
STATUTORY INSTRUMENTS

2017 No. 730

CRIMINAL LAW

The Criminal Justice (European Investigation Order) Regulations 2017

<i>Made</i>	- - - -	<i>5th July 2017</i>
<i>Laid before Parliament</i>		<i>10th July 2017</i>
<i>Coming into force</i>	- -	<i>31st July 2017</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to criminal justice(2), makes the following Regulations in exercise of the powers conferred by that section and by section 10(3) of the Investigatory Powers Act 2016(3).

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Criminal Justice (European Investigation Order) Regulations 2017 and come into force on 31st July 2017.

(2) Each amendment made by Schedule 3 has the same extent as the provision to which it relates.

(3) Regulation 32 does not extend to Scotland.

General Interpretation

2.—(1) In these Regulations—

“the 1990 Act” means the Criminal Justice (International Co-operation) Act 1990(4);

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- (1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2012/2752. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under European Union law in relation to certain matters by virtue of section 53 of that Act, these functions continue to be exercisable by the Secretary of State as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.
- (3) 2016 c. 25.
- (4) 1990 c. 5.

“the 2003 Act” means the Crime (International Co-operation) Act 2003⁽⁵⁾;

“business in the regulated sector” is to be interpreted in accordance with Schedule 9 to the Proceeds of Crime Act 2002 (regulated sector and supervisory activities)⁽⁶⁾;

“designated investigating authority” means an authority listed in Part 3 of Schedule 1 (investigating authorities);

“designated public prosecutor” means—

- (a) in relation to England and Wales and Northern Ireland, a prosecutor listed in Part 1 of Schedule 1 (public prosecutors);
- (b) in relation to Scotland, the Lord Advocate and any procurator fiscal;

“the Directive” means Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters⁽⁷⁾;

“EU prisoner” means a person who is detained in a participating State—

- (a) by virtue of a sentence or order of a court exercising criminal jurisdiction there, or
- (b) in consequence of—
 - (i) having been transferred there, or responsibility for that person’s detention and release having been transferred there, from the United Kingdom under the Repatriation of Prisoners Act 1984⁽⁸⁾, or
 - (ii) having been transferred there, or responsibility for that person’s detention and release having been transferred there, under any similar provision or arrangement from any other country or territory;

“evidence” includes information in any form and articles;

“financial institution” means a person who is carrying on business in the regulated sector;

“notify” means notify in writing (and “notice” and “notification” are to be read accordingly);

“participating State” means a State listed in Schedule 2;

“prison” includes an institution to which any of the following applies—

- (a) the Prison Act 1952⁽⁹⁾;
- (b) the Prison Act (Northern Ireland) 1953⁽¹⁰⁾, or
- (c) article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998⁽¹¹⁾;

“prisoner”—

- (a) in relation to England and Wales or Northern Ireland, means a person—
 - (i) serving a sentence in a prison;
 - (ii) in custody awaiting trial or sentence, or
 - (iii) committed to prison for default in paying a fine;
- (b) in relation to Scotland, means a person detained in custody;

“prosecuting authority” includes any prosecutor listed in Part 1 or Part 2 of Schedule 1.

(2) For the purposes of these Regulations, the central authority—

⁽⁵⁾ 2003 c. 32.

⁽⁶⁾ 2002 c. 29; Parts 1 and 2 of Schedule 9 were substituted by S.I. 2007/3287 and then amended by S.I. 2011/99, 2011/2701, 2012/1534, 2012/2299, 2013/3155, 2015/575 and 2016/680.

⁽⁷⁾ OJ No L 130, 1.5.2014, p1.

⁽⁸⁾ 1984 c. 47.

⁽⁹⁾ 1952 c. 52.

⁽¹⁰⁾ 1953 c. 18 (N.I.).

⁽¹¹⁾ S.I. 1998/1504 (N.I. 9).

- (a) in relation to England and Wales and Northern Ireland, is the Secretary of State (but see regulation 32);
- (b) in relation to Scotland, is the Lord Advocate;
- (c) in relation to a participating State, is an authority designated by that State for the purposes of Article 7(3) of the Directive.

Transitional provisions

3.—(1) These Regulations do not apply in relation to a case where, before the date on which these Regulations come into force, any of the following has occurred—

- (a) a domestic freezing order made under section 10 of the 2003 Act (domestic freezing orders) is forwarded by the Secretary of State or the Lord Advocate under section 11 of that Act (sending freezing orders);
- (b) an overseas freezing order (within the meaning of section 20 of the 2003 Act (overseas freezing orders)) is received by the Secretary of State or the Lord Advocate;
- (c) the Secretary of State receives a request to which any of the following provisions applies—
 - (i) section 31 of the 2003 Act (hearing witnesses in the UK by telephone);
 - (ii) section 32 of the 2003 Act (information about banking transactions: customer information);
 - (iii) section 35 of the 2003 Act (information about banking transactions: account information);
- (d) the Lord Advocate receives a request to which any of the following provisions applies—
 - (i) section 31 of the 2003 Act;
 - (ii) section 37 of the 2003 Act (information about banking transactions: customer information);
 - (iii) section 40 of the 2003 Act (information about banking transactions: account information);
- (e) a request for assistance under section 43 (information about a person’s bank account) or section 44 (monitoring banking transactions) of the 2003 Act is forwarded by the Secretary of State or the Lord Advocate or, in an urgent case, sent direct under section 45 of that Act (sending requests for assistance);
- (f) a warrant is issued by the Secretary of State or the Scottish Ministers under section 47(1) of the 2003 Act (transfer of UK prisoner to assist investigation abroad); or
- (g) a warrant is issued by the Secretary of State or the Scottish Ministers under section 48(1) of the 2003 Act (transfer of EU etc. prisoner to assist UK investigation).

Consequential amendments

- 4.** Schedule 3 contains consequential amendments.

PART 2

Making or validating a European investigation order in the United Kingdom

CHAPTER 1

General

Interpretation

5.—(1) In this Part—

“European investigation order” means—

- (a) in relation to this Chapter and Chapter 2, an order made or validated under regulation 6 or 7;
- (b) in relation to Chapter 3, an order made under regulation 22;

“executing authority” means an authority of the executing State having competence to recognise a European investigation order and ensure its execution in accordance with the Directive and the procedure applicable in a similar domestic case;

“judicial authority”—

- (a) in relation to England and Wales, means any judge or justice of the peace;
- (b) in relation to Northern Ireland, means any judge;
- (c) in relation to Scotland, means any judge of the High Court or sheriff;

“specified information” means the information required by Article 5 of the Directive to be included on the form set out in Annex A to the Directive.

(2) References in this Part to “the executing State”—

- (a) in relation to a European investigation order made under regulation 6, are to be construed in accordance with regulation 6(2);
- (b) in relation to a European investigation order made or validated under regulation 7, are to be construed in accordance with regulation 7(3);
- (c) in relation to a warrant issued under regulation 20, or to a European investigation order made under regulation 22 pursuant to such a warrant, are to be construed in accordance with regulation 20(1);
- (d) in relation to a warrant issued under regulation 21, or a European investigation order made under regulation 22 pursuant to such a warrant, are to be construed in accordance with regulation 21(1).

(3) For the purposes of this Part, a person transmits a European investigation order to a central authority or executing authority if that person sends the order to such an authority by any means capable of producing a written record under conditions allowing the authority to establish the order’s authenticity.

Power of a judicial authority to make a European investigation order

6.—(1) If it appears to a judicial authority on an application made by a person mentioned in paragraph (3)—

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted or it is being investigated,
- the judicial authority may make an order under this regulation.

(2) An order under this regulation is an order specifying one or more investigative measures that are to be carried out in a participating State (“the executing State”) for the purpose of obtaining evidence for use either in the investigation or the proceedings in question or both.

(3) An application under this regulation may be made—

(a) in relation to England and Wales and Northern Ireland, by—

(i) a prosecuting authority;

(ii) a constable (but only with the consent of a prosecuting authority);

(b) in relation to Scotland, by the Lord Advocate or a procurator fiscal;

(c) in any case where proceedings have been instituted, by or on behalf of a party to those proceedings.

(4) But an order under this regulation may only be made if it appears to the judicial authority that—

(a) it is necessary and proportionate to make the order for the purposes of the investigation or proceedings in question;

(b) the investigative measures to be specified in the order could lawfully have been ordered or undertaken under the same conditions in a similar domestic case (see regulation 11), and

(c) where the order is for an investigative measure in relation to which specific provision is made in Chapter 2 of this Part, any conditions imposed by virtue of such provision are satisfied.

Power of a designated public prosecutor to make or validate a European investigation order

7.—(1) If it appears to a designated public prosecutor—

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) proceedings have been instituted in respect of the offence in question or it is being investigated,

the prosecutor may make an order under this regulation.

(2) A designated public prosecutor in England and Wales and Northern Ireland may, at the request of a designated investigating authority, validate an order under this regulation where it appears to the prosecutor that the conditions in paragraph (1) are satisfied.

(3) An order under this regulation is an order specifying one or more investigative measures to be carried out in a participating State (“the executing State”) for the purpose of obtaining evidence for use either in the investigation or the proceedings in question or both.

(4) But an order under this regulation may only be made or validated if it appears to the designated public prosecutor that—

(a) it is necessary and proportionate to make or validate the order for the purposes of the investigation or proceedings in question;

(b) the investigative measures to be specified in the order could lawfully have been ordered or undertaken under the same conditions in a similar domestic case (see regulation 11), and

(c) where the order is for an investigative measure in relation to which specific provision is made in Chapter 2 of this Part, any conditions imposed by virtue of such provision are satisfied.

Form and content of a European investigation order

8. A European investigation order must—

- (a) be in the form set out in Annex A to the Directive;
- (b) contain the specified information;
- (c) contain any further information as may be required under Chapter 2 of this Part;
- (d) be signed by or on behalf of the person making or validating it (the signature may be an electronic one), and
- (e) include a statement certifying that the information given in it is accurate and correct.

Transmission of a European investigation order

- 9.—(1) Where a judicial authority makes a European investigation order, it must—
- (a) where the application for the order was made by a designated public prosecutor or a prosecutor listed in Part 2 of Schedule 1 (other designated prosecutors), give the order to that prosecutor for transmission to the central authority or to an appropriate executing authority of the executing State;
 - (b) where the application for the order was made by a constable with the consent of a such a prosecutor, give the order to that constable;
 - (c) in any other case, transmit the order to the central authority or to an appropriate executing authority of the executing State.
- (2) A designated public prosecutor must—
- (a) where it makes a European investigation order, transmit the order to the central authority or to an appropriate executing authority of the executing State;
 - (b) where it validates a European investigation order on behalf of a designated investigating authority—
 - (i) transmit the order to the central authority or to an appropriate executing authority of the executing State, or
 - (ii) give the order to the designated investigating authority for transmission to the central authority or to an appropriate executing authority of the executing State.
- (3) A prosecutor who receives an order under this regulation from a judicial authority must transmit the order to the central authority or to an appropriate executing authority of the executing State.
- (4) A constable who receives an order under this regulation from a judicial authority must give it to the prosecutor from whom consent to apply for the order was obtained, for transmission to the central authority or to an appropriate executing authority of the executing State.
- (5) A designated investigating authority which receives an order under this regulation from a designated public prosecutor must transmit the order to the central authority or to an appropriate executing authority of the executing State.
- (6) A European investigation order transmitted under this regulation must be accompanied by a translation of the order into the language notified by the executing State under Article 33(1)(b) of the Directive (if that language is not English).

Variation or revocation of a European investigation order

- 10.—(1) The judicial authority or designated public prosecutor that made or validated a European investigation order may vary or revoke it.
- (2) But a judicial authority may only vary or revoke an order on the application of a person mentioned below.
- (3) The persons are—

- (a) the person who applied for the order;
- (b) in relation to England and Wales and Northern Ireland, a prosecuting authority;
- (c) in relation to Scotland, the Lord Advocate or a procurator fiscal;
- (d) any other person affected by the order.

(4) An application by a constable under this regulation must not be made without the consent of a prosecuting authority.

(5) Where a judicial authority or designated public prosecutor revokes a European investigation order, the central authority or executing authority to which the order was originally transmitted must be informed without delay.

(6) Where a judicial authority or designated public prosecutor varies a European investigation order, the varied order must—

- (a) comply with the requirements of regulation 8 (form and content of a European investigation order), and
- (b) be transmitted to the central authority or appropriate executing authority of the executing State.

(7) A varied order transmitted under this regulation must, where necessary, be accompanied by a translation of the order into the language notified by the executing State under Article 33(1)(b) of the Directive (if that language is not English).

Meaning of “under the same conditions in a similar domestic case”

11.—(1) When deciding for the purposes of regulation 6(4)(b) or 7(4)(b) whether an investigative measure could lawfully have been ordered or undertaken under the same conditions in a similar domestic case, the judicial authority or designated public prosecutor (“the relevant authority”) must consider in particular the following matters.

(2) Where the investigative measure requested is one which would require the issue of a relevant instrument before it could be lawfully carried out in the United Kingdom, the relevant authority must consider whether it could have issued such an instrument taking into account in particular—

- (a) the nature of the evidence to be obtained;
- (b) the purpose for which that evidence is sought (including its relevance to the investigation or proceedings in respect of which the European investigation order is sought);
- (c) the circumstances in which the evidence is held;
- (d) the nature and seriousness of the offence to which the investigation or proceedings relates;
- (e) any provision or rule of domestic law applicable to the issuing of such an instrument.

(3) Where the investigative measure requested is one which would require authorisation under any enactment relating to the acquisition and disclosure of data relating to communications, or the carrying out of surveillance, before it could be lawfully carried out in the United Kingdom, the relevant authority must consider whether such authorisation—

- (a) has in fact been granted, or
- (b) could have been granted, taking into account in particular—
 - (i) the matters specified in sub-paragraphs (a) to (d) of paragraph (2), and
 - (ii) the provisions of the enactment applicable to the granting of such authorisation.

(4) Where the investigative measure requested is in connection with, or in the form of, the interception of communications, the relevant authority must consider whether any additional requirements relating to the making of such a request, imposed by any enactment other than these Regulations, have been complied with.

(5) Paragraph (2)(e) does not require the relevant authority to take into account any provision of domestic law imposing a procedural requirement which the judicial authority or designated public prosecutor considers cannot effectively be applied when making a European investigation order for the investigative measure concerned.

(6) For the purposes of this regulation—

“relevant instrument” includes a warrant, order, notice, witness summons, citation or equivalent instrument;

“enactment” means an enactment whenever passed or made and includes—

- (i) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978⁽¹²⁾;
- (ii) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (iii) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
- (iv) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

Use of evidence obtained under this Part

12.—(1) This regulation applies to evidence obtained from a participating State pursuant to a European investigation order made or validated under this Chapter.

(2) The evidence obtained—

- (a) may be used or disclosed for the purposes of the investigation or proceedings in relation to which the order was made or validated;
- (b) may not be used or disclosed for any other purpose, without the consent of the participating State from which it was obtained.

(3) In Scotland, the evidence may be received in evidence without being sworn to by a witness, so far as that may be done without unfairness to either party.

CHAPTER 2

Additional requirements for certain investigative measures

Interpretation and relationship to Chapter 1

13.—(1) This Chapter makes provision for certain types of investigative measures which may be specified in a European investigation order.

(2) The conditions and requirements imposed by this Chapter apply in addition to the conditions and requirements imposed by Chapter 1.

(3) For the purposes of this Chapter, a European investigation order is issued when it is made by a judicial authority, or made or validated by a designated public prosecutor, and references in this Chapter to “the issuing authority” are to be construed accordingly.

Hearing a person by videoconference or telephone

14.—(1) This regulation applies if a European investigation order is to be issued under this Part—

- (a) where a person is in the territory of a participating State and has to be heard as a witness, expert, suspect or accused person in proceedings in the United Kingdom, for that person to be heard in those proceedings by videoconference or other audiovisual transmission;

(12) 1978 c. 30.

- (b) where a person is in the territory of a participating State and has to be heard as a witness or expert in proceedings in the United Kingdom, for that person to be heard in those proceedings by telephone conference.

(2) A European investigation order may only be issued for the purpose mentioned in paragraph (1) (b) where the issuing authority is satisfied that it is not appropriate or not possible for the person to be heard to appear in the United Kingdom in person, and only after having examined other suitable means.

Banking and other financial information

15.—(1) This regulation applies if a European investigation order is to be issued under this Part—

- (a) in order to determine whether any person holds or controls one or more accounts, of whatever nature, in any financial institution located in the territory of a participating State and if so, to obtain all the details of the identified accounts, or
- (b) in order to obtain the details of accounts specified in the order in any financial institution specified in the order and of banking operations which have been carried out during a defined period through one or more of those accounts, including the details of any sending or recipient account.

(2) A European investigation order issued for the purpose mentioned in paragraph (1)(a) must—

- (a) include the reasons why the issuing authority considers that the requested information is likely to be of substantial value for the purposes of the investigation or proceedings to which the order relates;
- (b) include the grounds on which the issuing authority believes that financial institutions in the territory of the participating State hold the account and, to the extent the information is available, specify the institutions concerned; and
- (c) include any further information the issuing authority considers may facilitate its execution.

(3) A European investigation order issued for the purpose mentioned in paragraph (1)(b) must include the reasons why the issuing authority considers the requested information to be relevant for the purposes of the investigation or proceedings to which the order relates.

Investigative measures requiring the gathering of evidence in real time, continuously and over a certain period of time

16.—(1) This regulation applies if a European investigation order is to be issued under this Part for the purpose of carrying out an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time.

(2) Investigative measures of the type described in paragraph (1) include—

- (a) the monitoring of banking or other financial operations being carried out through one or more accounts specified in the order;
- (b) controlled deliveries on the territory of a participating State.

(3) A European investigation order issued for the purpose of carrying out an investigative measure of the type described in paragraph (1) must include the reasons why the issuing authority considers that requested information to be relevant for the purposes of the investigation or proceedings to which the order relates.

Covert investigations

17.—(1) This regulation applies if a European investigation order is to be issued under this Part for the purpose of requesting the assistance of a participating State in the conduct of investigations into crime by officers acting covertly (including under false identity).

(2) A European investigation order issued for the purpose mentioned in paragraph (1) must include the reasons why the issuing authority considers that the requested assistance is likely to be relevant for the purposes of the investigation or proceedings to which the order relates.

Provisional measures

18.—(1) This regulation applies if a European investigation order is to be issued under this Part for the purpose of provisionally preventing the destruction, transformation, removal, transfer or disposal of an item in the territory of a participating State that may be used as evidence in relation to the investigation or proceedings to which the order relates.

- (2) A European investigation order issued for the purpose mentioned in paragraph (1) must—
- (a) specify whether the item is to be transferred to the issuing authority or whether it is to remain in the participating State;
 - (b) where the item is to remain in the participating State, specify—
 - (i) the date of lifting of the provisional measure referred to in paragraph (1), or
 - (ii) the estimated date of the submission of a request for the item or material to be transferred to the issuing authority.

Interception of telecommunications where technical assistance is needed

19.—(1) This regulation applies if a European investigation order is to be issued under this Part for the interception of telecommunications in a participating State from which technical assistance is needed.

(2) Where it appears to the issuing authority that more than one participating State is in a position to provide the necessary technical assistance for the interception of the same telecommunications, the European investigation order must be sent only to one participating State.

- (3) Where—
- (a) paragraph (2) applies, and
 - (b) it appears to the issuing authority that the subject of the interception is or will be located in one of the participating States able to provide the necessary technical assistance,

the European investigation order must be sent to that State.

- (4) A European investigation order issued for the purpose mentioned in paragraph (1) must—
- (a) contain information for the purpose of identifying the subject of the interception;
 - (b) specify the desired duration of the interception;
 - (c) contain sufficient technical data, in particular the target identifier, to ensure that the order can be executed, and
 - (d) indicate the reasons why the issuing authority considers the requested information to be relevant for the purposes of the investigation or proceedings to which the order relates.

CHAPTER 3

Making a European investigation order for the temporary transfer of a prisoner

Temporary transfer of UK prisoner to a participating State for the purpose of UK investigation

20.—(1) The Secretary of State may issue a warrant for a prisoner to be transferred to a participating State (“the executing State”) where the presence of the prisoner on the territory of that State is required for the purpose of gathering evidence there in connection with a criminal investigation or criminal proceedings in the United Kingdom.

- (2) A warrant may be issued in respect of a prisoner under paragraph (1) only if—
- (a) the requirement in paragraph (3) is met, and
 - (b) it appears to the Secretary of State that it is necessary and proportionate for the prisoner to be transferred to the executing State for the purpose mentioned in paragraph (1).
- (3) The requirement is that—
- (a) the prisoner, or
 - (b) in the circumstances mentioned in paragraph (4), a person appearing to the Secretary of State to be an appropriate person to act on the prisoner’s behalf,

has made a written statement consenting to the transfer for the purpose mentioned in paragraph (1).

(4) The circumstances are those in which it appears to the Secretary of State to be inappropriate for the prisoner to act on his or her own behalf, by reason of his or her physical or mental condition or age.

- (5) A warrant under this section authorises—
- (a) the taking of the prisoner to a place in the United Kingdom and delivery of that prisoner at a place of departure from the United Kingdom into the custody of a person representing the appropriate authority of the executing State, and
 - (b) the bringing of the prisoner back to the United Kingdom and that prisoner’s transfer in custody to the place where the prisoner is liable to be detained pursuant to the sentence or order to which the prisoner is subject.

(6) Subsections (4) to (8) of section 5 of the 1990 Act (transfer of UK prisoner to give evidence or assist investigation overseas)⁽¹³⁾ have effect in relation to a warrant issued under this regulation as they have effect in relation to a warrant issued under that section.

(7) A warrant issued under this regulation must be forwarded to a judicial authority or designated public prosecutor for consideration under regulation 22.

- (8) In relation to a transfer from Scotland—
- (a) references in this regulation to the Secretary of State are to be read as references to the Scottish Ministers;
 - (b) the reference in paragraph (7) to “a judicial authority or designated public prosecutor” is to be read as a reference to the Lord Advocate.

Temporary transfer of EU prisoner to the UK for the purpose of UK investigation or proceedings

21.—(1) The Secretary of State may issue a warrant for an EU prisoner to be transferred to the United Kingdom from a participating State (“the executing State”) for the purpose of—

⁽¹³⁾ Section 5 was amended by paragraph 87 of Schedule 13 to the Merchant Shipping Act 1995 (c. 21).

- (a) giving evidence in criminal proceedings, or
 - (b) assisting in the investigation of an offence.
- (2) A warrant may be issued in respect of an EU prisoner under paragraph (1) only if the conditions in each of paragraphs (3) to (5) are satisfied.
- (3) The condition is that, where the EU prisoner is to be transferred for the purpose mentioned in paragraph (1)(a), a witness order has been made, or a witness summons or citation issued, in criminal proceedings in the United Kingdom in respect of the EU prisoner.
- (4) The condition is that it appears to the Secretary of State that the EU prisoner consents, or is likely to consent, to being transferred for the purpose mentioned in paragraph (1)(a), or as the case may be, paragraph (1)(b).
- (5) The condition is that it appears to the Secretary of State to be necessary and proportionate for the EU prisoner to be transferred to the United Kingdom for the purpose mentioned in paragraph (1) (a) or, as the case may be, paragraph (1)(b).
- (6) A warrant under this regulation authorises—
- (a) the bringing of the EU prisoner to the United Kingdom,
 - (b) the taking of the EU prisoner to, and detention in custody at, any place or places in the United Kingdom specified in the warrant,
 - (c) the returning of the EU prisoner to the executing State.
- (7) Subsections (4) to (8) of section 5 of the 1990 Act (transfer of UK prisoner to give evidence or assist investigation overseas) have effect in relation to a warrant issued under this regulation as they have effect in relation to a warrant issued under that section.
- (8) A person is not subject to the Immigration Act 1971(14) in respect of that person’s entry into or presence in the United Kingdom pursuant to a warrant under this regulation; but if the warrant ceases to have effect while that person is still in the United Kingdom—
- (a) that person is to be treated for the purposes of that Act as having then illegally entered the United Kingdom, and
 - (b) the provisions of Schedule 2 to that Act have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) does not have effect in relation to directions for the person’s removal given by virtue of this sub-paragraph.
- (9) A warrant issued under this regulation must be forwarded to a judicial authority or designated public prosecutor for consideration under regulation 22.
- (10) In relation to a transfer from Scotland—
- (a) references in this regulation to the Secretary of State are to be read as references to the Scottish Ministers;
 - (b) the reference in paragraph (9) to “a judicial authority or designated public prosecutor” is to be read as a reference to the Lord Advocate.

European investigation order for the temporary transfer of a prisoner

22.—(1) This regulation applies—

- (a) in relation to England and Wales and Northern Ireland, where a judicial authority or designated public prosecutor receives from the Secretary of State a warrant issued under regulation 20 or 21;
- (b) in relation to Scotland, where the Lord Advocate receives from the Scottish Ministers a warrant issued under regulation 20 or 21.

(14) 1971 c. 77.

(2) If satisfied that—

- (a) in relation to a warrant issued under regulation 20, it is necessary and proportionate for the prisoner to be present in the territory of the participating State for the purpose mentioned in paragraph (1) of that regulation;
- (b) in relation to a warrant issued under regulation 21, it is necessary and proportionate for the EU prisoner to be present in the United Kingdom for the purpose mentioned in paragraph (1)(a) or, as the case may be, paragraph (1)(b) of that regulation,

the judicial authority or designated public prosecutor (or, in Scotland, the Lord Advocate) must make an order for the transfer of the prisoner or the EU prisoner.

(3) An order under this regulation must—

- (a) be in the form set out in Annex A to the Directive;
- (b) contain the specified information;
- (c) be signed by or on behalf of the person who made it (the signature may be an electronic one), and
- (d) include a statement certifying that the information given in it is accurate and correct.

(4) An order made under this regulation—

- (a) in England and Wales or Northern Ireland must be given to the Secretary of State for transmission to the central authority or appropriate executing authority of the executing State;
- (b) in Scotland must be transmitted by the Lord Advocate to the central authority or appropriate executing authority of the executing State.

(5) A European investigation order transmitted under this regulation must be accompanied by a translation of the order into an appropriate language of the executing State (if that language is not English), in accordance with any notification made by that State under Article 33(1)(b) of the Directive.

Restrictions on prosecution and detention for other matters

23.—(1) This regulation applies where an EU prisoner (“the transferred person”) is transferred to the United Kingdom pursuant to a European investigation order made under regulation 22.

(2) Whilst in the United Kingdom, the transferred person must not be prosecuted or detained or subjected to any other restriction of personal liberty in relation to conduct which—

- (a) occurred before the person’s departure from the executing State, and
- (b) was not specified in the European investigation order.

(3) Paragraph (2) ceases to apply if the transferred person is released from custody whilst in the United Kingdom, and—

- (i) having been informed that his or her presence in the United Kingdom is no longer required, remains here after the expiry of the relevant period, or
- (ii) having left, returns.

(4) The relevant period is 15 days beginning with the day after the transferred person is informed that his or her presence in the United Kingdom is no longer required or, if later, the day after the transferred person is released from custody.

Time spent by UK prisoner in custody overseas

24.—(1) This regulation applies where a prisoner (“P”) is transferred to the executing State pursuant to a European investigation order made under regulation 22.

(2) Any period of time spent in custody outside the United Kingdom pursuant to the European investigation order must be treated for all purposes as if P had spent that period in custody in the place in the United Kingdom where P is liable to be detained pursuant to the sentence or order to which P is subject.

(3) Where P is serving a sentence and, prior to being returned to the United Kingdom, ceases to be in custody at a time when P is liable to be detained pursuant to the sentence or order to which P is subject, P must be deemed for all purposes to be unlawfully at large.

PART 3

Recognition and execution in the United Kingdom of a European investigation order made in a participating State

CHAPTER 1

General

Interpretation

25. In this Part—

“European investigation order”—

- (a) has the meaning given by Article 1 of the Directive, and
- (b) references to a European investigation order include part of an order;

“excluded material” and “special procedure material” have the same meaning as in the Police and Criminal Evidence Act 1984⁽¹⁵⁾ or, as the case may be, the Police and Criminal Evidence (Northern Ireland) Order 1989⁽¹⁶⁾;

“executing authority” means—

- (a) in relation to England, Wales and Northern Ireland, an authority listed in Part 4 of Schedule 1;
- (b) in relation to Scotland, the Lord Advocate;

“issuing authority” means an authority of the issuing State competent for the purposes of Article 2(c) of the Directive;

“issuing State”, in relation to a European investigation order, means the participating State in which that order is issued;

“items subject to legal privilege”—

- (a) in relation to England and Wales and Northern Ireland, has the same meaning as in the Police and Criminal Evidence Act 1984 or, as the case may be, the Police and Criminal Evidence (Northern Ireland) Order 1989;
- (b) in relation to Scotland, has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002;

“relevant part of the United Kingdom”, in relation to a European investigation order, means the part of the United Kingdom in which evidence to which that order relates is situated;

“relevant UK central authority” means the central authority in relation to the relevant part of the United Kingdom.

⁽¹⁵⁾ 1984 c. 60.

⁽¹⁶⁾ S.I. 1989/1341 (N.I. 12).

CHAPTER 2

General provisions relating to the recognition and execution of a European investigation order

Recognition of a European investigation order

26.—(1) This Part applies where the relevant UK central authority receives from the issuing State—

- (a) a European investigation order, or a copy of it, in the form set out in Annex A to the Directive, and
- (b) if the form is not in English, a copy of the form translated into English.

(2) If the central authority in relation to one part of the United Kingdom receives a European investigation order which includes a request for evidence appearing to the central authority to be situated in another part of the United Kingdom, that central authority must—

- (a) forward the European investigation order to the relevant UK central authority, and
- (b) notify the issuing authority or, where appropriate, the central authority of the issuing State that the European investigation order has been forwarded.

(3) The central authority must notify the issuing authority or, where appropriate, the central authority of the issuing State to confirm receipt of the European investigation order.

(4) Notification under paragraph (3) must be given—

- (a) without delay, and in any event within one week beginning with the day on which the European investigation order is received, and
- (b) in the form set out in Annex B to the Directive.

(5) The central authority must take a decision on the recognition and execution of the European investigation order in accordance with the remainder of this Part.

Sufficiency of information

27.—(1) This regulation applies if it is impossible for the central authority to take a decision on the recognition or execution of a European investigation order because the information provided by the issuing authority is incomplete or manifestly incorrect.

(2) The central authority must, without delay—

- (a) notify the issuing authority,
- (b) request that the issuing authority provide such further information as the central authority deems necessary for it to make a decision, specifying a reasonable period for the issuing authority to do so.

(3) The central authority must not take its decision on the recognition and execution of the European investigation order until the period specified under paragraph (2)(b) has expired.

Grounds for refusal of recognition or execution

28.—(1) Subject to paragraphs (2) and (3), recognition or execution of a European investigation order may be refused by the central authority only if it appears that—

- (a) one or more of the grounds for refusal in Schedule 4 apply;
- (b) the investigative measure indicated in the European investigation order does not exist under the law of the relevant part of the United Kingdom, and it appears to the central authority that there is no other investigative measure which would achieve the same result;

- (c) the investigative measure indicated in the European investigation order would not be available in a similar domestic case, and it appears to the central authority that there is no other investigative measure which would achieve the same result;
 - (d) the conduct in relation to which the European investigation order has been issued—
 - (i) does not constitute an offence under the law of the relevant part of the United Kingdom, and
 - (ii) is not indicated in the order as constituting an offence within the categories of offences set out in Annex D to the Directive and punishable in the issuing state with imprisonment or another form of detention for a maximum term of at least 3 years;
 - (e) the use of the investigative measure indicated in the European investigation order is restricted under the law of the relevant part of the United Kingdom to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the order;
 - (f) the European investigation order has been issued for the purpose of requesting assistance in the conduct of investigations into crime by officers acting covertly, including under false identity (“covert investigations”), and—
 - (i) the execution of the covert investigation would not be authorised in a similar domestic case, or
 - (ii) it has not been possible to reach agreement with the issuing authority on arrangements for the covert investigation in accordance with Article 29(4) of the Directive;
 - (g) the investigative measure indicated in the European investigation order requires the gathering of evidence in real time, continuously and over a certain period of time, and execution of the measure concerned would not be authorised in a similar domestic case;
 - (h) the European investigation order has been issued for the interception of telecommunications in the United Kingdom, and interception would not be authorised in a similar domestic case;
 - (i) regulation 36 applies (hearing persons in the UK through videoconference or other audio visual transmission), and the person to be heard is a suspect or accused person and has not consented to being heard;
 - (j) regulation 54 or 55 applies (temporary transfer of prisoners), and the person has not consented to being transferred, or
 - (k) regulation 54 applies (temporary transfer of UK prisoner to issuing State), and the transfer is liable to prolong the detention of the person in custody.
- (2) But the central authority may not refuse to recognise or execute a European investigation order by virtue of the application of sub-paragraphs (b) to (e) of paragraph (1) if the order relates to—
- (a) the obtaining of evidence which is already in the possession of the central authority, or appears to the central authority to already be in the possession of an executing authority, where it appears to the central authority that the evidence could lawfully have been obtained in the framework of a criminal investigation or criminal proceedings or for the purposes of the European investigation order in the relevant part of the United Kingdom;
 - (b) the obtaining of evidence contained in databases held by police or judicial authorities, where it appears to the central authority that the evidence is directly accessible by the central authority or by an executing authority in the framework of a criminal investigation or criminal proceedings;
 - (c) the hearing of a witness, expert, victim, suspect, accused person or third party in the relevant part of the United Kingdom;

- (d) any non-coercive investigative measure, or
- (e) the identification of a person holding a subscription of a telephone number or IP address specified in the order.

(3) Where the European investigation order concerns an offence in connection with taxes or duties, customs and exchange, the central authority must not refuse to recognise or execute the order on the ground that the law of the relevant part of the United Kingdom does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

- (4) Where it appears to the central authority that—
 - (a) paragraph 1 of Schedule 4 applies (execution impossible due to immunity or privilege under the law of the relevant part of the UK), and
 - (b) it is within the power of an authority in the United Kingdom to waive the immunity or privilege in question,

the central authority must, before refusing to recognise or execute the European investigation order by virtue of the application of that provision, ask that authority to waive the immunity or privilege.

(5) Before refusing to recognise or execute a European investigation order under paragraph (1) (a) on the basis that one or more of paragraphs 1, 2, 4, 5, 6 or 7 of Schedule 4 apply, the central authority must, without delay—

- (a) consult the issuing authority; and
- (b) where appropriate, request that it provide any necessary information, specifying a reasonable period for doing so.

(6) Where paragraph (5)(b) applies, the central authority must not refuse to recognise or execute the European investigation order until the specified period has expired.

(7) Where the central authority refuses to recognise or execute a European investigation order under this regulation, it must notify the issuing authority without delay.

Postponement of recognition or execution

29.—(1) An authority to which this regulation applies may postpone recognition or execution of a European investigation order for as long as grounds for postponement apply.

- (2) The grounds are—
 - (a) that executing the European investigation order might prejudice a criminal investigation or criminal proceedings taking place in the United Kingdom;
 - (b) that objects, documents or data to which the European investigation order relates are already being used in a criminal investigation or criminal proceedings taking place in the United Kingdom.

(3) Where an authority decides to postpone recognition or execution of the European investigation order under this regulation it must, without delay, notify the issuing authority and provide—

- (a) the reasons for the postponement, and
- (b) where possible, the expected duration of the postponement.

(4) As soon as possible after the grounds for postponement cease to apply, the authority which decided to postpone recognition or execution must—

- (a) notify the issuing authority, and
- (b) proceed to take a decision on the recognition and execution of the order or, as the case may be, proceed to execute the order.

- (5) The authorities to which this regulation apply are—

- (a) a central authority,
- (b) an executing authority to whom a referral has been made under regulation 51 (referral to executing authority for assistance in execution of a European investigation order).

Time limits for recognition and execution

30.—(1) Subject to paragraphs (2), (6) and (7), the central authority must take its decision on the recognition and execution of a European investigation order as soon as possible, and in any event before the expiry of the period of 30 days beginning with the day after the day on which the order was received.

(2) Where it is not practicable for the central authority to take its decision on the recognition and execution of a European investigation order within the period specified in paragraph (1), it must, without delay, notify the issuing authority—

- (a) giving reasons for the delay, and
- (b) specifying a date, within the period of 60 days beginning with the day after the day on which the European investigation order was received, by which the central authority expects to have taken its decision.

(3) Where the central authority decides to recognise or execute a European investigation order it must ensure any investigative measure specified in the order is carried out without delay and with the same celerity and priority as for a similar domestic case, and in any event before the expiry of the period of 90 days beginning with the day after the day on which the central authority takes its decision on recognition or execution.

(4) Paragraph (3) does not apply to the extent that an investigative measure relates to evidence already in the possession of the central authority, or appearing to the central authority to be in the possession of an executing authority.

(5) Where it appears to the central authority that it is not practicable for an investigative measure to be carried out within the period specified in paragraph (3), it must, without delay—

- (a) notify the issuing authority, giving reasons for the delay, and
- (b) consult with the issuing authority on the appropriate timing to carry out the investigative measure.

(6) The time limits specified in paragraphs (1) and (3) are extended by any period during which recognition or execution of the European investigation order is postponed under regulation 29.

(7) Where the issuing authority has indicated in a European investigation order that—

- (a) due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, shorter time limits than those provided for in this regulation are necessary, or
- (b) an investigative measure specified in the order must be carried out on a specific date,

the central authority must, in the application of this regulation, take as full account as possible of such an indication.

(8) In the case of a referral made under regulation 51, paragraphs (3) to (7) apply to the executing authority to whom the referral was made in relation to investigative measures specified in the referral as if it were the central authority.

Transfer of evidence to the issuing State

31.—(1) Subject to paragraphs (2), (3) and (5), a central authority or executing authority (“the transferring authority”) must, without undue delay, transfer to the issuing authority—

- (a) any evidence in the transferring authority’s possession obtained as a result of the execution of the European investigation order, and
 - (b) any evidence already in the possession of the transferring authority and to which the European investigation order relates, once a decision has been taken by the central authority to recognise and execute the order.
- (2) Transfer of evidence under this regulation may be suspended pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the European investigation order that an immediate transfer is necessary for the proper conduct of the investigation or proceedings to which the order relates, or for the preservation of individual rights.
- (3) Transfer of evidence under this regulation must be suspended if it appears to the transferring authority that the transfer would cause serious and irreversible damage to any person affected by the transfer.
- (4) When transferring evidence, the transferring authority must indicate whether it requires the issuing authority to return the evidence as soon as it is no longer required in the issuing State.
- (5) Where the evidence to be transferred consists of objects, documents or data which are relevant to an investigation or proceedings in the United Kingdom, the transferring authority may, at the explicit request of and after consultation with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the transferring authority as soon as it is no longer required in the issuing State, or at any other time or occasion agreed between the two authorities.

European investigation orders relating to HMRC matters

32.—(1) This regulation applies in the case of a European investigation order issued in connection with an investigation or proceedings in the issuing State that relate wholly or mainly to relevant conduct.

(2) Subject to paragraph (3), the Revenue Commissioners may exercise the functions of the Secretary of State (including as the central authority in relation to England and Wales and Northern Ireland) for the purpose of recognising and executing a European investigation order under this Part.

(3) Paragraph (2) does not apply to any function of the Secretary of State (including as the central authority in relation to England and Wales and Northern Ireland) conferred by the following—

- (a) regulation 36 (hearing a person through videoconference);
- (b) regulation 37 (hearing a person by telephone);
- (c) regulation 43 (nominating a court to make a customer information or account monitoring order);
- (d) regulation 51 (referral to executing authorities);
- (e) regulation 54 (transfer of UK prisoner to issuing State);
- (f) regulation 55 (transfer of EU prisoner to the UK).

(4) Where, by virtue of this regulation, the Revenue Commissioners nominate a court under regulation 38—

- (a) sub-paragraphs (b) and (c) of paragraph (5) of regulation 38 do not apply;
- (b) paragraph (4) of regulation 39 applies as if for the words from “chief officer” to “procurator fiscal”, there were substituted “Revenue Commissioners (within the meaning of regulation 32)”;
- (c) paragraph (3) of regulation 41 applies as if for sub-paragraph (a), there were substituted—
 - “(a) the Revenue Commissioners (within the meaning of regulation 32);”;
- (d) an Officer of Revenue and Customs may exercise any function conferred on a constable under—

- (i) regulation 39 (search warrants and production orders: giving effect to the European investigation order);
 - (ii) regulation 41 (power to revoke or vary a search warrant or production order or to authorise the release of evidence seized or produced),
- and references to a constable in those regulations are to be read as including references to an Officer of Revenue and Customs;
- (e) any function conferred on a constable under regulation 40 must be exercised by an Officer of Revenue and Customs in respect of any evidence—
 - (i) seized by or produced to an Officer of Revenue and Customs under regulation 39;
 - (ii) seized by such an officer by virtue of section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure)⁽¹⁷⁾, in the course of a search authorised by a warrant issued under regulation 39.
- (5) In this regulation—
- “HMRC matter” means any matter in relation to which the Revenue Commissioners have functions;
 - “Officer of Revenue and Customs” includes a person acting under the direction of such an officer;
 - “relevant conduct” means conduct which, if it occurred in England and Wales or Northern Ireland, would be conduct constituting an offence in relation to an HMRC matter;
 - “the Revenue Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

European investigation orders relating to customs matters

33.—(1) This regulation applies in the case of a European investigation order issued in relation to conduct which, if it occurred in the United Kingdom, would constitute an offence relating either to a general customs matter or to a customs revenue matter.

(2) In relation to a European investigation order to which this regulation applies, any function conferred on a constable under regulation 39, 40, or 41 may be exercised by—

- (a) a general customs official in relation to conduct which, if it occurred in the United Kingdom, would constitute an offence relating to a general customs matter, or
- (b) a customs revenue official in relation to conduct which, if it occurred in the United Kingdom, would constitute an offence relating to a customs revenue matter.

(3) In this regulation—

“customs revenue matter” has the meaning given by section 7(2) of the Borders, Citizenship and Immigration Act 2009 Act⁽¹⁸⁾ (customs revenue functions of the Director);

“customs revenue official” means a person designated as a customs revenue official in accordance with section 11(1) of that Act (designation of customs revenue officials);

“general customs matter” has the meaning given by section 1(2) of that Act (general customs functions of the Secretary of State);

“general customs official” means a person designated as a general customs official in accordance with section 3(1) of that Act (designation of general customs officials).

⁽¹⁷⁾ 2001 c. 16.

⁽¹⁸⁾ 2009 c. 11; section 7 was amended by paragraph 49 in Part 1, and paragraph 58 in Part 2, of Schedule 24 to the Finance Act 2012 (c. 14).

Request by an authority of the issuing State to assist in the execution of a European investigation order

- 34.**—(1) This regulation applies where—
- (a) a European investigation order contains a request for an authority of the issuing State to assist in the execution of the order, pursuant to Article 9(4) of the Directive, and
 - (b) the central authority decides to recognise and execute the order, or the part of the order to which the request relates.
- (2) The central authority or executing authority must authorise the request unless it considers that permitting the authority of the issuing State to assist would be—
- (a) contrary to a fundamental principle of law, or
 - (b) harmful to essential national security interests.
- (3) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by a chief officer of police for a police area in England and Wales—
- (a) section 88 of the Police Act 1996 (liability for wrongful acts of constables)(**19**) has effect as if—
 - (i) any unlawful conduct in the execution or purported execution of a European investigation order by P were unlawful conduct of a constable under the direction and control of the chief officer, and
 - (ii) subsection (4) of that section applied, in the case of the local policing body maintaining the force for which the chief officer is responsible, to P;
 - (b) section 89 of that Act (assaults on constables)(**20**) has effect as if references to a person assisting a constable in the execution of his duty in that section included references to P when assisting in the execution of the European investigation order.
- (4) A person convicted of an offence under subsection (1) of section 89 of the Police Act 1996 as a result of the application of paragraph (3)(b) is liable to imprisonment for a term not exceeding three months, or to a fine, or to both (but is not liable for any other penalty provided for in that subsection).
- (5) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by the Chief Constable of the Police Service of Northern Ireland—
- (a) section 29 of the Police (Northern Ireland) Act 1998 (liability for wrongful acts of constables)(**21**) has effect as if any unlawful conduct in the execution or purported execution of a European investigation order by P were unlawful conduct of a constable under the direction and control of the Chief Constable of the Police Service of Northern Ireland;
 - (b) section 66 of that Act (assaults on, and obstruction of, constables, etc.) has effect as if references to a person assisting a constable in the execution of his duty in that section included references to P when assisting in the execution of the European investigation order.
- (6) On summary conviction of an offence under section 66 of the Police (Northern Ireland) Act 1998 as a result of the application of paragraph (5)(b), a person is liable to imprisonment for a term

(19) 1996 c. 16; section 88 was amended by sections 102 and 103 of the Police Reform Act 2002 (c. 30) and by paragraph 42 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13). There are other amendments which are not relevant for the purposes of these Regulations.

(20) Section 89 was amended by section 104 of the Police Reform Act 2002. There are other amendments which are not relevant for the purposes of these Regulations.

(21) 1998 c. 32; section 29 was amended by section 102 of the Police Reform Act 2002 and by paragraph 32 of Schedule 6 to the Police (Northern Ireland) Act 2000 (c. 32). There are other amendments which are not relevant for the purposes of these Regulations.

not exceeding three months, or to a fine not exceeding the statutory maximum, or to both (but is not liable on summary conviction for any other penalty provided for in that section).

(7) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by the Chief Constable of the Police Service of Scotland—

- (a) section 24 of the Police and Fire Reform (Scotland) Act 2012 (liability for unlawful conduct)⁽²²⁾ has effect as if P were a person falling within subsection (2) of that section;
- (b) section 90 of that Act (assaulting or impeding police) has effect as if the capacities mentioned in subsection (3) of that section included that of P, acting in accordance with authority provided under this regulation.

(8) A person convicted of an offence under section 90 of the Police and Fire Reform (Scotland) Act 2012 as a result of the application of paragraph (7)(b) is liable to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or to both (but is not liable for any other penalty provided for in that section).

(9) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by the Director of the National Crime Agency—

- (a) paragraph 2 of Schedule 4 to the Crime and Courts Act 2013 (liability of NCA for unlawful acts)⁽²³⁾ has effect as if after sub-paragraph (4) of that paragraph, there were inserted—
 - “(4A) The fourth case is where the unlawful conduct is conduct of a person authorised under regulation 34 of the Criminal Justice (European Investigation Order) Regulations 2017 to assist an NCA officer in the execution of a European investigation order (within the meaning of Part 2 of those Regulations) which occurs when that person is providing, or purporting to provide, such assistance.”;
- (b) where P is assisting in the execution of the European investigation order, paragraph 3 of that Schedule (assaults or obstruction in connection with joint investigation teams) has effect as if P were a member of an NCA-led international joint investigation team (within the meaning of that Act) carrying out functions as a member of that team.

(10) A person convicted of an offence under paragraph 3 of Schedule 4 to the Crime and Courts Act 2013 as a result of the application of paragraph (9)(b) is liable on summary conviction—

- (a) in England and Wales, to imprisonment for a term not exceeding three months or to a fine, or to both;
- (b) in Northern Ireland or Scotland, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or to both;

but is not liable for any other penalty provided for in paragraph 3 of that Schedule.

CHAPTER 3

Execution of a European investigation order relating to witness evidence and hearings

Nominating a court to receive evidence from a person

35.—(1) This regulation applies where a European investigation order contains a request for a person in the United Kingdom to be heard as a witness, expert, victim, suspect, accused person or third party for the purpose of receiving evidence from them.

(2) The central authority may by notice nominate a court to receive any evidence to which the European investigation order relates for the purpose of giving effect to the order.

⁽²²⁾ 2012 asp 8.

⁽²³⁾ 2013 c. 22.

(3) But where it appears to the central authority that the conditions in paragraph (4) are satisfied, it must nominate a court under paragraph (2).

(4) The conditions are—

(a) that recognition or execution of the European investigation order cannot be refused under regulation 28, and

(b) that—

(i) the person from whom the evidence is to be received is unwilling to provide it in an alternative form, or

(ii) the person from whom the evidence is to be received is willing to provide it in an alternative form, but the issuing authority does not agree to receive it in that form.

(5) A court nominated under this regulation must give effect to the European investigation order in accordance with Schedule 5, before the end of the required period.

(6) The required period is—

(a) 90 days beginning with the day after the day on which the court is nominated, or

(b) any other period as may be agreed between the nominated court, the central authority and the issuing authority.

(7) In this regulation, “evidence in an alternative form” means—

(a) evidence in the form of a witness statement or other document;

(b) evidence in the form of a record of an interview with the person concerned;

(c) evidence in any other form mutually agreed upon between the central authority, the issuing authority and the person from whom the evidence is to be received.

Hearing a person through videoconference or other audio visual transmission

36.—(1) This regulation applies where a European investigation order contains a request for a person in the United Kingdom to be heard as a witness, expert, suspect or accused person by videoconference or other audiovisual transmission (“video-link”) in proceedings before a court in the issuing State (“the overseas proceedings”).

(2) Where it appears to the central authority that one of the conditions in paragraph (4) is satisfied, it may by notice nominate a court in the United Kingdom where the person may be heard in the overseas proceedings through a video-link.

(3) But where it appears to the central authority that, in addition, the conditions in paragraph (5) are satisfied, it must nominate a court under paragraph (2).

(4) The conditions are that—

(a) the person is neither a suspect nor a person accused in the overseas proceedings, or

(b) the person is either a suspect or is accused in the overseas proceedings but has consented to being heard by video-link.

(5) The conditions are—

(a) that recognition or execution of the European investigation order cannot be refused under regulation 28, and

(b) in any case where a person is requested to give evidence through a video-link, that either—

(i) the person is unwilling to provide that evidence in an alternative form, or

(ii) the person is willing to provide that evidence in an alternative form, but the issuing authority does not agree to receive the evidence in that form.

(6) Anything done by a person in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.

(7) Any statement made on oath by a witness giving evidence in pursuance of this regulation is to be treated as made in proceedings before the nominated court for the purposes of—

- (a) section 1 of the Perjury Act 1911⁽²⁴⁾;
- (b) Article 3 of the Perjury (Northern Ireland) Order 1979⁽²⁵⁾, and
- (c) section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995⁽²⁶⁾.

(8) A person convicted of an offence as a result of the application of paragraph (7) is liable to imprisonment for a term not exceeding two years, or to a fine, or to both (but is not liable for any other penalty provided for in the provisions mentioned in paragraph (7)).

(9) A court nominated under this regulation must give effect to the European investigation order in accordance with Part 1 of Schedule 6 before the end of the required period.

(10) Subject to paragraphs (6) and (7) and the provisions of Part 1 of Schedule 6, evidence given pursuant to this regulation is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.

(11) The required period is—

- (a) 90 days beginning with the day after the day on which the court is nominated, or
- (b) any other period as may be agreed between the nominated court, the central authority and the issuing authority.

(12) In this regulation, “evidence in an alternative form” means—

- (a) evidence in the form of a witness statement or other document;
- (b) evidence in the form of a record of an interview with the person concerned;
- (c) evidence in any other form mutually agreed upon between the central authority, the issuing authority and the person from whom the evidence is to be received.

Hearing a person by telephone conference

37.—(1) This regulation applies where a European investigation order contains a request for a person in the United Kingdom to be heard as a witness or expert by telephone conference in proceedings before a court in the issuing State.

(2) The central authority may by notice nominate a court in the United Kingdom where the person may be heard in the proceedings by telephone conference.

(3) But where it appears to the central authority that the conditions in paragraph (4) are satisfied, it must nominate a court under paragraph (2).

(4) The conditions are that—

- (a) recognition or execution of the European investigation order cannot be refused under regulation 28, and
- (b) in any case where a person is requested to give evidence by telephone conference, that either—
 - (i) the person is unwilling to provide that evidence in an alternative form, or

⁽²⁴⁾ 1911 c. 6; section 1 was amended by section 1 of the Criminal Justice Act 1948 (c. 58) and by sections 32 and 171 of, and paragraph 16 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33). There are other amendments, extensions and applications not relevant for the purposes of these Regulations.

⁽²⁵⁾ S.I. 1979/1714 (N.I. 19).

⁽²⁶⁾ 1995 c. 39; section 45 was amended by paragraph 18 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c. 48).

- (ii) the person is willing to provide that evidence in an alternative form, but the issuing authority does not agree to receive the evidence in that form.
- (5) Anything done by a person in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.
- (6) Any statement made on oath by a witness giving evidence in pursuance of this regulation is to be treated as made in proceedings before the nominated court for the purposes of—
 - (a) section 1 of the Perjury Act 1911;
 - (b) article 3 of the Perjury (Northern Ireland) Order 1979, and
 - (c) section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995.
- (7) A person convicted of an offence as a result of the application of paragraph (6) is liable to imprisonment for a term not exceeding two years, or to a fine, or to both (but is not liable for any other penalty provided for in the provisions mentioned in paragraph (6)).
- (8) A court nominated under this regulation must give effect to the European investigation order in accordance with Part 2 of Schedule 6 before the end of the required period.
- (9) Subject to paragraphs (5) and (6) and the provisions of Part 2 of Schedule 6, evidence given pursuant to this regulation is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.
- (10) The required period is—
 - (a) 90 days beginning with the day after the day on which the court is nominated, or
 - (b) any other period as may be agreed between the nominated court, the central authority and the issuing authority.
- (11) In this regulation, “evidence in an alternative form” means—
 - (a) evidence in the form of a witness statement or other document;
 - (b) evidence in the form of a record of an interview with the person concerned;
 - (c) evidence in any other form mutually agreed upon between the central authority, the issuing authority and the person from whom the evidence is to be received.

CHAPTER 4

Execution of a European investigation order by means of a search warrant etc.

Search warrants and production orders: nominating a court

38.—(1) This regulation applies if it appears to the central authority that in order to give effect to the European investigation order it will be necessary for a court to issue a warrant or, as the case may be, make a production order under regulation 39.

(2) Where it appears to the central authority that the condition in paragraph (3) is met, it may by notice nominate a court to issue a warrant or make a production order.

(3) The condition is that the conduct in relation to which the European investigation order was issued would, if it had occurred in the relevant part of the United Kingdom, constitute an indictable offence under the law of that part of the United Kingdom.

(4) But the central authority must nominate a court under paragraph (2) where it appears that, in addition, recognition or execution of the European investigation order cannot be refused under regulation 28.

- (5) If the Secretary of State nominates a court under this regulation, he or she must—
 - (a) send a copy of the European investigation order to that court;

- (b) send a copy of the order to the chief officer of police for the police area in which the evidence is situated, and
 - (c) tell the chief officer which court has been nominated.
- (6) In relation to Scotland, in this regulation “court” means “sheriff court”.
- (7) References to “the nominated court” in regulations 39 to 41 are references to a court nominated under this regulation, or in relation to Scotland, any sheriff at a court nominated under this regulation.

Search warrants and production orders: giving effect to the European investigation order

39.—(1) Within a period prescribed by rules of court, the nominated court must give effect to the European investigation order by issuing a warrant authorising a constable—

- (a) to enter the premises to which the European investigation order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates, and
- (b) to seize and retain any evidence for which that constable is authorised to search.

(2) But in relation to England and Wales and Northern Ireland, so far as the European investigation order relates to excluded material or special procedure material, the court must give effect to the order by making a production order (subject to paragraph (8)).

(3) A production order is an order for the person who appears to the court to be in possession of material to which the order relates to produce it to a constable before the end of the period of seven days beginning with the date on which the order is made, or such longer period as the order may specify.

(4) Before giving effect to the European investigation order, the nominated court must give the chief officer of police or, as the case may be, the procurator fiscal an opportunity to be heard.

(5) The nominated court may refuse to give effect to the European investigation order only if it is of the opinion that one or more of grounds in paragraph (6) apply.

(6) The grounds are that—

- (a) the execution of the European investigation order would be contrary to the principle of *ne bis in idem*;
- (b) there are substantial grounds for believing that executing the European investigation order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998(27));
- (c) there are substantial grounds for believing that the European investigation order has been issued for the purpose of prosecuting or punishing a person on account of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions;
- (d) there are substantial grounds for believing that a person’s position in relation to the investigation or proceedings to which the European investigation order relates might be prejudiced by reason of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions.

(7) The nominated court may postpone giving effect to the European investigation order if—

- (a) to do so might prejudice a criminal investigation or criminal proceedings taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the information must not be removed from the United Kingdom.

(8) The nominated court may issue a warrant under paragraph (1) in respect of excluded material or special procedure material only where—

- (a) a person has failed to comply with a production order made in respect of the same material (whether or not the court also deals with the matter as a contempt of court), or
- (b) it appears that one or more of the conditions in paragraph (9) is satisfied.

(9) The conditions are that—

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
- (c) the material consists of information which—
 - (i) is subject to a restriction on disclosure or obligation of secrecy under the law of the issuing State, and
 - (ii) is likely to be disclosed in breach of it if a warrant is not issued;
- (d) the making of a production order may seriously prejudice the investigation or proceedings to which the European investigation order relates.

(10) Section 409 of the Proceeds of Crime Act 2002 (jurisdiction of sheriff) has effect for the purposes of paragraph (1) as if that paragraph were included in Chapter 3 of Part 8 of that Act.

(11) A constable may take away any material produced to him or her under a production order; and the material is to be treated for the purposes of section 21 of the Police and Criminal Evidence Act 1984⁽²⁸⁾ or, as the case may be, Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (access and copying) as if it has been seized by the constable.

(12) A court in England and Wales or Northern Ireland must not issue a warrant under paragraph (1) in respect of any evidence unless the court has reasonable grounds for believing that it does not consist of or include items subject to legal privilege, excluded material or special procedural material.

(13) A sheriff must not issue a warrant under paragraph (1) in respect of any evidence unless the sheriff has reasonable grounds for believing that it does not consist of items subject to legal privilege.

(14) Paragraph (12) does not prevent a warrant being issued by virtue of paragraph (8) in respect of excluded material or special procedure material.

Evidence seized under a search warrant or production order

40.—(1) A constable must retain any evidence—

- (a) seized by or produced to him or her under regulation 39;
- (b) seized by him or her by virtue of section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure)⁽²⁹⁾, in the course of a search authorised by a warrant issued under that regulation,

until it is transferred to the issuing State in accordance with regulation 31 (transfer of evidence to the issuing State).

(2) But in relation to evidence of the type mentioned in paragraph (1)(b), nothing in this regulation or in regulation 30 requires the transfer of that evidence to the issuing State—

- (a) before it has been found, on the completion of any examination required to be made by arrangements under section 53(2) of the Criminal Justice and Police Act 2001, to

⁽²⁸⁾ Section 21 was amended by paragraph 3 of Schedule 1 to the Criminal Justice Act 2003 (c. 44).

⁽²⁹⁾ 2001 c. 16.

be property within subsection (3) of that section (property which may be retained after examination), or

- (b) at a time when it constitutes property in respect of which a person is required to ensure that arrangements such as are mentioned in section 61(1) of that Act (duty to secure) are in force.

Power to revoke or vary a search warrant or production order or to authorise the release of evidence seized or produced

41.—(1) On an application by a person mentioned in paragraph (3) or (4), the nominated court may—

- (a) vary or revoke a warrant issued or production order made by it under regulation 39, or
- (b) authorise the release of any evidence retained by a constable under regulation 40(1).

(2) But the nominated court may only exercise its power under paragraph (1) to the extent that—

- (a) it is of the opinion mentioned in regulation 39(5), or
- (b) it appears to the nominated court that the European investigation order has been withdrawn or no longer has effect in the issuing State.

(3) In relation to England and Wales and Northern Ireland, the persons are—

- (a) the chief officer of police to whom a copy of the European investigation order was sent;
- (b) the constable retaining the evidence under regulation 40(1);
- (c) any other person affected by the order.

(4) In relation to Scotland, the persons are—

- (a) a procurator fiscal;
- (b) any other person affected by the order.

(5) When considering an application under this regulation, the nominated court must not entertain any challenge to the substantive reasons in relation to which the European investigation order was issued.

CHAPTER 5

Execution of a European investigation order by means of a customer information order or an account monitoring order

Interpretation

42. In this Chapter—

- “account monitoring order” has the meaning given by regulation 45(3);
- “court”, in relation to Scotland, means a sheriff court;
- “customer information order” has the meaning given by regulation 44(3);
- “financial institution” includes a person who was at any time a financial institution, but who has ceased to be a financial institution.

Nominating a court to make a customer information order or an account monitoring order

43.—(1) This regulation applies if it appears to the central authority that in order to give effect to the European investigation order it will be necessary for a court to make—

- (a) a customer information order, or

(b) an account monitoring order.

(2) Where it appears to the central authority that the condition in paragraph (3) is met, it may by notice nominate a court to give effect to the European investigation order by making one of the orders mentioned in paragraph (1).

(3) The condition is that the conduct in relation to which the European investigation order was issued would, if it had occurred in the relevant part of the United Kingdom, constitute an indictable offence under the law of that part of the United Kingdom.

(4) But the central authority must nominate a court under paragraph (2) where it appears that, in addition, recognition or execution of the European investigation order cannot be refused under regulation 28.

(5) If the Secretary of State nominates a court under this regulation, he or she must—

- (a) send a copy of the European investigation order to that court;
- (b) specify which of the orders mentioned in paragraph (1) the court is to make;
- (c) send a copy of the order to the chief officer of police for a police area appearing to the Secretary of State to be the appropriate chief officer to receive it, and
- (d) tell the chief officer which court has been nominated.

(6) If the Lord Advocate nominates a court under this regulation, he or she must specify which of the orders mentioned in paragraph (1) the nominated court is to make.

(7) References to “the nominated court” in regulations 44 to 48 are references to a court nominated under this regulation, or in relation to Scotland, any sheriff at a court nominated under this regulation.

Court’s power to make a customer information order

44.—(1) This regulation applies where a court is nominated under regulation 43 to give effect to a European investigation order by making a customer information order.

(2) Subject to regulations 46 and 47 and within a period prescribed by rules of court, the nominated court must give effect to the European investigation order by making a customer information order.

(3) A customer information order is an order that a financial institution must, on being required to do so by notice in writing given by a constable (or, in Scotland, a constable under the instruction of a procurator fiscal), provide any customer information it has which relates to the person specified in the order.

(4) A financial institution which is required to provide information under a customer information order must provide the information to the constable or procurator fiscal in such a manner, and at or by such a time or times, as the order requires.

(5) Before giving effect to the European investigation order the nominated court must give the chief officer of police or procurator fiscal an opportunity to be heard.

(6) A customer information order has effect in spite of any restriction on the disclosure of the information (however imposed).

(7) Information obtained by a constable or procurator fiscal in pursuance of a customer information order must be transferred to the issuing State in accordance with regulation 31 (transfer of evidence to the issuing State).

(8) In relation to England and Wales and Northern Ireland, section 364 of the Proceeds of Crime Act 2002 (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this regulation as if this regulation were included in Chapter 2 of Part 8 of that Act.

(9) In relation to Scotland—

- (a) section 398 (meaning of customer information) except subsections (2)(f) and 3(i), and

(b) section 409 (jurisdiction of sheriff),
of the Proceeds of Crime Act 2002 have effect for the purposes of this regulation as if this regulation were included in Chapter 3 of Part 8 of that Act.

Court's power to make an account monitoring order

45.—(1) This regulation applies where a court is nominated under regulation 43 to give effect to a European investigation order by making an account monitoring order.

(2) Subject to regulations 46 and 47 and within a period prescribed by rules of court, the nominated court must give effect to the European investigation order by making an account monitoring order.

(3) An account monitoring order is an order that a financial institution must, for the period stated in the order, provide account information of the description specified in the order to a constable (or, in Scotland, a constable under the instruction of a procurator fiscal) in the manner, and at or by the time or times, stated in the order.

(4) Account information is information relating to an account or accounts held at the financial institution specified in the order by the person so specified (whether solely or jointly with another).

(5) Before giving effect to the European investigation order the nominated court must give the chief officer of police or procurator fiscal an opportunity to be heard.

(6) Account monitoring orders have effect as if they were orders of the court, and in spite of any restriction on the disclosure of the information (however imposed).

(7) Information obtained by a constable or procurator fiscal in pursuance of an account monitoring order must be transferred to the issuing State in accordance with regulation 34 (transfer of evidence to the issuing State).

(8) In relation to Scotland, section 409 of the Proceeds of Crime Act 2002 (jurisdiction of sheriff) has effect for the purposes of this regulation as if this regulation were included in Chapter 3 of Part 8 of that Act.

Grounds for refusing to make a customer information order or an account monitoring order

46.—(1) The nominated court may refuse to make an order under regulations 44 or 45 only if it is of the opinion that one or more of the grounds in paragraph (2) apply.

(2) The grounds are that—

- (a) the execution of the European investigation order would be contrary to the principle of *ne bis in idem*;
- (b) there are substantial grounds for believing that executing the European investigation order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998);
- (c) there are substantial grounds for believing that the European investigation order has been issued for the purpose of prosecuting or punishing a person on account of that person's sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions;
- (d) there are substantial grounds for believing that a person's position in relation to the investigation or proceedings to which the European investigation order relates might be prejudiced by reason of that person's sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions.

Postponement

- 47.** The nominated court may postpone making an order under regulations 44 or 45 if—
- (a) to make the order might prejudice a criminal investigation or criminal proceedings taking place in the United Kingdom, or
 - (b) under an order made by a court in criminal proceedings in the United Kingdom, the information must not be removed from the United Kingdom.

Power to vary or revoke customer information and account monitoring orders

48.—(1) On an application made by a person mentioned in paragraph (3), the nominated court may vary or revoke a customer information order or an account monitoring order.

- (2) But the nominated court may only exercise its power under paragraph (1) to the extent that—
- (a) it is of the opinion mentioned in regulation 46(1), or
 - (b) it appears to the nominated court that the European investigation order has been withdrawn or no longer has effect in the issuing State.
- (3) The persons are—
- (a) in relation to England and Wales and Northern Ireland, a chief officer of police to whom a copy of the order was sent;
 - (b) in relation to Scotland, a procurator fiscal;
 - (c) any other person affected by the order.

(4) When considering an application under this regulation, the nominated court must not entertain any challenge to the substantive reasons in relation to which the European investigation order was issued.

Offences in relation to customer information orders

49.—(1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under paragraph (1) is liable on summary conviction—

- (a) in England and Wales, to a fine;
- (b) in Northern Ireland, to a fine not exceeding the statutory maximum;
- (c) in Scotland to a fine not exceeding level 5 on the standard scale.

(3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—

- (a) makes a statement which it knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
- (c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
- (d) on conviction on indictment, to a fine.

Offence of disclosure

- 50.**—(1) This regulation applies where—
- (a) a financial institution is specified in a customer information order or account monitoring order made in the United Kingdom under this Part, or
 - (b) the central authority receives a European investigation order under this Part for evidence to be obtained from a financial institution in connection with the investigation of an offence in reliance on Article 27 of the Directive (information on banking and other financial operations).
- (2) If the financial institution, or an employee of the financial institution, discloses any of the following information, that person is guilty of an offence.
- (3) That information is—
- (a) that the request to obtain customer information or account information, or the European investigation order mentioned in paragraph (1)(b), has been received;
 - (b) that the investigation to which the request or order relates is being carried out;
 - (c) that, in pursuance of the request or order, information has been given to the authority which made the request or order.
- (4) A financial institution guilty of an offence under this regulation is liable—
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
 - (d) on conviction on indictment, to a fine.
- (5) Any other person found guilty of an offence under this regulation is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding three months or to a fine, or to both;
 - (b) on summary conviction in Northern Ireland or in Scotland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or to both;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

CHAPTER 6

Referral to an executing authority for assistance in execution of a European investigation order

Referral to executing authorities

- 51.**—(1) A central authority may refer a European investigation order to an executing authority where the central authority considers that—
- (a) the executing authority is likely to be able to give effect to the order, and
 - (b) it is expedient for the executing authority to give effect to the order.
- (2) But the central authority must make a referral under this regulation where it considers that—
- (a) the executing authority is likely to be able to give effect to the order;
 - (b) recognition or execution of the European investigation order cannot be refused under regulation 28, and
 - (c) it will not be possible to give effect to the order unless a referral is made.
- (3) A referral made under this regulation must be accompanied by a notice specifying—

- (a) the action the executing authority is expected to take in order to give effect to the European investigation order;
 - (b) the time period within which the action should be carried out in order to comply with any requirement imposed by regulation 30, and
 - (c) details of any time period within which the executing authority should raise any objection to the central authority's decision to recognise the European investigation order, or to the central authority's decision to make a referral under this regulation.
- (4) The central authority may withdraw a referral made under this regulation.
- (5) The central authority in relation to England and Wales and Northern Ireland may not refer a European investigation order to the Director of the Serious Fraud Office under this regulation unless the authority considers that the order relates to an offence involving serious or complex fraud.

Lord Advocate's direction in relation to serious or complex fraud

- 52.**—(1) This regulation applies if it appears to the Lord Advocate that a European investigation order relates to an offence involving serious or complex fraud.
- (2) The Lord Advocate may give a direction under section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (Lord Advocate's direction)⁽³⁰⁾ for the purposes of giving effect to the order.

CHAPTER 7

Recognition and execution of a European investigation order for the temporary transfer of a prisoner

Temporary transfer of prisoners

- 53.** Where a European investigation order includes a request for the temporary transfer of a prisoner or EU prisoner in accordance with Article 22 or 23 of the Directive, the central authority must give a copy of the European investigation order—
- (a) to the Scottish Ministers, where the request relates to a prisoner in Scotland or the transfer of an EU prisoner to Scotland;
 - (b) to the Secretary of State, in any other case.

Temporary transfer of UK prisoner to issuing State for the purpose of issuing State's investigation or proceedings

- 54.**—(1) This regulation applies where the Secretary of State receives from the central authority a European investigation order for the temporary transfer of a prisoner to the issuing State for the purpose of—
- (a) giving evidence in criminal proceedings in the issuing State, or
 - (b) assisting in the issuing State in the investigation of an offence.
- (2) If satisfied that the requirement in paragraph (3) is met, the Secretary of State may give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the prisoner.
- (3) The requirement is that—
- (a) the prisoner, or
 - (b) in the circumstances mentioned in paragraph (4), a person appearing to the Secretary of State to be an appropriate person to act on the prisoner's behalf,

⁽³⁰⁾ 1995 c. 39; section 27 was amended by paragraph 62 of Schedule 5 to the Crime (International Co-operation) Act 2003.

has made a written statement consenting to be transferred for the purpose mentioned in paragraph (1) (a), or as the case may be, paragraph (1)(b).

(4) The circumstances are that it appears to the Secretary of State to be inappropriate for the prisoner to act on his or her own behalf, by reason of his or her physical or mental condition or age.

(5) If satisfied that—

- (a) the requirement in paragraph (3) is met;
- (b) recognition or execution of the European investigation order cannot be refused under regulation 28; and
- (c) in any case where the purpose of the transfer is for the prisoner to give evidence in criminal proceedings in the issuing State, it is not possible for the prisoner to give that evidence by virtue of regulation 35 (nominating a court to receive evidence from a person), regulation 36 (hearing a person through videoconference or other audio visual transmission) or regulation 37 (hearing a person by telephone conference),

the Secretary of State must give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the prisoner.

(6) A warrant under this regulation authorises—

- (a) the taking of the prisoner to a place in the United Kingdom and delivery of that prisoner at a place of departure from the United Kingdom into the custody of a person representing the appropriate authority of the issuing State, and
- (b) the bringing of the prisoner back to the United Kingdom and that prisoner's transfer in custody to the place where the prisoner is liable to be detained pursuant to the sentence or order to which the prisoner is subject.

(7) Subsections (4) to (8) of section 5 of the 1990 Act (transfer of UK prisoner to give evidence or assist investigation overseas) have effect in relation to a warrant issued under this regulation as they have effect in relation to a warrant issued under that section.

(8) In relation to a transfer from Scotland, references in this regulation to the Secretary of State are to be read as reference to the Scottish Ministers.

Temporary transfer of EU prisoner to UK for the purpose of issuing State's investigation

55.—(1) This regulation applies where the Secretary of State receives from the central authority a European investigation order for the temporary transfer of an EU prisoner to the United Kingdom for the purpose of gathering evidence in connection with a criminal investigation or criminal proceedings in the issuing State.

(2) If satisfied that the requirement in paragraph (3) is met, the Secretary of State may give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the EU prisoner.

(3) The requirement is that the issuing authority has indicated in the European investigation order that the EU prisoner has consented to being transferred for the purpose mentioned in paragraph (1).

(4) If satisfied that—

- (a) the requirement in paragraph (3) is met, and
- (b) recognition or execution of the European investigation order cannot be refused under regulation 28,

the Secretary of State must give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the EU prisoner.

(5) A warrant under this regulation authorises—

- (a) the bringing of the EU prisoner to the United Kingdom,

(b) the taking of the EU prisoner to, and detention in custody at, any place or places in the United Kingdom specified in the warrant,

(c) the returning of the EU prisoner to the issuing State.

(6) Subsections (4) to (8) of section 5 of the 1990 Act have effect in relation to a warrant issued under this regulation as they have effect in relation to a warrant issued under that section.

(7) A person is not subject to the Immigration Act 1971 in respect of that person's entry into or presence in the United Kingdom pursuant to a warrant under this regulation; but if the warrant ceases to have effect while that person is still in the United Kingdom—

(a) that person is to be treated for the purposes of that Act as having then illegally entered the United Kingdom, and

(b) the provisions of Schedule 2 to that Act have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) does not have effect in relation to directions for the person's removal given by virtue of this sub-paragraph.

(8) In relation to a transfer from Scotland, references in this regulation to the Secretary of State are to be read as references to the Scottish Ministers.

Restrictions on prosecution and detention for other matters

56.—(1) This regulation applies where an EU prisoner ("the transferred person") is transferred to the United Kingdom pursuant to a warrant issued under regulation 55.

(2) Whilst in the United Kingdom, the transferred person must not be prosecuted or detained or subjected to any other restriction of personal liberty in relation to conduct which—

(a) occurred before the person's departure from the issuing State, and

(b) was not specified in the European investigation order.

(3) Paragraph (2) ceases to apply if the transferred person is released from custody whilst in the United Kingdom, and—

(i) having been informed that his or her presence in the United Kingdom is no longer required, remains here after the expiry of the relevant period, or

(ii) having left, returns.

(4) The relevant period is 15 days beginning with the day after the transferred person is informed that his or her presence in the United Kingdom is no longer required or, if later, the day after the transferred person is released from custody.

Time spent by UK prisoner in custody overseas

57.—(1) This regulation applies where a prisoner ("P") is transferred to the issuing State pursuant to a warrant issued under regulation 54.

(2) Any period of time spent in custody outside the United Kingdom pursuant to the European investigation order must be treated for all purposes as if P had spent that period in custody in the place in the United Kingdom where P is liable to be detained pursuant to the sentence or order to which P is subject.

(3) Where P is serving a sentence and, prior to being returned to the United Kingdom, ceases to be in custody at a time when P is liable to be detained pursuant to the sentence or order to which P is subject, P must be deemed for all purposes to be unlawfully at large.

PART 4

Miscellaneous

Interception of telecommunications where no technical assistance is needed

58.—(1) This regulation applies where—

- (a) a person in the United Kingdom has lawful authority to intercept telecommunications for the purposes of carrying out an investigative measure;
- (b) it appears to that person that the communication address of the subject of the interception is being used on the territory of a participating State, and
- (c) no technical assistance from that State is needed to carry out the interception.

(2) The person must notify the participating State of the interception—

- (a) prior to the interception taking place, where the person knows that the subject is or will be on the territory of the participating State;
- (b) in any other case, immediately after the person becomes aware that the subject of the interception is or has been during the period to which the interception relates, on the territory of the participating State.

(3) Notification under paragraph (2) must—

- (a) be given using the form set out at Annex C to the Directive, and
- (b) be accompanied by a translation into the language notified by the participating State under Article 33(1)(b) of the Directive (if that language is not English).

Designation of the Directive for the purposes of the Investigatory Powers Act 2016

59. The Directive is designated as an EU mutual assistance instrument for the purposes of section 10 of the Investigatory Powers Act 2016 (see paragraph (c) of the definition of “EU mutual assistance instrument” in subsection (3) of that section).

UK authority’s duty to reimburse participating State for compensation paid

60. If—

- (a) an officer of an authority in the United Kingdom (“the UK authority”) assists, in the territory of a participating State, in the execution of a European investigation order made or validated under Part 2 of these Regulations;
- (b) whilst assisting in the execution of the order, that officer causes damage to any person, and
- (c) the participating State or any authority of that State (“the compensator”) is required, in accordance with the Directive, to pay compensation to any person for such damage,

the UK authority must pay to the compensator, on request and on the provision of satisfactory evidence, an amount equivalent to the sum paid by the compensator in respect of that damage.

Rules of court

61.—(1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings under these Regulations.

(2) The power to make rules of court under this regulation does not prejudice any existing power to make rules.

5th July 2017

Nick Hurd
Minister of State
Home Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULES

SCHEDULE 1

Regulation 2

Designated prosecutors, investigating authorities and executing authorities

PART 1

Designated public prosecutors

The Bank of England

The Director of Public Prosecutions and any Crown Prosecutor

The Director of Public Prosecutions for Northern Ireland and any Public Prosecutor

The Director of the Serious Fraud Office and any person designated under section 1(7) of the Criminal Justice Act 1987

The Environment Agency

The Financial Conduct Authority

The Prudential Regulation Authority

PART 2

Other designated prosecutors

The Attorney General for England and Wales

The Attorney General for Northern Ireland

The Northern Ireland Department for Communities

The Secretary of State for Business, Energy and Industrial Strategy

The Secretary of State for Health

The Secretary of State for Transport

The Secretary of State for Work and Pensions

PART 3

Designated investigating authorities

The Chief Constable of the British Transport Police Force

The Chief Constable of the Police Service of Northern Ireland

The Chief Officer of police for a police area in England and Wales

The Health and Safety Executive

Her Majesty's Revenue and Customs

The Ministry of Defence Police Service

The National Crime Agency
The Port of Dover Police
The Secretary of State for Health
The Secretary of State for the Home Department
The Secretary of State for Justice

PART 4

Designated executing authorities

The Chief Constable of the British Transport Police Force
The Chief Constable of the Police Service of Northern Ireland
The Chief Officer of police for a police area in England and Wales
The Director of Public Prosecutions and any Crown Prosecutor
The Director of Public Prosecutions for Northern Ireland and any Public Prosecutor
The Director of the Serious Fraud Office and any person designated under section 1(7) of the Criminal Justice Act 1987
The Financial Conduct Authority
The Health and Safety Executive
Her Majesty's Revenue and Customs
The Land Registry
The Ministry of Defence Police Service
The National Crime Agency
The Northern Ireland Department for Communities
The Northern Ireland Department of Justice
The Port of Dover Police
The Secretary of State for Business, Energy and Industrial Strategy
The Secretary of State for Defence
The Secretary of State for Environment, Food and Rural Affairs
The Secretary of State for the Home Department
The Secretary of State for Justice
The Secretary of State for Transport
The Secretary of State for Work and Pensions

SCHEDULE 2

Regulation 2

Participating States

Austria
Belgium
Bulgaria
Croatia

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Cyprus
Czech Republic
Estonia
Finland
France
Germany
Greece
Hungary
Italy
Latvia
Lithuania
Luxembourg
Malta
The Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

SCHEDULE 3

Regulation 4

Consequential amendments

PART 1

Amendments to Acts

Amendment of the Criminal Justice Act 1987

1.—(1) In section 2 of the Criminal Justice Act 1987 (powers of the Director of the Serious Fraud Office)**(31)**—

(a) in subsection (1A), for paragraph (b) substitute—

“(b) the Secretary of State, acting—

(i) under section 15(2) of the Crime (International Co-operation) Act 2003, in response to a request received from a person mentioned in section 13(2) of that Act, or

(31) 1987 c. 38; section 2 was amended by section 143 of the Criminal Justice Act 1988 (c. 33), by section 164(2) of the Criminal Justice and Public Order Act 1994 (c. 33) and by paragraph 12 of Schedule 5 to the Crime (International Co-operation) Act 2003.

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- (ii) under regulation 51 of the Criminal Justice (European Investigation Order) Regulations 2017, on a referral under that regulation of a European investigation order issued by an authority in a participating State (within the meaning of Part 3 of those Regulations).”;
- (b) for subsection (18) substitute—
 - “(18) In this section—
 - “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;
 - “evidence”, in relation to subsections (1B), (8A) and (8C) above, includes documents and other articles;
 - “overseas authority” means a person mentioned in subsection (1A)(b)(i) or an authority mentioned in subsection (1A)(b)(ii).”.

Amendment of the Criminal Justice Act 1988

2. In Schedule 13 to the Criminal Justice Act 1988(32), in paragraph 6 (letters of request etc.)(33), in sub-paragraph (1), after “2003” insert “, and no order shall be made or validated under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.”.

Amendment of the Criminal Procedure (Scotland) Act 1995

- 3.—(1) The Criminal Procedure (Scotland) Act 1995(34) is amended as follows.
- (2) In section 210 (consideration of time spent in custody), in paragraph (c) of subsection (1), after “section 47(1) of the Crime (International Co-operation) Act 2003”, insert “ or regulation 20 or 54 of the Criminal Justice (European Investigation Order) Regulations 2017”.
 - (3) In section 267A (citation of witnesses for precognition), after subsection (1) insert—
 - “(1A) Subsection (1) extends to citation for precognition by the prosecutor where a European investigation order having effect by virtue of Part 3 of the Criminal Justice (European Investigation Order) Regulations 2017 contains a request for a person in Scotland to be heard under regulations 35 to 37 of those Regulations.”.
 - (4) In section 272 (evidence by letter of request or on commission)(35), after subsection (13) insert—
 - “(14) This section does not apply to a witness who or evidence that is the subject of a European investigation order made under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.”.
 - (5) In section 273 (television link evidence from abroad)(36), after subsection (4) insert—
 - “(5) This section does not apply to a witness who or evidence that is the subject of a European investigation order made under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.”.

(32) 1988 c. 33.

(33) Paragraph 6 of Schedule 13 was amended by paragraph 16 of Schedule 5 to the Crime (International Co-operation) Act 2003.

(34) 1995 c. 46.

(35) Section 272 was amended by section 35(4) of the Criminal Proceedings etc. (Reform) (Scotland) 2007 asp 6.

(36) Section 273 was amended by section 91(2) of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13.

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Amendment of the Criminal Law (Consolidation) (Scotland) Act 1995

4.—(1) The Criminal Law (Consolidation) Scotland Act 1995⁽³⁷⁾ is amended as follows.

(2) In subsection (2) of section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (Lord Advocate’s direction)⁽³⁸⁾, for the words from “under this section” to the end, substitute

““under this section—

- (a) by virtue of section 15(4) of the Crime (International Co-operation) Act 2003,
- (b) by virtue of regulation 52 of the Criminal Justice (European Investigation Order) Regulations 2017, or
- (c) on a request made by the Attorney-General of the Isle of Man, Jersey or Guernsey acting under legislation corresponding to this Part of this Act.”.

Amendment of the Regulation of Investigatory Powers Act 2000

5.—(1) The Regulation of Investigatory Powers Act 2000⁽³⁹⁾ is amended as follows.

(2) In section 1 (unlawful interception)—

- (a) in subsection (4), after “assistance” where it appears after paragraph (c), insert “in connection with, or in the form of, the interception of communications”;
- (b) after subsection (4) (as amended by paragraph (a) above), insert—

“(4A) The Secretary of State must also secure that a request for assistance to which subsection (4B) applies is made only with lawful authority.

(4B) This subsection applies to a request for assistance on behalf of a person in the United Kingdom to the competent authorities of a country or territory outside the United Kingdom where—

- (a) the assistance is in connection with, or in form of, the interception of communications, and
- (b) the request is made in accordance with [Directive 2014/41/EU](#) of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.”.

(3) In section 20, at the end of the definition of “international mutual assistance agreement”, insert “or [Directive 2014/41/EU](#) of the European Parliament and of the Council”.

Amendment of the Criminal Justice and Police Act 2001

6. In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure to which the additional powers in section 50 of that Act apply)⁽⁴⁰⁾, at the end insert—

“Criminal Justice (European Investigation Order) Regulations 2017”

“**73R.** The power of seizure conferred by regulation 39 of the Criminal Justice (European Investigation Order) Regulations 2017 (search warrants and production orders for giving effect to a European investigation order).”.

⁽³⁷⁾ 1995 c. 39.

⁽³⁸⁾ Section 27 was amended by paragraph 62 of Schedule 5 to the Crime (International Co-operation) Act 2003.

⁽³⁹⁾ 2000 c. 23.

⁽⁴⁰⁾ 2001 c. 16.

Amendment of the Crime (International Co-operation) Act 2003

7. In subsection (2) of section 51 of the 2003 Act (general interpretation), for paragraph (a) substitute—

“(a) Denmark or the Republic of Ireland, and”.

Amendment of the Criminal Justice Act 2003

8. In section 117 of the Criminal Justice Act 2003 (hearsay evidence: business and other documents)(41), in subsection (4) for paragraph (b) substitute—

“(b) was not obtained pursuant to—

(i) a request under section 7 of the Crime (International Co-operation) Act 2003,

(ii) an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988, or

(iii) an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017,

(all of which relate to overseas evidence).”.

Amendment of the Investigatory Powers Act 2016

9.—(1) In section 10 of the Investigatory Powers Act 2016—

(a) in subsection (1), after paragraph (b) (as closing words of the subsection), insert “so far as the assistance is in connection with, or in the form of, the interception of communications.”;

(b) after subsection (2) insert—

“(2A) Subsection (2) does not apply in the case of a request for assistance in connection with, or in the form of, interception of a communication stored in or by a telecommunication system if the request is made—

(a) in the exercise of a statutory power that is exercised for the purpose of obtaining information or taking possession of any document or other property, or

(b) in accordance with a court order that is made for that purpose.”.

PART 2

Amendments to subordinate legislation

Amendment of the Criminal Justice (Evidence) (Northern Ireland) Order 2004

10. In article 21 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (hearsay evidence: business and other documents)(42), in paragraph (4) for sub-paragraph (b) substitute—

“(b) was not obtained pursuant to—

(i) a request under section 7 of the Crime (International Co-operation) Act 2003,

(41) 2003 c. 44.

(42) S.I. 2004/1501 (N.I. 10).

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- (ii) an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988,
or
- (iii) an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017,
(all of which relate to overseas evidence).”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009

11. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009(43)—

- (a) in article 3, for the text after “sections 4”, substitute “and 4B of that Act.”;
- (b) in article 4, for the text after “sections 4”, substitute “and 4B of that Act.”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009

12. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009(44)—

- (a) for article 2 substitute—
 - “2. Bulgaria and Romania are designated as participating countries under section 51(2) (b) of the Crime (International Co-operation) Act 2003 for the purposes of section 6 of that Act.”;
- (b) for article 3 substitute—
 - “3. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of section 6 of that Act.”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009

13. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009(45)—

- (a) in article 2, omit “Croatia.”;
- (b) after article 3, insert—
 - “4. Austria, Belgium, Croatia, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden are designated as participating countries under section 51(2)(b) of the Crime (International Co-operation) Act 2003 for the purposes of section 6 of that Act.”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010

14. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010(46)—

(43) S.I. 2009/613.
(44) S.S.I. 2009/106.
(45) S.S.I. 2009/441.
(46) S.I. 2010/36.

- (a) in articles 3 and 4, omit “Croatia,”;
- (b) after article 4, insert—

“5. Austria, Belgium, Croatia, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 4 and 4B of that Act.”.

SCHEDULE 4

Regulation 28

General grounds for refusal

1. The execution of the European investigation order would be impossible as a consequence of—
 - (a) an immunity or privilege under the law of the part of the United Kingdom in which the evidence to which the order relates is situated, or
 - (b) any rule of law of that part of the United Kingdom on the determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media.
2. The execution of the European investigation order would harm essential national security interests, jeopardise a source of information or involve the use of classified information relating to specific intelligence activities.
3. An investigative measure specified in the European investigation order would not be authorised in a similar domestic case under the law of the part of the United Kingdom in which the evidence to which the order relates is situated, where—
 - (a) the European investigation order has been issued in relation to proceedings brought by administrative or judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and
 - (b) the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters.
4. The execution of the European investigation order would be contrary to the principle of *ne bis in idem*.
5. The European investigation order relates to conduct which is alleged to have occurred outside the territory of the issuing State and wholly or partially in the United Kingdom, and the conduct does not constitute an offence under the general criminal law of the part of the United Kingdom in which it occurred.
6. There are substantial grounds for believing that executing the European investigation order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
7. There are substantial grounds for believing that—
 - (a) the European investigation order has been issued for the purpose of investigating or prosecuting a person on account of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions;
 - (b) a person’s position in relation to the investigation or proceedings to which the European investigation order relates might be prejudiced by reason of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions.

SCHEDULE 5

Regulation 35

Receiving evidence before a nominated court

1. In this Schedule, “nominated court” means a court nominated under regulation 35.
2. The nominated court has the same powers for securing the attendance of a person as it has for the purposes of securing the attendance of a witness in other proceedings.
3. In Scotland the nominated court has the power to issue a warrant to officers of law to cite a witness, and section 156 of the Criminal Procedure (Scotland) Act 1995 (apprehension of witness)⁽⁴⁷⁾ applies in relation to such a witness.
4. The nominated court may take evidence on oath.
5. Rules of court may, in particular, make provision in respect of persons entitled to appear to take part in proceedings and for excluding the public from the proceedings.
- 6.—(1) A person cannot be compelled to give any evidence—
 - (a) which that person could not be compelled to give in criminal proceedings in the part of the United Kingdom in which the nominated court exercises jurisdiction;
 - (b) subject to sub-paragraph (2), which that person could not be compelled to give in proceedings in the issuing State;
 - (c) if doing so would be prejudicial to the security of the United Kingdom; or
 - (d) in that person’s capacity as an officer or servant of the Crown.

(2) Sub-paragraph (1)(b) does not apply unless the issuing authority concedes the claim of the person questioned to be exempt from giving the evidence.

(3) Where the person’s claim for exemption under sub-paragraph (1)(b) is not conceded, that person may be required to give the evidence to which the claim relates (subject to the other provisions of this paragraph); but the evidence may not be forwarded to the issuing authority if a court in the issuing State upholds the claim.

(4) A certificate signed by or on behalf of the Secretary of State or, where the nominated court is in Scotland, the Lord Advocate to the effect that sub-paragraph (1)(c) applies is conclusive evidence of that fact.
7. The evidence received by the nominated court is to be transferred to the central authority for forwarding to the issuing authority.
8. So far as may be necessary to give effect to the European investigation order—
 - (a) where the evidence received consists of a document, the original or copy is to be provided,
 - (b) where it consists of any other article, the article itself, or a description, photograph or other representation of it, is to be provided.
9. The Bankers’ Books Evidence Act 1879⁽⁴⁸⁾ applies to proceedings under this Schedule as it applies to other proceedings before the court.
10. No order for costs (or in Scotland, expenses) may be made.

⁽⁴⁷⁾ 1995 c. 46; section 156 was substituted by section 16 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

⁽⁴⁸⁾ 1879 c. 11.

SCHEDULE 6

Regulations 36 and 37

Hearing a person by video-link or telephone conference

PART 1

Hearing by video-link

1. In this Part—
 - “nominated court” means a court nominated under regulation 36;
 - “overseas proceedings” and “video-link” have the meanings given by that regulation.
2. The nominated court has the same powers for securing the attendance of a person to give evidence through a video-link as it has for the purposes of securing the attendance of a witness in other proceedings.
3. In Scotland the nominated court has the power to issue a warrant to officers of law to cite a witness for the purpose of securing a person’s attendance to give evidence through the video-link, and section 156 of the Criminal Procedure (Scotland) Act 1995 applies in relation to such a witness.
4. The nominated court must establish the identity of the person concerned.
5. The person must be heard—
 - (a) in the presence of the nominated court;
 - (b) under the supervision of the court of the issuing State;
 - (c) in accordance with the laws of that State; and
 - (d) with any measures for the protection of the person concerned agreed between the central authority and the issuing authority.
6. The nominated court must intervene where it considers it necessary to do so to safeguard the rights of the person concerned.
7. A person cannot be compelled to give any evidence—
 - (a) which that person could not be compelled to give in criminal proceedings in the part of the United Kingdom in which the nominated court exercises jurisdiction;
 - (b) if doing so would be prejudicial to the security of the United Kingdom; or
 - (c) in that person’s capacity as an officer or servant of the Crown.
8. A certificate signed by or on behalf of the Secretary of State or, where the court is in Scotland, the Lord Advocate to the effect that paragraph 7(b) applies is conclusive evidence of that fact.
9. Rules of court must make provision for—
 - (a) the use of interpreters;
 - (b) the drawing up of a record of the hearing, and
 - (c) sending the record to the issuing authority.

PART 2

Hearing by telephone conference

10. In this Part, “nominated court” means a court nominated under regulation 37.

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11. The nominated court must notify the witness or expert of the time when and the place at which that person is to be heard by telephone.

12. The nominated court must—

- (a) establish the identity of the witness or expert, and
- (b) be satisfied that the witness or expert is willing to be heard by telephone.

13. The witness or expert must be heard—

- (a) in the presence of the nominated court;
- (b) under the supervision of the court of the issuing State, and
- (c) in accordance with the laws of that State.

14. Rules of court must make provision for—

- (a) the use of interpreters;
- (b) the drawing up of a record of the hearing, and
- (c) sending the record to the issuing authority.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose [Directive 2014/41/EU](#) of the European Parliament and of the Council of 3rd April 2014 regarding the European Investigation Order in criminal matters (“the Directive”) (OJ No L 130, 1.5.2014, p.1).

Part 2 gives to judicial authorities the power to make a European investigation order on the application of a prosecutor, a defendant or accused in criminal proceedings, or a constable acting with the authority of a prosecutor. Prosecuting authorities listed in Part 1 of Schedule 1 (defined as “designated public prosecutors”) are also given a power to make a European investigation order and, in England and Wales and Northern Ireland, to validate an order at the request of certain investigating authorities, such as the police. These investigating authorities are listed in Part 3 of Schedule 1.

For the purposes of Part 2, a European investigation order is an order made under regulation 6 or 7 specifying one or more investigative measures to be carried out in a ‘participating State’ for the purpose of obtaining evidence for use in a domestic (UK) criminal investigation or proceedings. Participating States are listed in Schedule 2, and include all of the Members of the European Union except for Denmark and Ireland, which are not bound by the Directive. Under regulation 6, a judicial authority may make an order where it is satisfied that a domestic criminal investigation or prosecution exists, that it is necessary and proportionate to make the order, and where the investigative measures to be specified in the order could lawfully have been ordered or undertaken under the same conditions in a similar domestic case. For certain types of investigative measures such as those relating to video and telephone conferencing, financial information, and the interception of telecommunications, additional conditions and requirements are imposed by Chapter 2 of Part 2. Designated public prosecutors must apply the same tests when making or validating a European investigation order under regulation 7.

Regulation 11 is intended to assist the judicial authority or designated public prosecutor when deciding whether an investigative measure order could lawfully have been ordered or undertaken

under the same conditions in a similar case. It sets out specified matters the decision-maker must take into account for certain types for investigative measures (those which require some form of court or other authorisation before they can be carried out domestically, for example the search of a person's property under a warrant issued under section 8 of the Police and Criminal Evidence Act 1984 or the interception of communications under the Regulation of Investigatory Powers Act 2000). Regulation 11 does not prevent the decision-maker from taking into account other matters, nor does it require the decision-maker to take the specified matters into account in relation to investigative measures which fall outside the scope of paragraphs (2) to (6) (for example measures which are "non coercive" and which domestically, are not subject to any form of court or statutory authorisation process).

Regulation 11(5) allows the decision-maker to disregard any provision of domestic law imposing a procedural requirement which, by virtue of paragraph (2)(e), it would otherwise be required to take into account. Provisions which may be disregarded are those which impose procedural requirements which cannot effectively be applied when making a European investigation order. An example would be the requirement to give notice to an overseas respondent or other affected person prior to making an application for production order, because of the impracticalities involved.

Regulation 8 sets out the form of a European investigation order and certain minimum information it must contain. Regulation 9 deals with the procedure for transmission of an order to the relevant participating State, once it has been made by a judicial authority or designated public prosecutor. Under regulation 10, a judicial authority or designated public prosecutor may make or revoke a European investigation order.

Chapter 3 of Part 2 transposes provisions of the Directive relating to the temporary transfer of prisoners for the purpose of UK investigations and proceedings. A European investigation order may be issued requesting the transfer of a prisoner in the UK to a participating State for the purpose of assisting there in relation to the UK investigation, or for the transfer of a prisoner from a participating State to the UK to assist here in a UK investigation or to take part in criminal proceedings.

Part 3 deals with European investigation orders received from a participating State (termed "the issuing State") by one of the UK's central authorities, which must be given effect to ("recognised and executed") in accordance with the UK's obligations under the Directive. Regulation 26 sets out the procedural steps which must be taken where a European investigation order is first received by a central authority (including acknowledgement of receipt) and requires the authority to take a decision on execution and recognition. The central authority for England and Wales and Northern Ireland is the Secretary of State, in Scotland it is the Lord Advocate.

Regulation 28 sets out the circumstances where recognition or execution of a European investigation order may be refused. Different grounds for refusal are available depending on the nature of the investigative measure requested. Some grounds for refusal are always available in principle; these are set out in Schedule 4. Regulation 27 permits the central authority to go back to issuing authority if more information is required in order to take a decision on recognition or execution, for example in order to work out whether a particular ground for refusal applies. Under regulation 29, recognition or execution of a European investigation order may be postponed if it might prejudice a UK investigation or proceedings or if the evidence sought is already being used in such proceedings.

Regulation 30 sets out the time limits within which a central authority must take its decision on the recognition and execution of a European investigation order, and within which the order must be executed (the investigative measure carried out) where a decision to recognise and execute has been taken. These time limits can be extended in certain circumstances.

Regulation 31 deals with the transfer of the proceeds of an investigative measure (the evidence) to the issuing State once the investigative measure has been carried out, or where the evidence is already in possession of the relevant UK authorities.

Regulation 32, which does not extend to Scotland, permits the Commissioners of Her Majesty's Revenue and Customs ('the Commissioners') to exercise certain of the Secretary of State's functions under Part 3 where the European investigation order relates wholly or mainly to conduct which, if it

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occurred in the UK, would be criminal conduct relating to the Commissioners' functions. Where the Commissioners act under this power, Officers of Revenue and Customs may carry out the functions of constables in relation to the execution of search warrants and production orders made as a result. Under regulation 33, functions conferred on a constable under the provisions mentioned in that regulation may be exercised by a general customs official in relation to an offence, or offences, which if committed in the UK would relate to a general customs matter, and by a customs revenue official in relation to an offence, or offences, which if committed in the UK would relate to a customs revenue matter.

Regulation 34 applies where an authority of the issuing State requests to participate in the execution of a European investigation order in the UK, and extends civil and criminal liability provisions applying to police and NCA officers to persons authorised to assist under the regulation, where they are assisting police or the NCA in the execution of the order.

Regulations 35, 36, and 37 allow and, in certain circumstances, require a central authority to nominate a court to give effect to European investigation orders where a search warrant or production order is needed, or where a person is required to give evidence before a court in the UK or to take part in proceedings overseas via video or telephone conference under the supervision of a UK judicial authority. Schedule 5 and Parts 1 and 2 of Schedule 6 apply once a court has been nominated under regulations 35 and 36 and 37 respectively, and set out the procedure which the court must follow in order to give effect to the European investigation order.

Regulations 39 and 40 set out the procedure for giving effect to a European investigation order by making a search warrant or production order, and confer powers of entry, search and seizure where a warrant is issued. Under regulation 41 a court may in limited circumstances vary or revoke a search warrant or production order issued for the purpose of giving effect to a European investigation order.

Chapter 5 of Part 3 allows, and in certain circumstances, requires a central authority to nominate a court for the purpose of giving effect to European investigation orders relating to certain types of financial information. Once nominated, a court is obliged to make a customer information or account monitoring order unless certain grounds apply. Functions are conferred on constables in order to enforce these orders. Regulation 49 creates an offence of failing to comply with a customer information order, and regulation 50 creates disclosure offences (akin to domestic "tipping off" offences) relating to these orders and to requests for banking information made in reliance on Article 27 of the Directive.

Under Regulation 51, where it decides to recognise a European investigation order a central authority may (and in certain circumstances must) refer a European investigation order to an executing authority for that authority to carry out one or more of the investigative measures specified. Where a referral is made, the executing authority becomes subject to the time limit and evidence transfer obligations imposed elsewhere in the Regulations. Part 4 of Schedule 1 lists the executing authorities for England and Wales and Northern Ireland (in Scotland the only designated executing authority is the Lord Advocate – see the definition in regulation 25). Regulation 52 makes provision for the Lord Advocate to make a direction relating to the use of certain investigatory powers which apply in domestic cases of serious and complex fraud (equivalent to a referral in to the Serious Fraud Office in England and Wales or Northern Ireland).

Chapter 7 allows and in some cases requires the Secretary of State (in Scotland the Scottish Ministers) to give effect to a European investigation order by issuing a warrant for the transfer of a UK prisoner to the issuing State, or the transfer of a prisoner from the issuing State to the UK.

Part 4 contains miscellaneous provisions relating to the interception of telecommunications and reimbursement where an officer of a UK authority taking part in the execution of a European investigation order overseas causes damage. Regulation 59 designates the Directive as an EU Mutual Assistance instrument for the purposes of section 10 of the Investigatory Powers Act 2016 (not yet in force), enabling the UK to give effect to European investigation orders relating to the interception of telecommunications.

Schedule 3 contains consequential amendments. Paragraphs 11 to 14 make changes to participating country designation orders made under section 51(2) of the Crime (International Co-operation Act) 2003 (“the 2003 Act”). For Member States other than Denmark and Ireland, the Directive largely replaces existing EU mutual assistance regimes, as implemented in the United Kingdom through the 2003 Act. The effect of the amendments is twofold: firstly they ensure that member States who will cease to be “participating countries” for the purposes of the Act (by virtue of the amendment made by paragraph 7 of the Schedule) will remain designated for the purpose of provisions relating to service of process, which are outside the scope of the Directive. Secondly they remove designations for the “in scope” provisions of the 2003 Act for Member States not covered by the amendment made by paragraph 7 (i.e. those countries which were not Member States on the day the relevant provision of the 2003 Act entered into force).

Schedule 4 lists common grounds for refusal (those grounds for refusal which are in principle available irrespective of the nature of the investigative measure requested). Schedules 5 and 6 deal with the procedure which must be followed where a court is nominated to receive evidence, or to oversee a person’s participation in overseas proceedings by video or telephone conference.

A full impact assessment has not been produced for these Regulations as no impact on the private, voluntary or public sectors is foreseen.