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| APPLICATION FOR PRODUCTION ORDER: POCA 2002*(Criminal Procedure Rules, rr.47.6, 47.17, 47.18 & 47.19; ss.345 & 347, Proceeds of Crime Act 2002;**articles 6 & 8, Proceeds of Crime Act 2002 (External Investigations) Order 2014)* |
| Use this form ONLY for an application for a production order under section 345, Proceeds of Crime Act 2002 (POCA), or under article 6 of the POCA (External Investigations) Order 2014 (EIO), with or without an order to grant entry under POCA s.347 or EIO art.8. 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 entitled under POCA s.378 / EIO art.2 to apply for a production order (an ‘appropriate officer’).The person or property specified in box (1) is subject to the investigation described in that box.For the purposes of the investigation, I apply for an order for [the production of] [access to] the material described in box (2), which appears to be in the possession or control of the respondent(s) specified in box (3). [I apply also for an order to grant entry.][I gave the respondent(s) notice of this application in the prescribed form on ……...………..… (date).][I gave the respondent(s) oral or other informal notice of this application on …………...……… (date).][I have given the respondent(s) no notice, for the reasons explained in box (3).] |
| 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.] |
| **(1) The investigation.**(a) The investigation is:*Either:*[(i) [a confiscation investigation] [a money laundering investigation] [a detained cash investigation] [a detained property investigation] [a frozen funds investigation] [a cryptoasset investigation] in the United Kingdom.]*or:*[(ii) an investigation outside the United Kingdom.](b) Who or what is under investigation? *In the case of a confiscation investigation or money laundering investigation, give the subject’s name and any other identifying details, e.g. date of birth, address, etc. In the case of a detained cash investigation, a detained property investigation, a frozen funds investigation or a cryptoasset investigation specify the cash, property, funds, or cryptoassets.*(c) Explain as appropriate:[(i) If this is a UK confiscation investigation, why do you suspect that the person under investigation has benefited from his or her criminal conduct? *Explain clearly and succinctly the grounds for your suspicion. The court must be satisfied that your grounds for suspicion are reasonable.*][(ii) If this is a UK money laundering investigation, why do you suspect that the person under investigation has committed a money laundering offence? *Identify the alleged money laundering offence and explain clearly and succinctly the grounds for your suspicion. The court must be satisfied that your grounds for suspicion are reasonable.*][(iii) If this is a UK detained cash, property or cryptoasset investigation, why do you suspect that the cash or property or cryptoassets involved was/were obtained through unlawful conduct or is/are intended to be used in unlawful conduct? *Explain clearly and succinctly the grounds for your suspicion. The court must be satisfied that your grounds for suspicion are reasonable.*][(iv) If this is a UK frozen funds investigation, why do you suspect that the money held in the frozen account was obtained through unlawful conduct or is intended to be used in unlawful conduct? *Explain clearly and succinctly the grounds for your suspicion. The court must be satisfied that your grounds for suspicion are reasonable.*][(v) If this is a non-UK investigation, why do you believe that there is an investigation by an overseas authority which relates to a criminal investigation or to criminal proceedings (including proceedings to remove the benefit of a person’s criminal conduct following that person’s conviction), and the investigation is into whether property has been obtained as a result of or in connection with criminal conduct, or into the extent or whereabouts of such property? *Explain clearly and succinctly the circumstances. The court must be satisfied that the criteria prescribed by EIO art.6 are met.*] |
| **(2) The material.**(a) What material do you want the respondent to produce or give access to? *Identify the material in as much detail as practicable. You must include the same description in the notice you give the respondent and in the draft order you give the court.*(b) Why do you believe that that material is likely to be of substantial value to the investigation? *Material may be of substantial value by itself or together with other material. The court must be satisfied that your grounds for belief are reasonable.*(c) Why do you believe that it is in the public interest and proportionate for the material to be produced or access to it given, having regard to:* other potential sources of information,
* the benefit likely to accrue to the investigation if the material is obtained, and
* the circumstances under which the respondent(s) hold(s) the material?

*Explain clearly and succinctly the grounds for your belief. The court must be satisfied that your grounds for belief are reasonable.* |
| (3) The respondent(s).(a) Who appears to be in possession or control of the material? *Name or describe the person(s), company(ies), etc. (if more than one, number them in this paragraph and in (b) and (c) beneath). They are ‘the respondent(s)’.*(b) Why do you believe that the respondent(s) has/have the material? *Explain clearly and succinctly the grounds for your belief. The court must be satisfied that your grounds for belief are reasonable.*(c) If you did not give formal written notice of this application to the respondent(s), was that because: [ ]  you gave them informal notice and they confirmed that they did not require formal notice? [ ]  you believe there to be good reasons why the respondent(s) should not be given notice at all?*Explain clearly and succinctly the grounds for your belief. The court must be satisfied that your grounds for belief are reasonable.*(d) How long should the court give the respondent(s) to produce or give access to the material? *Under POCA s.345 and EIO art.6, the order must allow 7 days unless the court decides that a longer or shorter period would be appropriate. If you want the order to specify more or less than 7 days, explain what you want and why.* |
| (4) Order to grant entry.If you want the court to make an order requiring anyone entitled to grant access to premises to allow access to material on those premises:(a) specify the address(es) or other description(s) of the premises:(b) explain why you need an order: |
| (5) 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) and / or in the absence of any other person who would be affected by the production order if it were made, tick as many of the following boxes as apply and give details.(a) The court can deal with this application without the respondent(s) because: [ ]  the respondent(s) has / have waived the opportunity to attend. [ ]  it would prejudice the investigation if the respondent(s) were present. The material to be obtained is not journalistic material. Give details:(b) The court can deal with this application without any other person(s) affected by it (e.g. the person under investigation; the holder of a joint account with that person) because: [ ]  they cannot be identified or contacted. [ ]  it would prejudice the investigation if they were present. [ ]  it would prejudice the investigation to adjourn or postpone the application so as to allow them to attend. [ ]  they have waived the opportunity to attend.Give details: |
| (6) Duty of disclosure. *See also the declaration in box (7).*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. You must disclose also whether material has been produced by the respondent(s) before, and with what outcome, 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.* |
| (7) 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: …………………………. |
| (8) AuthorisationI have reviewed this application and the attached draft order(s) in accordance with the Code of Practice applicable and I authorise the applicant to make the application.Authorising officer’s name: ...……………………………….……………..………………………………..…Rank or grade: ………………………………………..……………..………………………………………..…Signed: …………………………………………………………….…………………… [authorising officer]Date: …………………………. Time: ………………………. |
| 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:]][[1]](#footnote-1)[I considered [written] [oral] representations by the respondent(s).]1On 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 [POCA sections 345 and 346] [the Proceeds of Crime Act 2002 (External Investigations) Order 2014, article 6] are met and I [make] [refuse to make] [an order] [orders] 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**

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**When to use this form**

This form is for an application for a production order under rule 47.18 of the Criminal Procedure Rules (CrimPR) and section 345 of the Proceeds of Crime Act 2002 (POCA) or article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014 (the EIO). You can also use this form for an application for an order to grant entry under CrimPR 47.19 and POCA s.347 or EIO art.8. If the details in each case are substantially the same (e.g. the same investigation and the same suspect), one form can be used to make applications against more than one respondent (i.e. the person, company, etc. who holds the material).

There are different forms for applications for production orders under other Acts, for applications for other orders under POCA, and for applications for search warrants.

Under POCA s.345 a judge can order that material must be produced to an officer who is carrying out a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation, a frozen funds investigation or a cryptoasset investigation if the requirements in POCA s.346 are met, namely—

(a) the court must be satisfied that there are reasonable grounds for suspecting that—

(i) in the case of a confiscation investigation, the person subject to the investigation has benefited from that person’s criminal conduct;

(ii) in the case of a money laundering investigation, the person subject to the investigation has committed a money laundering offence; or

(iii) in the case of a detained cash investigation, a detained property investigation, a frozen funds investigation or a cryptoasset investigation the property involved was obtained through unlawful conduct, or is intended to be used in unlawful conduct.

(b) the court must be satisfied that there are reasonable grounds for believing that—

(i) the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it;

(ii) the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and

(iii) it is in the public interest for the material to be produced or for access to it to be given, having regard to—

* the benefit likely to accrue to the investigation if the material is obtained, and
* the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Under EIO art.6 a judge can order that material must be produced to an officer who is assisting an external investigation within the scope of that Order.

Under POCA s.348, a production order does not require a respondent to produce or give access to material which the respondent would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court, or material which is ‘excluded material’.

The definition of excluded material is at page 10, beneath. Health, social services and education records held in confidence are likely to be excluded material. Documents or other records held for the purposes of journalism will be excluded material if they have been held in confidence ever since they were created or acquired for journalistic purposes, e.g. notes of a confidential interview. Other business and banking records and other journalistic material held in confidence are likely to be materials that a judge can order to be produced.

You will need to decide whether it is more appropriate to apply for a production order under POCA or under section 9 and Schedule 1, Police and Criminal Evidence Act 1984 (PACE), bearing in mind that POCA can only be used for a money laundering, confiscation or detained cash investigation.

An order to grant entry may be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order has been made in respect of material in a particular office in that building.

A POCA or EIO production order cannot require a respondent to make a witness statement. If you need an order for a witness to give evidence, you must apply under CrimPR Part 17 (Witness summonses, warrants and orders).

**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 use an electronic version of this form, the boxes will expand: see the forms at <https://www.gov.uk/guidance/criminal-procedure-rules-forms#other-proceedings>. If you use a paper version and need more space, you may attach extra sheets.

**2. Complete the declaration in box (7) and the authorisation 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 and whether or not it includes a reproduction of the authorising officer’s 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). An email chain from you to your authorising officer and then from him or her to the court office, attaching the application and draft order(s), usually will be adequate.

**5. Send or deliver a notice of the application to the respondent, or explain why you have not done so in box (3).** 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. Under POCA s.378, a constable, a National Crime Agency officer, an officer of Revenue and Customs, an immigration officer and an accredited financial investigator each may be an ‘appropriate officer’. Under EIO art.2, an ‘appropriate officer’ is a constable, an NCA officer or a Revenue and Customs officer.

**Giving notice of the application**

Under CrimPR 47.6, you must give the respondent (i.e. the person, company, etc. who holds the material) notice of the application (but see the rest of this note). There is a form of notice for doing so. If there is more than one respondent, each should be notified. Under CrimPR 47.5 in some circumstances the court may allow an application to be made without notifying a respondent if it would prejudice the investigation to give that respondent notice, but the court will exercise its discretion sparingly. If you want the court to exercise that discretion, you must explain why in box (3).

Usually, therefore, you should contact the respondent(s) before you apply to the court. Give them a reasonable time to consider what you are asking for – a period of 5 business days (a working week) is suggested. It may be that the respondent(s) can let you have the material that you want without a court order. Even if the respondent(s) cannot do that, it will help you settle the terms of the order that you want the court to make, and will help you include a realistic period for the respondent(s) to produce the material, if you have first discussed what you want with them. In addition, it will help you to give the court an accurate time estimate if you have been able to find out whether the respondent(s) will want to attend a hearing.

If a respondent tells you that they do not want formal written notice of the application, and do not want to attend court, give details in boxes (3) and (5). Those details will help the court to make appropriate arrangements for the judge to consider the application.

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 47.6(2)(f), 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. A respondent who holds material in a professional capacity, for example as an accountant or a solicitor, and any respondent who holds journalistic material (see ‘When to use this form’, above), can be expected to need sufficient details of the application to allow them to decide how they should respond.

Under CrimPR 47.5, the court can allow an application to go ahead in the absence of the respondent(s) and anyone who would be affected by a production order 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. A person affected by an application includes the person(s) under investigation or a joint account holder. Because it is likely to prejudice the investigation if the suspect, or a family member or close associate of the suspect, is told about the application, the court is unlikely to require you to tell them unless the circumstances are unusual.

CrimPR 47.5(4) makes special provision for journalists. It provides that the court must not determine an application for a production order in the absence of any respondent who, if the order sought by the applicant were made, would be required to produce or give access to journalistic material, unless that respondent 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. Even if neither the applicant nor the respondent wants to attend, in some cases the judge may need the applicant to attend a hearing to answer questions: see CrimPR 47.5(2)(b).

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 explain whether the investigation is a UK confiscation investigation, money laundering investigation, detained cash investigation, detained property investigation, frozen funds investigation or a cryptoasset investigation, or an ‘external’ (i.e. non UK) investigation, and give sufficient details for the judge to be able to make an informed decision about the application.

**The material sought**

You must describe the material to be produced in as much detail as practicable. The description in the notice(s) for the respondent(s) and in the draft order(s) that you supply for the court must correspond with this. If necessary, in the draft order(s) continue the description on the back of the form or on a separate sheet.

Take care that the words used in a notice and in the order(s) can be understood without reference to the rest of the application. A production order may be ineffective if it does not sufficiently identify the material in respect of which it has been made, or if it leaves the identification of that material to the discretion of the investigator. Avoid general expressions like ‘all correspondence’ or ‘evidence in documentary or any other form relating to’ an event or a named person. A useful test is to read the draft order as if you were the person who had to comply with it. If it is not clear what that person is required to produce, then the order is too widely drawn.

If the material to be produced is from financial records, e.g. bank accounts, the judge must be satisfied that the dates from, or between, which that material is sought can be justified by reference to the investigation. Avoid general requests like ‘all entries since inception’ unless that can be justified by reference to relevant dates.

The question at box (2)(c) is about the balance the judge must strike, before making an order and even if all the other conditions for making the order are satisfied, between (i) the importance of the public interest in protecting privacy and confidentiality against intrusion, and (ii) the importance of the public interest in effective investigation of suspected criminal conduct. The respondent is under a duty of confidentiality in relation to the material that you want produced (or this application would not be needed). Therefore you must satisfy the judge that the public interest requirement in POCA s.346 is met (see ‘When to use this form’, above). A useful approach is to ask yourself the question why your need for the information you hope to get should be allowed to override the respondent’s duty of confidence, and then explain that in your answer to the question.

**The respondent(s)**

Under POCA s.345, an order requires production of the material within 7 days of its date unless it specifies a different period. See also ‘Giving notice of the application’, above.

**Excluded material**

Under POCA s.379 and section 11 of the Police and Criminal Evidence Act 1984 (PACE), ‘excluded material’ means—

 (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which that person holds in confidence;

 (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

 (c) journalistic material which a person holds in confidence and which consists—

 (i) of documents; or

 (ii) of records other than documents.

A person holds material other than journalistic material in confidence if that person holds it subject to an express or implied undertaking to hold it in confidence, or subject to a restriction on disclosure or an obligation of secrecy contained in an Act.

A person holds journalistic material in confidence if that person holds it subject to any such undertaking, restriction or obligation, and it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

Under PACE s.12, ‘personal records’ means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

 (a) to that person’s physical or mental health;

 (b) to spiritual counselling or assistance given or to be given to that person; or

 (c) to counselling or assistance given or to be given to that person, for the purposes of his or her personal welfare, by any voluntary organisation or by any individual who—

 (i) by reason of office or occupation has responsibilities for that welfare; or

 (ii) by reason of an order of a court has responsibilities for that person’s supervision.

Under PACE s.13, ‘journalistic material’ means material acquired or created for the purposes of journalism, but only if it is in the possession of a person who acquired or created it for those purposes (including a person who receives it from someone who intends that the recipient shall use it for those purposes).

**The draft court order**

If necessary, continue the description of the material to be produced on the reverse side of the draft order, or on a separate page or pages. 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.

May 2024

1. 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-1)