same judge.

47B.4 Judges can refuse to determine applications and request they be resubmitted (if necessary to another court) where:

- the application is not in the proper form;
- there is an inaccurate reading time estimate; and/or
- there is insufficient justification for the application to be made at that court centre.

### **Dealing with applications without a hearing**

47B.5 The court must not determine an application in the applicant's absence in the circumstances set out in CrimPR 47.5(2); or in the absence of any respondent in the circumstances set out in CrimPR 47.5(3) and (4).

47B.6 When permitted by the rules, and where the application has been sufficiently completed and submitted on the correct form, there is a presumption that the application will be dealt with without a hearing. The judge is always entitled to require a hearing to clarify omissions or ambiguity on the application, or for any other reason.

47B.7 It will often not be appropriate for a court to deal with an application without a hearing in the following situations:

- where the investigation involved covert activity or the application is based on material gathered covertly;
- where the application is based on material which is especially sensitive and/or where it will be necessary to ensure the security at court of the material produced in support of the application;
- where the case may result in substantial local and/or national public interest;
- where the application is particularly lengthy, serious or complex.

47B.8 Applications should be sent electronically to the designated secure email address at the relevant court centre.

47B.9 A judge considering an application without a hearing will subject the application to the usual intense level of scrutiny ensuring that the relevant statutory requirements have been met. If the judge is not so satisfied then the judge will refuse the application, require further information to be served or adjourn it for a hearing in court, which can be carried out via live link or telephone, where permitted by the Rules. The Court will inform the applicant of the outcome and make the necessary arrangements for any additional hearings that may be required. There is no requirement for any order to be signed by the judge with a “wet ink” signature. The applicant will be notified electronically of any orders that are made.

47B.10 Applications considered without a hearing will be determined by a judge as soon as practicable. Approved orders will be returned electronically to the applicant and an electronic copy must be securely saved by the court.. If there is a particular urgency with any application, that fact should be made clear to the court when it is served and the judge should expedite it where possible.

### **Listing**

47B.11 To assist the listing process, the applicant must supply a realistic estimate of the reading time required when the application is served. This estimate should be provided in the application and in the covering email to which it is attached. The covering email should also stipulate whether there have been any previous applications in the same or any connected investigation and provide the name of the judge who granted any previous Orders.

47B.12 Where the judge has decided that a hearing is required to determine or further consider the application, the expectation is that this hearing should usually take place by live link or

telephone.<sup>1</sup> Where the judge directs a hearing at court, any additional material relied on by the applicant must be brought to court on the day of the hearing. Any additional material should not be retained by the court once the application has been determined, but must be taken away by the applicant at the end of the hearing.<sup>2</sup>

47B.13 When listing such hearings consideration should be given to Division XIII Listing of these practice directions which states at A.1 that listing is a judicial responsibility and function. G.3(1) of that division envisages that such applications will be completed by 10.30am or start after 4.30pm so as not to interfere with trials. This general direction does not prevent a judge from considering applications outside of these times where other court business allows.

47B.14 However, as paragraph G.8 of Division XIII Listing makes clear, along with the relevant case law, that the search powers in PACE constitute “a serious inroad upon the liberty of the subject. The responsibility for ensuring that the procedure is not abused lies with circuit judges. It is of cardinal importance that circuit judges should be scrupulous in discharging that responsibility.”<sup>3</sup> Accordingly, there must be adequate time allowed for the judge to read carefully the application and all the supporting evidence supplied with it. The judge will require sufficient time to enable a short judgment to be given, where necessary so that in the event of challenge in the Administrative Court there is an explanation of the reasons for the decision for that court to consider.

### **DARTS Recording**

47B.15 Hearings in court are required to be recorded whether on DARTS or some other secure method such as on a hand-held machine. Determination of the method of recording is a matter for the judge.

### **CrimPR Part 48 Contempt of court**

#### **CPD XI Other proceedings 48A: CONTEMPT IN THE FACE OF THE MAGISTRATES' COURT**

##### **General**

48A.1 The procedure to be followed in cases of contempt of court is given in CrimPR Part 48. The magistrates' courts' power to deal with contempt in the face of the court is contained within section 12 of the Contempt of Court Act 1981. Magistrates' courts also have the power to punish a witness who refuses to be sworn or give evidence under section 97(4) of the Magistrates' Courts Act 1980.

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<sup>1</sup> Although the court cannot receive evidence by telephone, information in support of the application can be given on oath by this means.

<sup>2</sup> Generally, there are no secure storage at facilities at court centres where sensitive material can be safely left.

<sup>3</sup> *per Lloyd LJ R v Maidstone Crown Court, ex p Waitt* [1988] Crim LR 384.

**Contempt consisting of wilfully insulting anyone specified in section 12 or interrupting proceedings**

48A.2 In the majority of cases, an apology and a promise as to future conduct should be sufficient for the court to order a person's release. However, there are likely to be certain cases where the nature and seriousness of the misconduct requires the court to consider using its powers, under section 12(2) of the Contempt of Court Act 1981, either to fine or to order the person's committal to custody.

**Imposing a penalty for contempt**

48A.3 The court should allow the person a further opportunity to apologise for his or her contempt, and should follow the procedure at CrimPR 48.8(4). The court should consider whether it is appropriate to release the person or whether it must exercise its powers to fine the person or to commit the person to custody under section 12 (2) of the 1981 Act. In deciding how to deal with the person, the court should have regard to the period for which he or she has been detained, whether the conduct was admitted and the seriousness of the contempt. Any period of committal to custody should be for the shortest period of time commensurate with the interests of preserving good order in the administration of justice.

**CrimPR Part 50 Extradition**

**CPD XI Other proceedings 50A: EXTRADITION: GENERAL MATTERS AND CASE MANAGEMENT**

**General matters: expedition at all times**

50A.1 Compliance with these directions is essential to ensure that extradition proceedings are dealt with expeditiously, both in accordance with the spirit of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and surrender procedures between Member States and the United Kingdom's other treaty obligations. It is of the utmost importance that orders which provide directions for the proper management and progress of cases are obeyed so that the parties can fulfil their duty to assist the court in furthering the overriding objective and in making efficient use of judicial resources. To that end:

- (i) the court may, and usually should, give case management directions, which may be based on a model, but adapted to the needs of the individual case, requiring the parties to supply case management information, consistently with the overriding objective of the Criminal Procedure Rules and compatibly with the parties' entitlement to legal professional and litigation privilege;

- (ii) a defendant whose extradition is requested must expect to be required to identify what he or she intends to put in issue so that directions can be given to achieve a single, comprehensive and effective extradition hearing at the earliest possible date;
- (iii) where the issues are such that further information from the requesting authority or state is needed then it is essential that the request is formulated clearly and in good time, in terms to which the parties can expect to contribute but which terms must be approved by the court, in order that those to whom the request is addressed will be able to understand what is sought, and why, and so can respond promptly;
- (iv) where such a request or other document, including a formal notice to the defendant of a post-extradition consent request, requires transmission to an authority or other person in a requesting state or other place outside the UK, it is essential that clear and realistic directions for the transmission are given, identifying who is to be responsible and to what timetable, having regard to the capacity of the proposed courier. Once given, such directions must be promptly complied with and the court at once informed if difficulties are encountered.
- (v) any skeleton argument must comply with the requirements of these Practice Directions and, if applicable, of the court.  
(Paragraphs XII D.17 to D.23 set out the general requirements for skeleton arguments. Paragraphs XI 50E.1 to 50E.7 set out some special requirements that apply in an extradition appeal to the High Court.)

**General guidance under s. 2(7A) Extradition Act 2003 (as amended by the Anti-Social Behaviour, Crime and Policing Act 2014)**

- 50A.2 When proceeding under section 21A of the Act and considering under subsection (3)(a) of the Act the seriousness of the conduct alleged to constitute the extradition offence, the judge will determine the issue on the facts of each case as set out in the warrant, subject to the guidance in paragraph 50A.3 below.
- 50A.3 In any case where the conduct alleged to constitute the offence falls into one of the categories in the table at paragraph 50A.5 below, unless there are exceptional circumstances, the judge should generally determine that extradition would be disproportionate. It would follow under the terms of s. 21A(4)(b) of the Act that the judge must order the person's discharge.
- 50A.4 The exceptional circumstances referred to above in paragraph 50A.3 will include:
- i. vulnerable victim;
  - ii. crime committed against someone because of their disability, gender-identity, race, religion or belief, or sexual orientation;

- iii. significant premeditation;
- iv. multiple counts;
- v. extradition also sought for another offence;
- vi. previous offending history.

50A.5 The table is as follows:

<b>Category of offence</b>	<b>Examples</b>
Minor <b>theft</b> – (not robbery/ burglary or theft from the person)	Where the theft is of a low monetary value and there is a low impact on the victim or indirect harm to others, for example: <ul style="list-style-type: none"> <li>(a) Theft of an item of food from a supermarket;</li> <li>(b) Theft of a small amount of scrap metal from company premises;</li> <li>(c) Theft of a very small sum of money.</li> </ul>
Minor financial offences ( <b>forgery, fraud and tax offences</b> )	Where the sums involved are small and there is a low impact on the victim and / or low indirect harm to others, for example: <ul style="list-style-type: none"> <li>(a) Failure to file a tax return or invoices on time;</li> <li>(b) Making a false statement in a tax return;</li> <li>(c) Dishonestly applying for a tax refund;</li> <li>(d) Obtaining a bank loan using a forged or falsified document;</li> <li><b>(e) Non-payment of child maintenance.</b></li> </ul>
Minor <b>road traffic, driving</b> and related offences	Where no injury, loss or damage was incurred to any person or property, for example: <ul style="list-style-type: none"> <li>(a) Driving whilst using a mobile phone;</li> <li><b>(b) Use of a bicycle whilst intoxicated.</b></li> </ul>
Minor <b>public order</b> offences	Where there is no suggestion the person started the trouble and the offending behaviour was, for example: <ul style="list-style-type: none"> <li>(a) Non-threatening verbal abuse of a law enforcement officer or government official;</li> <li>(b) Shouting or causing a disturbance, without threats;</li> <li><b>(c) Quarrelling in the street,</b></li> </ul>



	without threats.
Minor <b>criminal damage</b> (other than by fire)	For example, breaking a window
<b>Possession of controlled substance</b> (other than one with a high capacity for harm such as heroin, cocaine, LSD or crystal meth)	Where it was possession of a very small quantity and intended for personal use

## **CPD XI Other proceedings 50B: MANAGEMENT OF APPEAL TO THE HIGH COURT**

50B.1 Applications for permission to appeal to the High Court under the Extradition Act 2003 must be started in the Administrative Court of the Queen’s Bench Division at the Royal Courts of Justice in London.

50B.2 A Lord Justice of Appeal appointed by the Lord Chief Justice will have responsibility to assist the President of the Queen’s Bench Division with overall supervision of extradition appeals.

### **Definitions**

50B.3 Where appropriate “appeal” includes “application for permission to appeal”.

50B.4 “EAW” means European Arrest Warrant.

50B.5 A “nominated legal officer of the court” is a court officer assigned to the Administrative Court Office who is a barrister or solicitor and who has been nominated for the purpose by the Lord Chief Justice under CrimPR 50.18 and 50.30.

### **Forms**

50B.6 The forms are to be used in the High Court, in accordance with CrimPR 50.19, 50.20, 50.21 and 50.22.

50B.7 The forms may be amended or withdrawn from time to time, or new forms added, under the authority of the Lord Chief Justice: see CrimPD I 5A.

### **Management of the Appeal**

50B.8 Where it is not possible for the High Court to begin to hear the appeal in accordance with time limits contained in CrimPR 50.23(1) and (2), the court may extend the time limit if it believes it to be in the interests of justice to do so and may do so even after the time limit has expired.

50B.9 The power to extend those time limits may be exercised by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

50B.10 Case management directions setting down a timetable may be imposed upon the parties by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court. For the court's constitution and relevant powers and duties see section 4 of the Senior Courts Act 1981 and CrimPR 50.18 and 50.30.

### **Listing of Oral, Renewal and Substantive Hearings**

50B.11 Arrangements for the fixing of dates for hearings will be made by a Listing Officer of the Administrative Court under the direction of the judge with overall responsibility for supervision of extradition appeals.

50B.12 A Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court may give such directions to the Listing Officer as they deem necessary with regard to the fixing of dates, including as to whether cases in the same/related proceedings or raising the same or similar issues should be heard together or consecutively under the duty imposed by CrimPR 1.1 (2)(e). Parties must alert the nominated court officer for the need for such directions.

50B.13 Save in exceptional circumstances, regard will not be given to an advocate's existing commitments. This is in accordance with the spirit of the legislation that extradition matters should be dealt with expeditiously. Extradition matters are generally not so complex that an alternative advocate cannot be instructed.

50B.14 If a party disagrees with the time estimate given by the court, they must inform the Listing Office within 5 business days of the notification of the listing and they must provide a time estimate of their own.

### **Expedited appeals**

50B.15 The court may direct that the hearing of an appeal be expedited.

50B.16 The court will deal with requests for an expedited appeal without a hearing. Requests for expedition must be made in writing, either within the appeal notice, or by application notice, clearly marked with the Administrative Court reference number, which must be lodged with the Administrative Court Office or emailed to the appropriate email address: [administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk](mailto:administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk) and notice must be given to the other parties.

- 50B.17 Any requests for an expedited appeal made to an out of hours judge must be accompanied by:
- (i) a detailed chronology;
  - (ii) reasons why the application could not be made within court hours;
  - (iii) any orders or judgments made in the proceedings.

**Amendment to Notices**

- 50B.18 Amendment to Notice of Appeal requiring permission:
- (i) subject to CrimPR 50.20(5), an appeal notice may not be amended without the permission of the court: CrimPR\_50.17(6)(b);
  - (ii) an application for permission to amend made before permission to appeal has been considered will be determined without a hearing;
  - (iii) an application for permission to amend after permission to appeal has been granted and any submissions in opposition will normally be dealt with at the hearing unless there is any risk that the hearing may have to be adjourned. If there is any risk that the application to amend may lead the other party to seek time to answer the proposed amendment, the application must be made as soon as practicable and well in advance of the hearing. A failure to make immediate applications for such an amendment is likely to result in refusal;
  - (iv) legal representatives or the appellant, if acting in person, must
    - a. Inform the court at the time they make the application if the existing time estimate is affected by the proposed amendment; and
    - b. Attempt to agree any revised time estimate no later than 5 business days after service of the application.
  - (v) where the appellant wishes to restore grounds of appeal excluded on the grant of permission to appeal, the procedure is governed by CrimPR 50.22.
- 50B.19 Amendment to Respondent's Notice:
- (i) a respondent's notice may not be amended without the permission of the court: CrimPR 50.17(6)(b);
  - (ii) an application for permission to amend made before permission to appeal has been considered will be determined without a hearing;
  - (iii) an application for permission to amend after permission to appeal has been granted and any submissions in opposition will normally be dealt with at the hearing unless there is any risk that the

- hearing may have to be adjourned. If there is any risk that the application to amend may lead the other party to seek time to answer the proposed amendment, the application must be made as soon as practicable and well in advance of the hearing. A failure to make immediate applications for such an amendment is likely to result in refusal;
- (iv) legal representatives or the appellant, if acting in person, must
- a. Inform the court at the time they make the application if the existing time estimate is affected by the proposed amendment; and
  - b. Attempt to agree any revised time estimate no later than 5 business days after service of the application.

### **Use of Live-Links**

50B.20 When a party acting in person is in custody, the court office will request the institution to use live-link for attendance at any oral or renewal hearing or substantive appeal. The institution must give precedence to all such applications in the High Court over live-links to the lower courts, including the Crown Court.

### **Interpreters**

50B.21 It is the responsibility of the Listing Officer to ensure the attendance of an accredited interpreter when an unrepresented party in extradition proceedings is acting in person and does not understand or speak English.

50B.22 Where a party who does not understand or speak English is legally represented it is the responsibility of his/her solicitors to instruct an interpreter if required for any hearing in extradition proceedings.

### **Disposing of applications and appeals by way of consent**

50B.23 CrimPR 50.24 governs the submission of Consent Orders and lists the essential requirements for such orders. Any Consent Order, the effect of which will be to allow extradition to proceed, must specify the date on which the appeal proceedings are to be treated as discontinued, for the purposes of section 36 or 118, as the case may be, of the Extradition Act 2003: whether that is to be the date on which the order is made or some later date. A Consent Order may be approved by a Lord Justice of Appeal, a Single Judge of the High Court or, under CrimPR 50.30(2), a nominated legal officer of the court. The order may, but need not, be pronounced in open court: CrimPR 50.17(1)(c)(iii). Once approved, the order will be sent to the parties and to any other person as required by CrimPR 50.29(3)(b), (c).

- 50B.24 A Consent Order to allow an appeal brought under s.28 of the Extradition Act 2003 must provide:
- (i) for the quashing of the decision of the District Judge in Westminster Magistrates' Court discharging the Requested Person;
  - (ii) for the matter to be remitted to the District Judge to hold fresh extradition proceedings;
  - (iii) for any ancillary matter, such as bail or costs.
- 50B.25 A Consent Order to allow an appeal brought under s.110 of the Extradition Act 2003 must provide:
- (i) for the quashing of the decision of the Secretary of State for the Home Department not to order extradition;
  - (ii) for the matter to be remitted to the Secretary of State to make a fresh decision on whether or not to order extradition;
  - (iii) for any ancillary matter, such as bail or costs.
- 50B.26 Where:
- (a) a Consent Order is intended to dispose of an application for permission to appeal which has not yet been considered by the court, the order must make clear by what means that will be achieved, bearing in mind that an application for permission which is refused without a hearing can be renewed under CrimPR 50.22(2). If the parties intend to exclude the possibility of renewal the order should declare either (i) that the time limit under rule 50.22(2) is reduced to nil, or (ii) permission to appeal is given and the appeal determined on the other terms of the order.
  - (b) one of the parties is a child or protected party, the documents served under CrimPR 50.24(5) must include an opinion from the advocate acting on behalf of the child or protected party and, in the case of a protected party, any relevant documents prepared for the Court of Protection.

### **Fees**

50B.27 Applications to extend Representation Orders do not attract any fee.

50B.28 Fees are payable for all other applications in accordance with the current Fees Order.

## **CPD XI Other proceedings 50C: EXTRADITION: REPRESENTATION ORDERS**

50C.1 Representation Orders may be granted by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court upon a properly completed CRM14 being lodged with the court. A Representation

Order will cover junior advocate and solicitors for the preparation of the Notice of Appeal to determination of the appeal.

50C.2 Applications to extend Representation Orders may be granted by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated court officer who may direct a case management hearing before a Lord Justice of Appeal, a Single Judge, or a Master of the Administrative Court. Since these applications do not attract a fee, parties may lodge them with the court by attaching them to an email addressed to the nominated legal officer of the court.

50C.3 Applications to extend Representation Orders to cover the instruction of Queen's Counsel to appear either alone or with a junior advocate must be made in writing, either by letter or application notice, clearly marked with the Administrative Court reference number, which must be lodged with the Administrative Court Office or emailed to the appropriate email address: [administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk](mailto:administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk).

The request must:

- (i) identify the substantial novel or complex issues of law or fact in the case;
- (ii) explain why these may only be adequately presented by a Queen's Counsel;
- (iii) state whether a Queen's Counsel has been instructed on behalf of the respondent;
- (iv) explain any delay in making the request;
- (v) be supported by advice from junior advocate or Queen's Counsel.

50C.4 Applications for prior authority to cover the cost of obtaining expert evidence must be made in writing, either by letter, clearly marked with the Administrative Court reference number, which must be sent or emailed to the Administrative Court Office.

The request must:

- (i) confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;
- (ii) explain why the evidence was not called at the extradition hearing in Westminster Magistrates' Court and what evidence can be produced to support that;
- (iii) explain why the new evidence would have resulted in the District Judge deciding a question at the extradition hearing differently and whether, if so, the District Judge would have been required to make a different order as to discharge of the requested person;

- (iv) explain why the evidence was not raised when the case was being considered by the Secretary of State for the Home Department or information was available that was not available at that time;
- (v) explain why the new evidence would have resulted in the Secretary of State deciding a question differently, and if the question had been decided differently, the Secretary of State would not have ordered the person's extradition;
- (vi) state when the need for the new evidence first became known;
- (vii) explain any delay in making the request;
- (viii) explain what relevant factual, as opposed to expert evidence, is being given by whom to create the factual basis for the expert's opinion;
- (ix) explain why this particular area of expertise is relevant: for example why a child psychologist should be appointed as opposed to a social worker;
- (x) state whether the requested person has capacity;
- (xi) set out a full breakdown of all costs involved including any VAT or other tax payable, including alternative quotes or explaining why none are available;
- (xii) provide a list of all previous extensions of the Representation Order and the approval of expenditure to date;
- (xiii) provide a timetable for the production of the evidence and its anticipated effect on the time estimate and hearing date;
- (xiv) set out the level of compliance to date with any directions order.

50C.5 Experts must have direct personal experience of and proven expertise in the issue on which a report is sought; it is only if they do have such experience and it is relevant, that they can give evidence of what they have observed.

50C.6 Where an order is granted to extend a Representation Order to obtain further evidence it will still be necessary for the party seeking to rely on the new evidence to satisfy the court hearing the application for permission or the substantive appeal that the evidence obtained should be admitted having regard to sections 27(4) and 29(4) of the Extradition Act 2003 and the judgment in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin).

50C.7 Applications to extend representation for the translation of documents must be made in writing, either by letter, clearly marked with the Administrative Court reference number, which must be sent to Administrative Court Office, The Royal Courts of

Justice, Strand, London, WC2A 2LL or emailed to the appropriate email address:

administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk

The request should:

- (i) explain the importance of the document for which a translation is being sought and the justification for obtaining it;
- (ii) explain what it is believed to be contained in the document and the issues it will assist the court to address in hearing the appeal;
- (iii) confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;
- (iv) confirm that the evidence sought was not called at the extradition hearing in the Westminster Magistrates' Court;
- (v) explain why the evidence sought would have resulted in the District Judge deciding a question at the extradition hearing differently and whether, if so, the District Judge would have been required to make a different order as to discharge of the requested person;
- (vi) confirm that the new evidence was not raised when the case was being considered by the Secretary of State for the Home Department;
- (vii) explain why the new evidence sought would have resulted in the Secretary of State deciding a question differently, and if the question had been decided differently, the Secretary of State would not have ordered the person's extradition;
- (viii) confirm when the need for the new evidence first became known;
- (ix) explain any delay in making the request;
- (x) explain fully the evidential basis for incurring the expenditure;
- (xi) explain why the appellant cannot produce the evidence himself or herself in the form of a statement of truth;
- (xii) set out a full breakdown of all costs involved including any VAT or other tax payable and the Legal Aid Agency contractual rates;
- (xiii) provide a list of all previous extensions of the Representation Order and the expenditure to date.

50C.8 Where an order is made to extend representation to cover the cost of the translation of documents it will still be necessary for the party seeking to rely on the documents as evidence to satisfy the court that it should be admitted at the hearing of the appeal having regard to sections 27(4) and 29(4) of the Extradition Act 2003 and



the judgment in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin).

## **CPD XI Other proceedings 50D: EXTRADITION: APPLICATIONS, ETC**

### **50D.1 Extension or abridgement of time**

- (i) any party who seeks extension or abridgment of time for the service of documents, evidence or skeleton arguments must apply to the High Court on the appropriate form and pay the appropriate fee;
- (ii) applications for extension or abridgment of time may be determined by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court;
- (iii) applications for extension of time must include a witness statement setting out the reasons for non-compliance with any previous order and the proposed timetable for compliance;
- (iv) any application made to an out of hours judge must be accompanied with:
  - a. a detailed chronology;
  - b. reasons why the application could not be made within court hours;
  - c. any orders or judgments made in the proceedings.

### **Representatives**

50D.2 CrimPR Part 46 applies.

50D.3 Where under CrimPR 46.2(1)(c) a legal representative withdraws from the case then that representative should satisfy him or herself that the defendant is aware of the time and date of the appeal hearing and of the need to attend, by live link if the court has so directed. If the legal representative has any reason to doubt that the defendant is so aware then he or she should promptly notify the Administrative Court Office.

### **Application to adjourn**

50D.4 Where a hearing date has been fixed, any application to vacate the hearing must be made on the appropriate form. A fee is required for the application if it is made within 14 days of the hearing date. The application must:

- (i) explain the reasons why an application is being made to vacate the hearing;
- (ii) detail the views of the other parties to the appeal;
- (iii) include a draft order with the application notice.

- 50D.5 If the parties both seek an adjournment then the application must be submitted for consideration by a Lord Justice of Appeal, a Single Judge of the High Court or a Master of the Administrative Court. Exceptional circumstances must be shown if a date for the hearing has been fixed or the adjournment will result in material delay to the determination of the appeal.
- 50D.6 An application to adjourn following a compromise agreement must be supported by evidence justifying exceptional circumstances and why it is in compliance with the overriding objective.

**Variation of directions**

- 50D.7 Where parties are unable to comply with any order of the court they must apply promptly to vary directions before deadlines for compliance have expired and seek further directions. An application to vary directions attracts a fee and the application notice, to be submitted on the appropriate form, must:
- (i) provide full and proper explanations for why the current and existing directions have not been complied with;
  - (ii) detail the views of the other parties to the appeal;
  - (iii) include a draft order setting out in full the timetable and directions as varied i.e. a superseding order which stands alone.

- 50D.8 A failure to make the application prior to the expiry of the date specified in the order will generally result in the refusal of the application unless good reasons are shown.

**Application to certify a point of law of general public importance**

- 50D.9 Where an application is made under CrimPR 50.25(2)(b) the application must be made on the appropriate form accompanied by the relevant fee.
- 50D.10 Any response to the application must be made within 10 business days.
- 50D.11 Where an application to certify is granted but permission to appeal to the Supreme Court is refused, it shall be for those representing the Requested Person to apply for an extension of the Representation Order to cover proceedings in the Supreme Court, if so advised.
- 50D.12 The representation order may be extended by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

50D.13 The result of the application to certify a point of law of general public importance and permission to appeal to the Supreme Court may be notified in advance to the legal representatives but legal representatives must not communicate it to the Requested Person until 1 hour before the pronouncement is made in open court.

50D.14 There shall be no public announcement of the result until after it has been formally pronounced.

**Application to reopen the determination of an appeal**

50D.15 An application under CrimPR 50.27 to reopen an appeal must be referred to the court that determined the appeal, but may if circumstances require be considered by a judge or judges other than those who determined the original appeal.

**Application to extend required period for removal pursuant to section 36 of the Extradition Act 2003**

50D.16 Where an application is made for an extension of the required period within which to extradite a Requested Person it must be accompanied by:

- (i) a witness statement explaining why it is not possible to remove the Requested Person within the required period and the proposed timetable for removal;
- (ii) a draft order.

50D.17 The application to extend time may be made before or after the expiry of the required period for extradition, but the court will scrutinise with particular care an application made after its expiry.

50D.18 Where extensions of time are sought for the same reason in respect of a number of Requested Persons who are due to be extradited at the same time, a single application may be made to the court listing each of the Requested Persons for whom an extension is sought.

50D.19 The application may be determined by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court and a single order listing those persons may be granted.

**Application for directions ancillary to a discharge pursuant to section 42 or 124 of the Extradition Act 2003**

50D.20 Where the High Court is informed that the warrant or extradition request has been withdrawn then unless ancillary matters are dealt with by Consent Order an application notice must be issued seeking any such directions. The notice of discharge of a Requested Person must be accompanied by:

- (i) the notification by the requesting state that the EAW has been withdrawn together with a translation of the same;
- (ii) a witness statement containing:
  - a. details of whether the withdrawn EAW is the only EAW outstanding in respect of the Requested Person;
  - b. details of other EAWs outstanding in respect of the Requested Person and the stage which the proceedings have reached;
  - c. whether only part of the EAW has been withdrawn;
  - d. details of any bail conditions;
  - e. details of any institution in which the Requested Person is being detained, the Requested Person's prison number and date of birth.

50D.21 The order for discharge may be made by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

50D.22 It is the responsibility of the High Court to serve the approved order on the appropriate institution and Westminster Magistrates' Court.

## **CPD XI Other proceedings 50E: EXTRADITION: COURT PAPERS**

### **Skeleton arguments**

- 50E.1 The court on granting permission to appeal or directing an oral hearing for permission to appeal will give directions as to the filing of skeleton arguments. Strict compliance is required with all time limits.
- 50E.2 A skeleton argument must:
- (i) not normally exceed 25 pages (excluding front sheets and back sheets) and be concise;
  - (ii) be printed on A4 paper in not less than 12 point font and 1.5 line spacing;
  - (iii) define the issues in the appeal;
  - (iv) be set out in numbered paragraphs;
  - (v) be cross-referenced to any relevant document in the bundle;
  - (vi) be self-contained and not incorporate by reference material from previous skeleton arguments;
  - (vii) not include extensive quotations from documents or authorities.

- 50E.3 Where it is necessary to refer to an authority, the skeleton argument must:
- (i) state the proposition of law the authority demonstrates; and
  - (ii) identify but not quote the parts of the authority that support the proposition.
- 50E.4 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.
- 50E.5 A chronology of relevant events will be necessary in most appeals.
- 50E.6 Where a skeleton argument has been prepared in respect of an application for permission to appeal, the same skeleton argument may be relied upon in the appeal upon notice being given to the court or a replacement skeleton may be lodged not less than 10 business days before the hearing of the appeal.
- 50E.7 At the hearing the court may refuse to hear argument on a point not included in a skeleton argument filed within the prescribed time.

### **Bundles**

- 50E.8 The bundle for the hearing should be agreed by the parties save where the Requested Person is acting in person. In those circumstances the court expects the Requesting State to prepare the bundle.
- 50E.9 The bundle must be paginated and indexed.
- 50E.10 Subject to any order made by the court, the following documents must be included in the appeal bundle:
- (i) a copy of the appellant's notice;
  - (ii) a copy of any respondent's notice;
  - (iii) a copy of any appellant's or respondent's skeleton argument;
  - (iv) a copy of the order under appeal;
  - (v) a copy of any order made by the Court in the exercise of its case management powers;
  - (vi) any judgment of the Court made in a previous appeal involving the party or parties which is relevant to the present proceedings.
  - (vii) where the bundle of papers reaches more than 200 pages, the parties should agree a core appeal bundle which must contain (i)-(vi) above.
- 50E.11 The Bundle should only contain relevant documents and must not include duplicate documents.

- 50E.12 Bundles lodged with the court will not be returned to the parties but will be destroyed in the confidential waste system at the conclusion of the proceedings and without further notification.

**CPD XI Other proceedings 50F: EXTRADITION: CONSEQUENCES OF NON COMPLIANCE WITH DIRECTIONS**

- 50F.1 Failure to comply with these directions will lead to applications for permission and appeals being dealt with on the material available to the court at the time when the decision is made.
- 50F.2 Judges dealing with extradition appeals will seek full and proper explanations for any breaches of the rules and the provisions of this Practice Direction.
- 50F.3 If no good explanation can be given immediately by counsel or solicitors, the senior partner or the departmental head responsible is likely to be called to court to explain any failure to comply with a court order. Where counsel or solicitors fail to obey orders of the court and are unable to provide proper and sufficient reasons for their disobedience they may anticipate the matter being formally referred to the President of the Queen's Bench Division with a recommendation that the counsel or solicitors involved be reported to their professional bodies.
- 50F.4 The court may also refuse to admit any material or any evidence not filed in compliance with the order for directions or outside a time limit specified by the court.
- 50F.5 A failure to comply with the time limits or other requirements for skeleton arguments will have the consequences specified in 50E.7.