



Crime (Overseas Production Orders) Act 2019

2019 CHAPTER 5

Supplementary

9 Restrictions on service of order

- (1) An overseas production order that is not served within the period of 3 months beginning with the day on which the order is made is to be treated as if it had been quashed immediately after the end of that period.
- (2) An overseas production order made in England and Wales or Northern Ireland may be served only by the Secretary of State.
- (3) An overseas production order made in Scotland may be served only by the Lord Advocate.
- (4) The Secretary of State or, as the case may be, the Lord Advocate may serve an overseas production order only if the Secretary of State or the Lord Advocate considers that to do so would be in accordance with a designated international co-operation arrangement.

10 Retention of electronic data and use as evidence

- (1) Electronic data produced in compliance with an overseas production order may be retained for so long as is necessary in all the circumstances.

This includes retaining it so that it may be used as evidence in proceedings in respect of an offence.
- (2) Subsection (1) does not authorise the doing of anything that contravenes the data protection legislation.
- (3) In section 117 of the Criminal Justice Act 2003 (evidence: business and other documents), in subsection (4)(b)—
 - (a) omit the “or” at the end of sub-paragraph (ii);

- (b) at the end of sub-paragraph (iii) insert “or
(iv) an overseas production order under the Crime (Overseas Production Orders) Act 2019,”.
- (4) In Article 21 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)) (principal categories of admissibility: business and other documents), in paragraph (4)(b)—
 - (a) omit the “or” at the end of paragraph (ii);
 - (b) at the end of paragraph (iii) insert “or
(iv) an overseas production order under the Crime (Overseas Production Orders) Act 2019,”.
- (5) In Scotland, electronic data produced in compliance with an overseas production order may be received in evidence without being sworn to by witnesses, so far as that may be done without unfairness to either party.

11 Procedural matters

- (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to an overseas production order.
- (2) The power to make rules of court under subsection (1) does not prejudice any existing power to make rules.
- (3) Subsection (1) does not authorise the making of provision that is inconsistent with the provision made by section 12.
- (4) An order made under this Act by a judge in England and Wales entitled to exercise the jurisdiction of the Crown Court, or by a Crown Court judge in Northern Ireland, has effect as if it were an order of the Crown Court.

12 Notice of application for order: journalistic data

- (1) This section applies to an application for an overseas production order if there are reasonable grounds for believing that the electronic data specified or described in the application consists of or includes journalistic data.
- (2) “Journalistic data” means electronic data that—
 - (a) was created or acquired for the purposes of journalism, and
 - (b) is stored by or on behalf of a person who created or acquired it for the purposes of journalism.
- (3) Where this section applies, notice of the application must be served on—
 - (a) the person against whom the overseas production order is sought, and
 - (b) if different, the person by whom, or on whose behalf, the journalistic data is stored.
- (4) But a judge may direct that notice of an application need not be served on a person falling within subsection (3)(b) if the judge is satisfied that—
 - (a) serving notice on the person would prejudice the investigation of an indictable offence or a terrorist investigation, or
 - (b) it is not reasonably practicable to establish the person’s identity or to make contact with the person so as to enable service to be effected.

- (5) Where a person (“R”) receives electronic data from another person (“S”) and S intends R to use the data for the purposes of journalism, R is to be taken to have acquired the data for those purposes.
- (6) For the purposes of this section—
 - (a) electronic data is not to be regarded as having been created or acquired for the purposes of journalism if it was created or acquired with the intention of furthering a criminal purpose, and
 - (b) electronic data which a person intends to be used to further such a purpose is not to be regarded as intended to be used for the purposes of journalism.
- (7) In determining for the purposes of subsection (6) whether or not a purpose is a criminal purpose, crime is to be taken to mean conduct which—
 - (a) constitutes one or more criminal offences under the law of a part of the United Kingdom, or
 - (b) is, or corresponds to, conduct which, if it all took place in a particular part of the United Kingdom, would constitute one or more criminal offences under the law of that part of the United Kingdom.
- (8) Subsections (9) and (10) of section 4 apply for the purposes of subsection (4) of this section as they apply for the purposes of subsection (3)(a) of that section.
- (9) In this section, “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act).

13 Effect of notice of application

- (1) Where notice of an application for an overseas production order is served on a person (whether under section 12 or otherwise), the person must not—
 - (a) conceal, destroy, alter or dispose of any of the electronic data specified or described in the application for the order, or
 - (b) disclose the making of the application or its contents to any person.
- (2) But a person on whom notice of an application for an overseas production order is served may do something mentioned in paragraph (a) or (b) of subsection (1)—
 - (a) with the leave of a judge, or
 - (b) with the written permission of the appropriate officer who made the application or an equivalent appropriate officer.
- (3) Where no overseas production order is made on the application, the duty imposed on a person under subsection (1)(a) and (b) ceases to apply when the application is dismissed or abandoned, unless on a dismissal of the application the judge orders that the duty is to continue to apply.
- (4) Where an overseas production order is made on the application, the duty imposed on a person under subsection (1)(a) ceases to apply when one of the following occurs—
 - (a) the order is served;
 - (b) the order is revoked before it is served, unless on its revocation the judge orders that the duty is to continue to apply;
 - (c) the order is treated as if it had been quashed by virtue of section 9(1) or is otherwise quashed before it is served.

- (5) Where an overseas production order is made on the application, the duty imposed on a person under subsection (1)(b) ceases to apply—
 - (a) where the overseas production order does not include a non-disclosure requirement, when the order is made;
 - (b) where the overseas production order includes a non-disclosure requirement, when the non-disclosure requirement expires (see section 8).
- (6) An order under subsection (3) or (4)(b) must specify or describe when the duty is to cease to apply.
- (7) For the purpose of subsection (2)(b), an appropriate officer is an equivalent appropriate officer in relation to an application for an overseas production order if—
 - (a) the appropriate officer falls within the same sub-paragraph of section 2(1)(a) or (b) as the appropriate officer who made the application, and
 - (b) where that sub-paragraph is sub-paragraph (vii) of section 2(1)(a) or sub-paragraph (v) of section 2(1)(b), the appropriate officer is of the same description as the appropriate officer who made the application.
- (8) In subsection (5), “non-disclosure requirement” has the meaning given by section 8(2).

14 Means of service

- (1) This section applies in relation to—
 - (a) the service of an overseas production order,
 - (b) the service of notice of an application for an overseas production order, and
 - (c) the service of any other order or document issued or made in, or for the purposes of, proceedings relating to an overseas production order by a court (including a single judge) in England and Wales, Scotland or Northern Ireland.
- (2) The order, notice or other document may be served on a person (whether the person is in the United Kingdom or outside it) by such means, including electronic means, as rules of court permit.
- (3) In addition, the order, notice or other document may be served on a person outside the United Kingdom in any of the following ways—
 - (a) by delivering it to the person’s principal office within the United Kingdom or, if the person has no such office in the United Kingdom, to any place in the United Kingdom where the person carries on business or conducts activities;
 - (b) if the person has specified an address in the United Kingdom as one at which the person, or someone on the person’s behalf, will accept service of documents of the same description as the order, notice or other document, by delivering it to that address;
 - (c) by making it available for inspection (whether to the person or to someone acting on the person’s behalf) at a place in the United Kingdom (but this is subject to subsection (4));
 - (d) in accordance with arrangements made—
 - (i) where the order, notice or other document is made or issued in England and Wales or Northern Ireland, by the Secretary of State;
 - (ii) where the order, notice or other document is made or issued in Scotland, by the Lord Advocate.

- (4) The order, notice or other document may be served on a person outside the United Kingdom in the way mentioned in subsection (3)(c) only if—
- (a) it is not reasonably practicable for it to be served by any other means (whether as mentioned in subsection (3)(a), (b) or (d) or as permitted by rules of court), and
 - (b) the person serving the order, notice or other document takes such steps as that person considers appropriate for the purpose of bringing its contents, and the availability of it for inspection, to the attention of the person on whom it is being served.
- (5) The steps mentioned in subsection (4)(b) must be taken as soon as reasonably practicable after the order, notice or other document is made available for inspection.

15 Application of Act to service police

- (1) A judge advocate may, on an application by a member of a service police force, make an overseas production order against a person in respect of electronic data if each of the requirements for the making of the order is fulfilled (see section 4).
- (2) This Act applies in relation to an application under subsection (1) and an overseas production order made under that subsection as it applies in relation to an application made to a judge by an appropriate officer under section 1(1) and an overseas production order made under that section.
- (3) For the purposes of subsection (2) (and unless the context otherwise requires)—
- (a) references to a judge are to be read as references to a judge advocate;
 - (b) references to an appropriate officer are to be read as references to a member of a service police force;
 - (c) references to an equivalent appropriate officer are to be read as references to a member of the same service police force as the person who applied for the order or, as the case may be, made the application;
 - (d) in section 3, “item subject to legal privilege” is to have the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
 - (e) the reference in sections 4(3)(a) and 12(4)(a) to an indictable offence is to be read as a reference to an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales is an indictable offence;
 - (f) section 7(2) is to be read as if paragraphs (c) and (d) were replaced with a new paragraph (c) referring to the Secretary of State;
 - (g) section 9 is to be read as if—
 - (i) the reference in subsection (2) to an overseas production order made in England and Wales or Northern Ireland were a reference to an overseas production order made by a judge advocate, and
 - (ii) subsection (3) were omitted;
 - (h) the reference in section 14(1)(c) to a court in England and Wales, Scotland or Northern Ireland is to be read as if it included the Court Martial.
- (4) If a person (whether the person is in the United Kingdom or outside it) fails to comply with an order made under this Act by a judge advocate, the Court Martial may certify the failure to the High Court in England and Wales.
- (5) The High Court—

Status: This is the original version (as it was originally enacted).

- (a) may inquire into the matter, and
 - (b) must hear—
 - (i) any witness who may be produced against or on behalf of the person alleged to have failed to comply with the order, and
 - (ii) any statement that may be offered in defence.
- (6) Having acted in accordance with subsection (5), the High Court may deal with the person in any way in which it could deal with the person if the failure had been a failure to comply with an order of that court.
- (7) In this section—
- “judge advocate” has the same meaning as in the Armed Forces Act 2006 (see section 362 of that Act);
 - “service police force” means—
 - (a) the Royal Navy Police,
 - (b) the Royal Military Police, or
 - (c) the Royal Air Force Police.