STATUTORY RULES OF NORTHERN IRELAND

2021 No. 16

COURT OF JUDICATURE, NORTHERN IRELAND

CROWN COURT

The Crown Court (Amendment) Rules (Northern Ireland) 2021

Made - - - - *27th January 2021*

Laid before Parliament *1st February 2021*

Coming into operation in accordance with Rule 1

The Crown Court Rules Committee makes the following Rules in exercise of the powers conferred by sections 52(1) and 53A of the Judicature (Northern Ireland) Act 1978(**a**), section 49 of the Crime (International Co-Operation) Act 2003(**b**) and section 11(1) of the Crime (Overseas Production Orders) Act 2019(**c**).

Citation and commencement

1.—(1) These Rules shall be cited as the Crown Court (Amendment) Rules (Northern Ireland) 2021.

(2) Except as provided by paragraph (3), these Rules shall come into operation on the twenty-first day after the date upon which this instrument is laid before Parliament.

(3) Rule 2(4) shall come into operation on the same day as section 1(1) to (4) and (7) and sections 2 to 14 of the Crime (Overseas Production Orders) Act 2019, so far as they extend to Northern Ireland, come into force for all remaining purposes.

Amendment to the Crown Court Rules (Northern Ireland) 1979

2. The Crown Court Rules (Northern Ireland) 1979(**d**) are amended as follows:

(1) In rule 61—

(a) in the title, after "television" insert "or telephone";

(b) in sub-paragraph (1), after "links)" insert "or section 31(4) (hearing witnesses in the UK by telephone)";

(c) in sub-paragraph (2), after "Part 1" insert "or 2"; and

(d) in sub-paragraph (3), after "section 30(1)" insert "or, as the case may be, section 31(1)".

(**a**) 1978 c.23, to which the most recent relevant amendments were made by paragraphs 26 and 28 of the Constitutional Reform Act 2005 (c.4); paragraph 6 of Schedule 17 to, and paragraphs 14 and 26 of Schedule 18 to, the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976); and paragraph 2 of the Schedule to the Northern Ireland (Miscellaneous Provisions) Act 2014 (c.13).

(**b**) 2003 c.32, to which there have been no recent amendments.

(**c**) 2019 c.5, to which there has been no amendment

(**d**) S.R. 1979 No. 90, to which the most recent relevant amendments were made by S.R. 2010 No. 133, S.R. 2011 No. 230, S.R. 2016 No. 297, S.R. 2018 No. 24 and S.I. 2019/908.

(2) After rule 62, insert—

"**Record of telephone link before a nominated court**

62A.—(1) In proceedings before a court nominated pursuant to a notice under section 31(4), the chief clerk shall make a record of the evidence given in the presence of the Court and the information prescribed in paragraph (2).

(2) The information referred to in paragraph (1) is—

(a) details of the request in respect of which the notice under section 31(4) was given;

(b) the date on which, and place at which, the proceedings under Part 2 of Schedule 2 took place;

(c) the name of the witness who gave evidence;

(d) the name of any person who took part in the proceedings as a legal representative or as an interpreter; and

(e) the language in which the evidence was given.

(3) As soon as is reasonably practicable after the proceedings under Part 2 of Schedule 2, the chief clerk shall send to the external authority that made the request a copy of an extract of so much of the record as relates to the proceedings in respect of that request.".

(3) In rule 62B—

(a) for the title, substitute "Restriction on access to records kept under rules 60, 62, and 62A"; and

(b) for "60 and 62", substitute "60, 62 and 62A".

(4) After rule 62M, insert the new Part VIIIB set out in the Schedule to these Rules.

Declan Morgan
Seamus Treacy
John O'Hara
Stephen A Fowler
Gavan Duffy

Dated 18th January 2021

Signed by the authority of the Lord Chancellor

In exercise of the powers conferred upon me by section 53A of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

Alex Chalk MP
Parliamentary Under Secretary of State
Ministry of Justice

Dated 27th January 2021

SCHEDULE

Rule 2(4)

"PART VIIIB

APPLICATIONS FOR ORDERS FOR ACCESS TO ELECTRONIC DATA UNDER THE CRIME (OVERSEAS PRODUCTION ORDERS) ACT 2019

Interpretation

62N.—(1) In this Part of these Rules—

"the Act" means the Crime (Overseas Production Orders) Act 2019(**a**);

"business day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(**b**);

"chief clerk" means the chief clerk of the Court at the place where the proceedings under the Act are to be heard and includes such other civil servant in the Department of Justice as may be authorised to act on his behalf for the purpose in question; and

expressions which are defined in the Act have the same meaning as in the Act and a reference to a section is a reference to that section so numbered in the Act.

(2) A reference in this Part to a person affected by an order made under the Act includes a person by whom or on whose behalf there is stored any journalistic data specified or described in the application for that order.

Application for an overseas production order

62O.—(1) Subject to rule 62Q(7)(c), an application for an order under section 1 shall be made by giving notice in writing to the chief clerk which shall—

(a) identify the applicant for the order and demonstrate that the applicant is entitled under the Act to apply;

(b) identify the respondent;

(c) specify the designated international co-operation arrangement by reference to which the application is made;

(d) specify or describe the electronic data in respect of which the order is sought;

(e) specify—

(i) the person, or the description of person, to whom the applicant is seeking the Court to order that electronic data must be produced or made accessible; and

(ii) the period by the end of which the applicant is seeking that that electronic data must be produced or made accessible (which shall be a period of 7 days beginning with the day on which the order is served on the respondent, unless the Court otherwise directs);

(f) state whether the applicant is seeking a non-disclosure requirement in the order; and

(g) be accompanied by a draft of the order sought by the applicant.

(2) The application shall be supported by an affidavit which shall—

(**a**) 2019 c.5
(**b**) 1971 c.80

(a) explain the grounds for believing that the respondent operates in, or is based in, a country or territory outside the United Kingdom which is a party to, or participates in, that designated international co-operation arrangement;

(b) explain the grounds for believing that the electronic data sought does not consist of or include excepted electronic data;

(c) briefly describe the investigation for the purposes of which the electronic data is sought and explain—

(i) the grounds for believing that an indictable offence has been committed which is under investigation or in respect of which proceedings have begun; or

(ii) how the investigation constitutes a terrorist investigation within the meaning of the Terrorism Act 2000(**a**);

(d) explain the grounds for believing that the respondent has possession or control of all or part of the electronic data sought;

(e) explain the grounds for believing that the electronic data sought is likely to be of substantial value to the investigation, or the proceedings (as the case may be), whether by itself or together with other material;

(f) where paragraph (2)(c)(i) applies, explain the grounds for believing that all or part of the electronic data sought is likely to be relevant evidence in respect of the offence concerned;

(g) explain the grounds for believing that it is in the public interest for the respondent to produce or give access to the electronic data sought, having regard to—

(i) the benefit likely to accrue to the investigation, or to the proceedings (as the case may be), if that data is obtained; and

(ii) the circumstances under which the respondent has possession or control of any of that data; and

(h) where a non-disclosure requirement is sought in the order—

(i) explain why such a requirement would be appropriate; and

(ii) specify or describe the proposed duration of the requirement, if ordered.

(3) Subject to rule 62Q(7)(b), the applicant for an order under section 1 shall serve the notice of the application, the supporting affidavit and the draft order on the respondent and on any other person affected by the order being sought.

(4) In the event that an overseas production order is made, the applicant shall as soon as practicable serve the order on the Secretary of State for service on the respondent.

(5) Where notice of the application was served on a respondent, in the event that the application is dismissed or abandoned, the applicant shall—

(a) as soon as reasonably practicable so notify that respondent; and

(b) where the application is dismissed, as soon as reasonably practicable notify that respondent if the Court nonetheless orders that for a period that respondent must not—

(i) conceal, destroy, alter or dispose of any of the electronic data specified or described in the application; or

(ii) disclose the making of the application or its contents to any person.

Variation or revocation of an overseas production order

62P.—(1) This rule applies to an application to vary or revoke an order listed in paragraph (2) by—

(**a**) 2000 c.11

(a) the applicant for that order, or an equivalent appropriate officer;

(b) the respondent:

(c) another person affected by the order; or

(d) the Secretary of State.

(2) The orders to which this rule applies are—

(a) an overseas production order;

(b) an order under section 8(4) maintaining an unexpired non-disclosure requirement;

(c) an order under section 13(3) maintaining a duty not to conceal, destroy, alter or dispose of electronic data, and not to disclose the making or content of an application for an overseas production order; and

(d) an order under section 13(4)(b) maintaining a duty not to conceal, destroy, alter or dispose of electronic data.

(3) Subject to rule 62Q(7)(c), an applicant under this rule shall—

(a) apply as soon as practicable after becoming aware of the grounds for doing so by giving notice in writing to the chief clerk;

(b) include with the application an accompanying draft of the order sought; and

(c) serve the notice of the application, the supporting affidavit referred to in paragraph (4) or (5) and the draft order on the respondent, if applicable, and on any other person affected by the order.

(4) Where the application is for a variation, or further variation, of an overseas production order, it shall be supported by an affidavit which shall—

(a) specify the electronic data in respect of which the varied order is sought (which may include electronic data not specified or described in the original order);

(b) satisfy or, as the case may be, continue to satisfy, the requirements of rule 62O(1)(a) to (c) and 62O(2)(a) to (f) (which may be done by reference to the original order);

(c) meet the requirements of rule 62O(2)(g);

(d) specify the variation proposed and explain—

(i) what material circumstances have changed since the order was made; and

(ii) why the order should be varied.

(5) Where the application is for the revocation of an overseas production order, it shall be supported by an affidavit which shall explain why revocation is appropriate.

(6) Where the application includes a request that the Court, despite revocation, maintains—

(a) the requirement that for a further period the respondent must not conceal, destroy, alter or dispose of any of the electronic data specified or described in the order; or

(b) an unexpired non-disclosure requirement,

the affidavit referred to in paragraph (5) shall explain why, and for how long, it would be appropriate to maintain that requirement.

Consideration of an overseas production order

62Q.—(1) Subject to paragraphs (2) to (5), the Court may determine an application under rule 62O or 62P—

(a) at a hearing (which shall be in private unless the Court otherwise directs) or without a hearing; and

(b) in the absence of—

(i) the applicant;

(ii) the respondent; or

(iii) any other person affected by the order.

(2) The Court shall not determine such an application in the applicant's absence if—

(a) the applicant requests a hearing; or

(b) it appears to the Court that—

(i) the proposed order may require the production of excepted electronic data, within the meaning of section 3; or

(ii) for any other reason the application is so complex or serious as to require the Court to hear from the applicant.

(3) The Court shall not determine such an application in the absence of any respondent or other person affected unless—

(a) subject to paragraph (7)(a), the absentee has had at least two business days in which to make representations; or

(b) the Court is satisfied that—

(i) the applicant cannot identify or contact the absentee;

(ii) it would prejudice the investigation if the absentee were present;

(iii) where journalistic data is sought, it would prejudice the investigation of another indictable offence or another terrorist investigation if the absentee were present; or

(iv) the absentee has waived the opportunity to attend.

(4) The Court shall not determine such an application 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 data, unless that respondent has waived the opportunity to attend.

(5) The Court shall not make, vary or revoke an order unless the applicant states, in an affidavit or orally, that to the best of the applicant's knowledge and belief—

(a) the application discloses all information which is material; and

(b) the content of the application is true.

(6) Where the statement required by paragraph (5) is made orally—

(a) the statement shall be on oath or affirmation, unless the Court otherwise directs; and

(b) the chief clerk shall arrange for a record of the making of the statement.

(7) The Court may in its discretion—

(a) shorten or extend (whether before or after it has expired) a time limit under this Part;

(b) subject to section 12(3) and (4) dispense with a requirement for service under this Part (whether before or after service was required); and

(c) consider an application for an order or to vary, further vary or revoke an order orally instead of in writing.

Application containing information withheld from a respondent or other person

62R.—(1) This rule applies where an application under rule 62O or 62P includes information which the applicant considers should be revealed only to the Court.

(2) The affidavit supporting such application shall—

(a) identify that information; and

(b) explain why that information should not be served on the respondent or another person.

(3) Subject to paragraph (4), at a hearing of an application to which this rule applies, the Court shall consider, in the following sequence—

(a) representations first by the applicant and then by the respondent and any other person, in the presence of them all; and then

(b) further representations by the applicant in the others' absence.

(4) The Court may in its discretion direct other arrangements for the hearing of an application to which this rule applies."

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Crown Court Rules (Northern Ireland) 1979 (S.R. 1979 No. 90) to—

— take account of The Crime (Overseas Production Orders) Act 2019 (2019 c. 5) which enables law enforcement agencies and prosecutors to apply to the courts of the United Kingdom for a court order requiring service providers outside the UK to produce or grant access to electronic data for the purposes of investigating and prosecuting serious crimes. The Rules prescribe procedural matters relating to such applications; and

— insert rules relating to hearing evidence by telephone under The Crime (International Co-Operation) Act 2003 (2003 c. 32).

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