|  |
| --- |
| APPLICATION FOR EXTENSION TO MORATORIUM PERIOD*(Criminal Procedure Rules, r.47.61; s.336A, Proceeds of Crime Act 2002)* |
| Use this form ONLY for an application for an extension to the moratorium period order under section 336A, Proceeds of Crime Act 2002 (POCA).This form collects the information required by that legislation. **See the notes for guidance at the end of this form.** The notes explain how to use the form and contain other important information. Application to a judge at …………………..…………………….………………………..……. Crown CourtThis is an application by ………………..……………...…….…………………….…… (name of applicant)of ………………………….…………………….…..……… (name of police force or investigating agency)Applicant’s address: ……………………….…….............................…….…………………………..… Email address: ……………..…………………….…………………………………..……………….… Contact telephone number(s): ……….……………………………………………………………………...… I am a “senior officer” under section 336D of POCA and am entitled to apply for an extension of the moratorium period.The following are respondents[[1]](#footnote-1) to this application: *Complete for as many respondents as are notified.*1. ………………………………………………………………………………………………………..
2. ………………………………………………………………………………………………………..
3. ………………………………………………………………………………………………………..

[I gave respondent (i) notice of this application on ……...………..… (date).][I gave respondent (i) oral or other informal notice of this application on …………...……… (date).][I have not given respondent (i) notice of this application.][I gave respondent (ii) notice of this application on ……...………..… (date).] [I gave respondent (ii) oral or other informal notice of this application on …………...……… (date).][I have not given respondent (ii) notice of this application.][I gave respondent (iii) notice of this application on ……...………..… (date).] [I gave respondent (iii) oral or other informal notice of this application on …………...……… (date).][I have not given respondent (iii) notice of this application.] |
| Listing information required from the applicant*Either:*[I invite the court to deal with this application without a hearing.]*or:*[I wish to attend a hearing [in person][by live link][by telephone] to make this application. I estimate that the court should allow …………….… (time) to read the application and …………….… (time) for the hearing.]*If the applicant asks for a hearing the court cannot determine the application in the applicant’s absence.**The court officer must arrange for the court to hear such an application no sooner than 2 business days after notice of the application was served, unless the court directs that no hearing need be arranged, or the court gives other directions for the hearing.* |
| **(1) The Disclosure.**This application relates to a disclosure made in respect of the property identified in box (5) of this application1. Date on which disclosure was made
2. Date on which the current moratorium period began:
3. Date(s) and period(s) of any previous extension(s) of that period:

 1. Date that the current moratorium period ends:
2. Date until which extension is sought:

*Further Application(s)--This application must be submitted to the court in advance of the end of the existing moratorium period.**Each extension must last no more than 31 days after the day after which the preceding moratorium period would otherwise end.**The sum of all moratorium extensions must last no more than 186 days following the original 31 day moratorium period) and must be submitted to the court in advance of the end of the existing moratorium period.* |
| **(2) The Respondent(s).**1. Name of entity/individual(s) that are respondents to this extension application:

*(‘Respondent’ means, as well as a person within the meaning of rule 47.2C, an ‘interested person’ within the meaning of section 336D(3) of POCA, namely the person who made the relevant disclosure and any other person who appears to the applicant to have an interest in the relevant property)*               1. Do you wish to apply to exclude from any part of the hearing an interested person or anyone representing that person:

No:      Yes:      If Yes which person do you wish to exclude 1. Are you applying for any of the information specified in this application to be withheld from an interested person and/or anyone representing them?

No:      Yes:      If Yes which person do you want to withhold information from? 1. If your answer to either (b) or (c) is yes, please complete box (9) below.
 |
| (3) Application in the absence of the respondent(s), etc.If you want the court to deal with this application in the absence of the respondent(s) tick as many of the following boxes as apply and give details.The court can deal with this application without the respondent(s) because: [ ]  The absentee has had at least 2 business days in which to make representations.[ ]  The applicant cannot identify or contact the absentee. [ ]  It would prejudice the investigation if the absentees were present.[ ]  It would prejudice the investigation to adjourn or postpone the application so as to allow the absentee to attend.[ ]  The absentee has / have waived the opportunity to attend.Give details:       |
| **(4) The subject (s)***Who is under investigation? Give the subject’s name and any other identifying details, e.g. date of birth, address, etc.*1. Name of the person

 1. Address:

   |
| (5) The relevant property*\*\* ‘Relevant property’ means any property that would be the subject of the prohibited act (within the meaning of section 335(8) or (as the case may be) section 336(10) of POCA) in relation to which the moratorium period in question applies, only in the case of a first/interim application to extend the moratorium period and only where applicable)*List of ‘relevant property’ subject of this application (numbered for ease of reference if necessary)       |
| (6) The investigation.Give details of the status of the investigation:1. An investigation is being carried out in relation to a relevant disclosure which can be described as: *(State the nature of the investigation, why it requires more time or has not been completed)*

     1. The grounds for believing that the investigation is being conducted diligently and expeditiously are: *(State key milestones undertaken in process so far with dates)*

     1. The grounds for believing that further time is needed for conducting the investigation are: *(State why further time is required)*

      1. The grounds for believing that it is reasonable in all the circumstances for the moratorium order to be extended are: *(State why this may be)*

      |
| (7) Duty of disclosure. *See also the declaration in box (8).*Is there anything of which you are aware that might reasonably be considered capable of undermining any of the grounds of this application, or which for some other reason might affect the court’s decision?*For example, you must disclose anything that could be said to raise doubts about the credibility or reliability of information you have received, and explain why you have decided that that information can be relied upon despite that. and whether there is any unusual feature of the investigation or of any potential prosecution. The court will not necessarily refuse to make an order where you disclose something that tends to undermine the grounds of the application, but if you do not disclose something that might affect the court’s decision then that could make any order ineffective.*      |
| (8) Declaration. *See Criminal Procedure Rules r.47.5(8), (9). The Crown Court can punish for contempt of court a person who knowingly makes a false declaration to the court.*To the best of my knowledge and belief:(a) this application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and(b) the content of this application is true.Signed: ………………………...……………………………….……….………………………… (applicant)Date: …………………………. Time: …………………………. |
| (9) Grounds for exclusion. *Under relevant circumstances, this section of the Application can be omitted if required*1. If your answer to either (b) or (c) is yes in box (2), please set out your grounds for belief, as to why, if the information were to be disclosed, on the basis that there would be one or more of the following results:

i) evidence of an offence would be interfered with or harmed,ii) the gathering of information about the possible commission of an offence would be interfered with,iii) a person would be interfered with or physically injured,iv) the recovery of property under POCA would be interfered with,v) national security would be put at risk.     (For the Court at the time of service)*The court will determine whether grounds are reasonable**and will determine the application to withhold information in the respondent’s absence and that of any legal representative of the respondent.**Where the court agrees that information in the application may be withheld from a respondent, the relevant information may be omitted from any part of the application that is served on respondent; and the other parts of the application must be marked to show that, unless the court otherwise directs, it is only for the court. It is in this other part the grounds for belief of the matters in i)-v) above are to be included.**If the court allows the application to withhold information, the court must consider representations first by the applicant and then by the respondent, in the presence of both; and then the court may consider further representations by the applicant in the respondent’s absence and that of any legal representative of the respondent.**If the court refuses an application to withhold information from the respondent, the applicant may withdraw the application to extend the moratorium period.* |
| Judge’s decision – this record must be kept by the courtI considered this application today [at] [without] a hearing.The applicant satisfied me about his or her entitlement to make the application.[The applicant confirmed on oath or affirmation the declaration in box (7).][The applicant gave me additional information [the essence of which was:]][[2]](#footnote-2)[I considered [written] [oral] representations by the respondent(s).](2)On the basis of the information contained in this application [as supplemented by the additional information described above] I [am] [am not] satisfied that the requirements of section 336A(1) (and, if relevant, section 336B(5)) POCA are met and I [make] [refuse to make] an order extending the moratorium period accordingly. My reasons include these: *The judge should give a brief indication of his or her conclusions in relation to any notable features of the application.*[I did not accept the following assertion(s):]Signed: ………………………………………..…………………………………………………………...…Name: ………………………..…………………………………………………………………………….…A Judge entitled to exercise the jurisdiction of the Crown CourtDate: ………………………….  |

**Notes for guidance for applicants**

**Contents of these notes** Page

When to use this form 7

How to use this form 8

Applicant’s contact details 8

Status of the applicant 8

Giving notice of the application 9

Deciding the application with or without a hearing 9

Time estimates and live links 9

The investigation 9

The draft court order 9

Delivering the court order to the applicant 9

**When to use this form**

This form is for an application for an order to extend the moratorium period under rule 47.62 of the Criminal Procedure Rules (CrimPR) and section 336A of the Proceeds of Crime Act 2002 (POCA). Sections 327 to 329 of POCA provide that a person commits an offence if the person knows or suspects (or has reasonable grounds to know or suspect) that a person is engaged in money laundering. “Money laundering” means an act involving criminal property which constitutes an offence under sections 327 to 329 of POCA. The person does not commit these offences if an authorised disclosure under section 338 POCA is made to a constable, a customs officer or a nominated officer, and the person in the regulated sector has appropriate consent (see sections 335 and 336 of POCA) to do the “prohibited act”. A “prohibited act” means an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

If appropriate consent is refused within 7 days of the disclosure above, and “the moratorium period” expires, the person within the regulated sector must be treated as having the appropriate consent. The “moratorium period” means:

(a) the period of 31 days starting with the day on which the person making an authorised disclosure receives notice that consent to the doing of a prohibited act is refused;

(b) the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of a prohibited act is refused; or

(c) any such period as extended or further extended by virtue of a previous order under section 336A of POCA (power of court to extend the moratorium period), or in accordance with any provision of section 336C of POCA (extension of moratorium period pending determination of proceedings).

Under s.336A of POCA a judge can order that the moratorium period can be extended for up to 31 days if satisfied that—

(a) an investigation is being carried out in relation to a relevant disclosure (but has not been completed),

(b) the investigation is being conducted diligently and expeditiously,

(c) further time is needed for conducting the investigation, and

(d) it is reasonable in all the circumstances for the moratorium period to be extended.

The court can grant further extensions to the moratorium period, but section 336A(7) POCA provides that the moratorium period cannot be extended for a period of more than 186 days (in total) beginning with the day after the end of the 31 day period mentioned in section 335(6) or (as the case may be) section 336(8).

Rule 47.61 CrimPR provides that an applicant for an order to extend the moratorium period must

(a) apply in writing before the date on which the moratorium period otherwise would end;

(b) demonstrate that the applicant is entitled to apply as a senior officer within the meaning of section 336D of the Proceeds of Crime Act 2002;

(c) serve the application on the court officer;

(d) serve notice on each respondent that an application has been made; and

(e) serve the application on each respondent to such extent, if any, as the court directs.

*(‘Respondent’ means, as well as a person within the meaning of rule 47.2C, an ‘interested person’ within the meaning of section 336D(3) of POCA, namely the person who made the relevant disclosure and any other person who appears to the applicant to have an interest in the relevant property)*

**How to use this form**

**1. Complete the details on the front page and in boxes (1) to (6).** Delete words in square brackets that do not apply. If you need more space, you may attach extra sheets.

**2. Complete the declaration in box (8).**

**3. Attach the draft order(s) you are asking the court to make, with two copies of each for the court to keep.**

**4. Send or deliver a copy of the completed form and draft order(s) to the court.** Make sure the court knows if the application is urgent. You may send the application by secure email or by other secure electronic means (where other means are available – e.g. by uploading it to a secure website). An application delivered to the court office by electronic means (including email) is valid, whether or not it includes a reproduction of your signature as long as the court staff will recognise as genuine your electronic address (e.g. a National Crime Agency, police or other investigating agency email address).

**5. Send or deliver a notice of the application to the respondent.** There is a form of notice for use with this application.

**Applicant’s contact details**

The court may need to contact you urgently. In choosing the address and telephone number(s) to give, you should be aware that details entered in this application form may be disclosed in subsequent legal proceedings, unless the court orders them to be withheld. In the notice to the respondent, give contact details that you are content for the respondent to use.

**Status of the applicant**

You must satisfy the court about your entitlement to make the application. Section 336A(2) provides that the application can only be made by a “senior officer” within the definition in section 336D(7):

(a) the Director General of the National Crime Agency,

(b) any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,

(c) a police officer of at least the rank of inspector,

(d) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that rank,

(e) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank,

(f) a member of staff of the Financial Conduct Authority who is not below such grade as is designated by the Treasury for the purposes of this Part,

(g) the Director of the Serious Fraud Office (or a member of staff of that Office authorised for the purposes of section 336A by virtue of section 2C(2)), or

(h) an accredited financial investigator who falls within a description specified in an order made for the purposes of section 336A by the Secretary of State under section 453.

**Giving notice of the application**

Under CrimPR 47.61(2)(d), you must give the respondent notice of the application (but see the rest of this note). If there is more than one respondent, each should be notified.

If a respondent asks for more information about the application than is given by the form of notice, be prepared to disclose all, or at least a part, of the application that you intend to give to the court. In particular, you should be prepared to show the respondent the draft order(s) that you want the court to make. The court may order you to disclose details, under CrimPR 47.61(2)(e), and may adjourn any hearing of the application until you have done so, if the court decides that the respondent needs more information than you have given them to be able to consider what, if any, representations to make to the court.

Under CrimPR 47.63(1), the court can allow an application to go ahead in the absence of the respondent(s) if (i) the absentee has had at least 2 business days in which to make representations after receiving formal notice of the application to the court, (ii) the applicant cannot identify or contact that person, (iii) it would prejudice the investigation if that person were present, (iv) it would prejudice the investigation to adjourn or postpone the application so as to allow that person to attend, or (v) that person has waived the opportunity to attend.

**Deciding the application with or without a hearing**

The court will always arrange a hearing if the applicant wants one, and usually will arrange a hearing if a respondent wants to attend. In some cases, however, if neither the applicant nor the respondent wants to attend, if the judge is satisfied that it would prejudice the investigation for any other person who would be affected by an order (e.g. the suspect) to be present, if the judge thinks that the application contains enough information to make a decision, and if CrimPR 47.5(2)(b) does not apply, then the judge may make a decision without a hearing. If the judge dismisses the application, you are entitled to apply again but you must then refer to the previous, unsuccessful, application and explain what the renewed application includes which the previous application lacked.

**Time estimates and live links**

The court needs your estimate of how long to allow for the judge to read the application and for any hearing of the application. If in doubt, consult the court listing officer.

Where a live link is available, it can be used for you to attend the court if the judge allows. The application must have been delivered to the court in advance (delivery may be by secure email: see ‘How to use this form’, above), and you will be required to take an oath (or affirm) as required by the Criminal Procedure Rules.

**The investigation**

You must give sufficient details for the judge to be able to make an informed decision about the application.

**The draft court order**

If the order runs to more than one page, each page must be approved by the judge. Approval may be indicated by the judge’s handwritten signature, or initial, if the order is issued on paper. If the order is issued as an electronic document, the applicant and respondent(s) are entitled to treat each page as approved (and see the note beneath).

**Delivering the court order to the applicant**

If the judge makes an order, the court may send it to you by secure email or other secure electronic means (where other means are available – e.g. by uploading it to a secure website). This is especially likely where the judge makes an order in your absence, without a hearing.

A form of order delivered by electronic means is valid and enforceable whether or not it includes a reproduction of the judge’s handwritten signature, and whether or not it includes a reproduction of a court office stamp. An order must identify the judge who made it unless that is otherwise recorded by the court officer. Usually, the form of order will include the name of the judge who made the order. Even if it does not, the judge’s name will be recorded in the court office. The applicant and the respondent(s) are entitled to treat as authentic a form of order sent electronically if two conditions are met:

(1) the order must have reached the applicant from a source that can be recognised as appropriate and genuine (e.g. the court office email address); and

(2) the form that sets out the order must include contact details for the court office, so that a respondent receiving the order can check its authenticity for themselves if they want.

If those two conditions are met, then as a matter of law a form of order sent to you by email or other electronic means is as good as an order printed on paper, signed by hand by the judge and stamped in ink by the court office. The absence of a paper order so signed and stamped is of itself no reason for a respondent to refuse to comply. An email chain from the court office to the applicant, and then from the applicant to the respondent(s), attaching the order(s), usually will be adequate; but remember that you are responsible for the security and confidentiality of information transmitted by you by electronic means, and that an email from the court office to you may attach orders directed to more than one respondent and may include information not intended for a respondent.

1. Respondents are those who made the relevant disclosure and those who appear to have an interest in the relevant property. [↑](#footnote-ref-1)
2. Include a brief summary of any information / representations unless it is recorded elsewhere (for example, in an audio recording of an oral application). [↑](#footnote-ref-2)