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| APPLICATION FOR PRODUCTION ORDER: NATIONAL SECURITY ACT 2023*(Criminal Procedure Rules, rr.47.6; 47.11& 47.12; paragraph 3 & 4 of Schedule 2, National Security Act 2023)* |
| Use this form ONLY for an application for a production order under paragraph 3 & 4 of Schedule 2, National Security Act 2023 (NS Act), with or without an order to grant entry under NS Act Schedule 2, paragraph 9(10). 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 contains other important information.  Application to a judge at …………………………………………….………………………..……. Crown Court  This 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 constable]  [not a constable but entitled to make this application under ………………...…………………….…… ]  For the purposes of an investigation into whether a relevant act has been or is about to be committed as described in box (1), I apply for an order for the production of, or for access to, or for a statement of the location of, the material described in box (2), which [appears to be in the possession, custody or control of the respondent(s) specified in box (3)] OR [is expected to come into existence within 28 days of the court’s order and which the respondent(s) specified in box (3) then is/are likely to have].  [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 not given the respondent(s) any notice of this application, 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.**  What is under investigation and how does it constitute a relevant act defined in Paragraph 1 (2) of Schedule 2 NS Act? *Specify the legislation which applies and give a brief description of what is under investigation.* |
| **(2) The material.**  (a) What material, or description of material, do you want the respondent to produce or give access to, or locate? *Identify the material in as much detail as practicable. This must include material that is likely to be evidence that a relevant act has been, or is about to be committed, and must consist of, or include, confidential material. This material must not include items subject to legal privilege. 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 suspect that the respondent has material to which this application relates in their possession, custody or control? *The court must be satisfied that your grounds for suspicion are reasonable.*  *Or:*  (c) Where material to which this application relates is expected to come into existence within 28 days, (i) why do you suspect that this is likely, and (ii) why do you suspect that respondent is likely within 28 days to have it in their possession, custody or control? *The court must be satisfied that your grounds for suspicion are reasonable.*  (d) Why do you believe that the 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.*  (e) 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) has/have any of it?   *Explain briefly the grounds for your belief. The court must be satisfied that your grounds for belief are reasonable.* |
| (3) The respondent(s).  *Either:*  (a) Where the material already exists, who appears to have it? *Name or describe the person(s), company(ies), etc. (if more than one, number them in this paragraph and in (b) beneath). They are ‘the respondent(s)’. Explain briefly the you think they have that material. For the court to be able to make an order, it must appear to the court that the respondent(s) have at least some of the material in their possession, custody or control.*  (b) How long should the court give the respondent(s) to produce or give access to the material? *Under NS Act Schedule 2, paragraph 3(8) the order must allow 7 days unless the court decides that a different period would be appropriate. If you want the order to specify more or less than 7 days, explain what you want and why.*  *Or:*  (c) Where the material is expected to come into existence within 28 days of the date of the court’s order, who is likely then to have the material? *Name or describe the person(s), company(ies), etc. (if more than one, number them in this paragraph and in (d) beneath). They are ‘the respondent(s)’. Explain briefly why you think they are likely then to have the material. For the court to be able to make an order, it must appear to the court that the respondent(s) are likely to have at least some of the material in their possession, custody, or control within that period.*  (d) How long should the court give the respondent(s) to produce or give access to the material? *Under NS Act Schedule 2, paragraph 4(9) the order must allow 7 days beginning with the date of the notification required by paragraph 8(a), unless the court decides that a different period would be appropriate. If you want the order to specify more or less than 7 days, explain what you want and why.*  *In every case:*  (e) 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 respondents should not be given notice at all?  *Explain briefly the grounds for your belief. The court must be satisfied that your grounds for belief are reasonable.* |
| (4) 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.  they have waived the opportunity to attend.  Give details: |
| (5) 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 tell the court about anything of which you are aware that might raise doubts about the credibility or the reliability of the information that you have received. You must then explain why you have concluded that the court may rely upon the information that you have received. You must disclose also whether material has been produced by the respondent(s) in the course of this investigation 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.* |
| (6) 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: …………………………. |
| (7) Authorisation  I 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 court  I 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 (6).  The applicant gave me additional information [the essence of which was:][[1]](#footnote-2)  I considered [written] [oral] representations by the respondent(s).1  I [am] [am not] satisfied that the requirements of NS Act Schedule 2, paragraph 3 [and paragraph 4] are met and I [make] [refuse to make] [an order] [orders] accordingly. *Note here any additional findings or reasons for making or refusing the order.*    Signed: ………………………………………..…………………………………………………………...…  Name: ………………………………………..…………..…..… A Circuit judge  Date: …………………………. |

**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 47.12 of the Criminal Procedure Rules (CrimPR) and paragraph 3 and 4 of Schedule 2 to the National Security Act 2023 (NS Act). 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 NS Act and for applications for search warrants.

Under NS Act Schedule 2, paragraph 3 a judge can order that material must be produced to an officer who is carrying out an investigation into whether a relevant act has been or is about to be committed if the requirements and conditions in NS Act Schedule 2, paragraph 3 are fulfilled. The judge must be satisfied that the material to which the application relates consists of or includes material described in NS Act as ‘confidential material’, and that it does not include items subject to legal privilege. For definitions, see ‘Legal privilege’, ‘confidential material’, ‘protected material’ and ‘confidential journalistic material’ beneath. Certain personal records, human tissue or tissue fluid held in confidence, or other material acquired in the course of trade such as business and banking records held in confidence are likely to fall under the meaning of ‘protected material’. Documents or other records held for the purposes of journalism will be ‘confidential journalistic 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.

The judge must also be satisfied that four conditions are met.

The first condition is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.

The second condition is that there are reasonable grounds for suspecting that a person specified in the application has in their possession, custody or control material which **—**

1. is likely to be evidence that a relevant act has been, or is about to be, committed,
2. consists of or includes confidential material, and
3. does not include items subject to legal privilege.

The third condition is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.

The fourth condition is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to –

1. the benefit likely to accrue to the investigation if the material is obtained, and
2. the circumstances under which the person concerned has any of the material in their possession, custody or control.

An order can require a respondent who does not in fact have the material, or expect to have it within the time for its production, instead to state where it is, to the best of his or her knowledge or belief.

Under NS Act Schedule 2, paragraph 4, if the material to be produced is expected to come into existence within 28 days of the court’s order, a respondent who is likely then to have it can be ordered to notify a named constable as soon as is reasonably practicable after it comes into the respondent’s possession, custody or control. The judge must be satisfied that five conditions are met.

The first is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.

The second is that there are reasonable grounds for suspecting that, within a period of 28 days beginning with the date of the order, there is likely to come into existence material which –

1. is evidence that a relevant act has been, or is about to be, committed,
2. consists of or includes confidential material, and
3. does not include items subject to legal privilege.

The third is that there are reasonable grounds to suspect that a person specified in the application is likely within that 28 day period to have in their possession, custody or control any of the material to which the application relates.

The fourth is that there are reasonable grounds to believe that the material is likely to be of substantial value to an investigation into whether a relevant act has been, or is about to be, committed.

The fifth is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to –

1. the benefit likely to accrue to an investigation if the material is obtained, and
2. the circumstances under which the person concerned is likely to have any of the material in their possession, custody or control.

An NS Act 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 (7).** 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 <http://www.justice.gov.uk/courts/procedure-rules/criminal/forms-2015>. If you use a paper version and need more space, you may attach extra sheets.

**2. Complete the declaration in box (6) and the authorisation in box (7).**

**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**

The applicant must satisfy the court about his or her entitlement to make the application. Officers of some other investigating authorities can apply for production orders as if they were constables, under the legislation which applies to them. Examples include members of the National Crime Agency designated with the powers and privileges of a constable, and officers of HM Revenue and Customs.

**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 (4).

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 (4). 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 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)(d) 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 NS Act Schedule 2, paragraph 3 and 4 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 NS Act Schedule 2, paragraphs 3(8) and 4(9), an order requires production of the material within 7 days of the date of the order, or within 7 days of the date of notice by the respondent of receipt of the material, unless the order specifies a different period. See also ‘Giving notice of the application’, above.

**Legal privilege**

Under NS Act Schedule 2, paragraph 3 and 4 and section 10 of the Police and Criminal Evidence Act 1984 (PACE), the court cannot make an order for the production of items subject to legal privilege. Unless the items in question are held with the intention of furthering a criminal purpose, those items are:

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made—

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

**Confidential material**

Under NS Act Schedule 2, paragraph 17(2), ‘confidential material’ means –

1. confidential journalistic material, and
2. protected material.

**Confidential journalistic material**

‘Confidential journalistic material’ means –

1. in the case of material contained in a communication, journalistic material which the sender of the communication –
   1. holds in confidence, or
   2. intends the recipient, of the communication to hold in confidence.
2. In any other case, journalistic material which a person holds in confidence.

A person holds material in confidence for the purposes of this section if –

1. The person is subject to an express of implied undertaking to hold it in confidence, or
2. The person holds it subject to a restriction on disclosure or an obligation of secrecy contained in an enactment.

**Protected material**

Under NS Act Schedule 2, paragraph 4, ‘protected material’ means –

1. Items subject to legal privilege,
2. Material which includes –
   1. Personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for purposes of any paid or unpaid office and which he holds in confidence, and
   2. Human tissue or tissue fluid which has been take for the purposes of diagnosis or medical treatment and which a person holds in confidence.
3. Material, other than items subject to legal privilege and excluded material, in the possession of a person who –
   1. Acquired or created it in the course of any trade, business, profession or other occupation of for the purpose of any paid or unpaid office, and
   2. Holds it subject –
      1. To an express or implied undertaking to hold it in confidence, or
      2. To a restriction or obligation such as is mentioned is in section 11(2)(b) of PACE 1984.

**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.

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-2)