



# Crime (Overseas Production Orders) Act 2019

## 2019 CHAPTER 5

### *Overseas production orders*

#### **1 Making of overseas production order on application**

- (1) A judge may, on an application by an appropriate officer, make an overseas production order against a person in respect of electronic data if each of the requirements for the making of the order is fulfilled (see section 4).
- (2) An application for an overseas production order must—
  - (a) specify the designated international co-operation arrangement by reference to which the application is made, and
  - (b) specify or describe the electronic data in respect of which the order is sought.
- (3) An appropriate officer applying for an overseas production order must not specify or describe in the application for the order electronic data that the appropriate officer has reasonable grounds for believing consists of or includes excepted electronic data.
- (4) An overseas production order is an order made under this Act that either—
  - (a) requires the person against whom the order is made to produce the electronic data specified or described in the order, or
  - (b) requires the person against whom the order is made to give access to the electronic data specified or described in the order.
- (5) In this Act “designated international co-operation arrangement” means a relevant treaty which—
  - (a) relates (in whole or in part) to the provision of mutual assistance in connection with the investigation or prosecution of offences, and
  - (b) is designated by the Secretary of State by regulations.
- (6) For the purposes of subsection (5) a treaty is a relevant treaty if a Minister of the Crown has laid before Parliament a copy of the treaty under section 20(1)(a) of the Constitutional Reform and Governance Act 2010.

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*Status: This is the original version (as it was originally enacted).*

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(“Treaty” and “Minister of the Crown” have the same meaning for the purposes of this section as they have for the purposes of Part 2 of that Act.)

(7) In this Act—

“appropriate officer” has the meaning given by section 2;

“electronic data” and “excepted electronic data” have the meanings given by section 3;

“judge” means—

- (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;
- (b) in relation to Scotland, a judge of the High Court of Justiciary or the sheriff;
- (c) in relation to Northern Ireland, a Crown Court judge.

## 2 Appropriate officers

(1) In this Act “appropriate officer” means—

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

- (i) a constable,
- (ii) an officer of Revenue and Customs,
- (iii) a member of the Serious Fraud Office,
- (iv) an accredited financial investigator,
- (v) a counter-terrorism financial investigator,
- (vi) a person appointed by the Financial Conduct Authority under section 168(3) or (5) of the Financial Services and Markets Act 2000 to conduct an investigation, or
- (vii) a person of a description specified in regulations made by the Secretary of State;

(b) in relation to Scotland—

- (i) a procurator fiscal,
- (ii) a constable,
- (iii) an officer of Revenue and Customs,
- (iv) a person appointed by the Financial Conduct Authority under section 168(3) or (5) of the Financial Services and Markets Act 2000 to conduct an investigation, or
- (v) a person of a description specified in regulations made by the Secretary of State.

(2) An accredited financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a confiscation investigation or a money laundering investigation within the meaning of Part 8 of the Proceeds of Crime Act 2002 (see section 341 of that Act).

(3) A counter-terrorism financial investigator other than a Schedule 5A counter-terrorism financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a terrorist investigation so far as relating to terrorist property.

- (4) A Schedule 5A counter-terrorism financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a terrorist financing investigation.
- (5) A person mentioned in any of sub-paragraphs (ii) to (v) of subsection (1)(b) may exercise a function conferred by a provision of this Act only if authorised to do so by a procurator fiscal.
- (6) A certificate of a procurator fiscal that a person mentioned in any of sub-paragraphs (ii) to (v) of subsection (1)(b) had authority to exercise a function conferred by a provision of this Act is conclusive evidence of that fact.
- (7) If regulations under subsection (1)(a)(vii) describe a person by reference to the person being authorised by another person, the regulations may include provision which has a similar effect to the provision made by subsection (6).
- (8) In this section—
  - “accredited financial investigator” has the same meaning as in the Proceeds of Crime Act 2002 (see section 3 of that Act);
  - “counter-terrorism financial investigator” means a person who is accredited—
    - (a) by virtue of section 63F(4)(a) of the Terrorism Act 2000 in relation to that Act, or
    - (b) by virtue of section 63F(4)(c) of the Terrorism Act 2000 in relation to Schedule 5 or 5A to that Act;
  - “Schedule 5A counter-terrorism financial investigator” means a person who is accredited by virtue of section 63F(4)(c) of the Terrorism Act 2000 in relation to Schedule 5A to that Act and not in relation to Schedule 5 to that Act;
  - “terrorist financing investigation” has the same meaning as in Part 1 of Schedule 5A to the Terrorism Act 2000 (see paragraph 4 of that Schedule);
  - “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act);
  - “terrorist property” has the same meaning as in the Terrorism Act 2000 (see section 14 of that Act).

### **3 Meaning of “electronic data” and “excepted electronic data”**

- (1) This section applies for the purposes of this Act.
- (2) “Electronic data” means data stored electronically.
- (3) “Excepted electronic data” means electronic data that is—
  - (a) an item subject to legal privilege, or
  - (b) a personal record which is a confidential personal record.
- (4) Where the person against whom an overseas production order is sought is a telecommunications operator, this Act applies as if references to excepted electronic data included electronic data that is communications data.
- (5) Where an application for an overseas production order is made for the purposes of a terrorist investigation other than a terrorist financing investigation, this Act applies as if references to excepted electronic data did not include electronic data that is a personal record which is a confidential personal record.

- (6) “Item subject to legal privilege”—
- (a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
  - (b) in relation to Scotland, has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act);
  - (c) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 ([S.I. 1989/1341 \(N.I. 12\)](#)) (see Article 12 of that Order).
- (7) “Personal record” means a record concerning an individual (“P”) (whether living or dead) who can be identified from the record and relating to—
- (a) P’s physical or mental health,
  - (b) spiritual counselling or assistance given, or to be given, to P, or
  - (c) counselling or assistance given, or to be given, to P for the purposes of P’s personal welfare by—
    - (i) any voluntary organisation,
    - (ii) any individual who by reason of an office or occupation has responsibilities for P’s personal welfare, or
    - (iii) any individual who by reason of an order of a court has responsibilities for P’s supervision.
- (8) A personal record is a “confidential personal record” if—
- (a) it was created in circumstances giving rise to an obligation of confidence owed to P and the obligation continues to be owed, or
  - (b) it is held subject to a restriction on disclosure, or an obligation of secrecy, contained in an enactment (whenever passed or made).
- (9) In this section—
- “communications data” and “telecommunications operator” have the same meaning as in the Investigatory Powers Act 2016 (see section 261 of that Act);
  - “terrorist financing investigation” has the same meaning as in Part 1 of Schedule 5A to the Terrorism Act 2000 (see paragraph 4 of that Schedule);
  - “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act).

#### **4 Requirements for making of order**

- (1) The requirements for the making of an overseas production order are—
- (a) the requirements set out in subsections (2) to (7), and
  - (b) such additional requirements as are specified in regulations made by the Secretary of State (so far as applicable).
- (2) The judge must be satisfied that there are reasonable grounds for believing that the person against whom the order is sought—
- (a) operates in a country or territory outside the United Kingdom which is a party to, or participates in, the designated international co-operation arrangement specified in the application for the order, or
  - (b) is based in a country or territory outside the United Kingdom which is a party to, or participates in, the designated international co-operation arrangement specified in the application for the order.

- (3) The judge must be satisfied that—
- (a) there are reasonable grounds for believing that an indictable offence has been committed and proceedings in respect of the offence have been instituted or the offence is being investigated, or
  - (b) the order is sought for the purposes of a terrorist investigation.
- (4) The judge must be satisfied that there are reasonable grounds for believing that the person against whom the order is sought has possession or control of all or part of the electronic data specified or described in the application for the order.
- (5) The judge must be satisfied that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be of substantial value (whether or not by itself) to the proceedings or investigation mentioned in subsection (3)(a) or, as the case may be, to a terrorist investigation.
- (6) The judge must be satisfied that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be relevant evidence in respect of the offence mentioned in subsection (3)(a).
- This requirement does not apply where the order is sought for the purposes of a terrorist investigation.
- (7) The judge must be satisfied that there are reasonable grounds for believing that it is in the public interest for all or part of the electronic data specified or described in the application for the order to be produced or, as the case may be, accessed having regard to—
- (a) the benefit likely to accrue, if the data is obtained, to the proceedings or investigation mentioned in subsection (3)(a) or, as the case may be, to a terrorist investigation, and
  - (b) the circumstances under which the person against whom the order is sought has possession or control of any of the data.
- (8) For the purpose of subsection (2)—
- (a) a person operates in a country or territory outside the United Kingdom if the person creates, processes, communicates or stores data by electronic means in that country or territory (whether or not the person also creates, processes, communicates or stores data by electronic means in the United Kingdom);
  - (b) a person is based in a country or territory outside the United Kingdom—
    - (i) in the case of an individual, if the individual's habitual place of residence is in that country or territory;
    - (ii) in the case of a body corporate, if the body is incorporated in, or has its principal place of business in, that country or territory;
    - (iii) in any other case, if the person's principal place of business is in, or the person's activities are principally conducted in, that country or territory.
- (9) For the purpose of subsection (3)(a)—
- (a) an offence under the law of Scotland is an indictable offence if it may be tried on indictment in Scotland;
  - (b) an offence under the law of Northern Ireland is an indictable offence if it is an offence which, if committed by an adult, is triable on indictment in Northern Ireland (whether or not it is also triable by a court of summary jurisdiction).

(As regards an offence under the law of England and Wales, see Schedule 1 to the Interpretation Act 1978.)

- (10) An offence under the law of Northern Ireland which would be triable only by a court of summary jurisdiction but for Article 29 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)), or any other statutory provision which requires the offence to be tried on indictment at the instance of the accused or the prosecution, is not an indictable offence for the purpose of subsection (3)(a).
- (11) For the purpose of subsection (6), "relevant evidence", in relation to an offence, means anything that would be admissible in evidence in proceedings in respect of the offence.
- (12) In this section, "terrorist investigation" has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act).

## 5 Contents of order

- (1) The electronic data specified or described in an overseas production order may be all or part of the electronic data specified or described in the application for the order (subject to subsections (2) and (3)).
- (2) The judge must not specify or describe in the order electronic data that the judge has reasonable grounds for believing consists of or includes excepted electronic data.
- (3) If the requirement in section 4(5) or (7) is fulfilled by reference to part only of the electronic data specified or described in the application for the order, the judge must not specify or describe in the order electronic data by reference to which the requirement is not fulfilled.
- (4) An overseas production order must specify—
  - (a) the person, or the description of person, to whom the electronic data specified or described in the order must be produced or, as the case may be, to whom access to the electronic data specified or described in the order must be given, and
  - (b) the period by the end of which the electronic data specified or described in the order must be produced or, as the case may be, access to the electronic data specified or described in the order must be given.
- (5) The period specified by virtue of subsection (4)(b) must be a period of seven days beginning with the day on which the order is served, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances.

## 6 Effect of order

- (1) A requirement in an overseas production order to produce the electronic data specified or described in the order is a requirement to produce the electronic data in a form—
  - (a) in which it can be taken away, and
  - (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (2) A requirement in an overseas production order to give access to the electronic data specified or described in the order is a requirement—
  - (a) to give access to the electronic data in a form in which it is visible and legible, and

- (b) if so required by the specified person or, as the case may be, by a person of the specified description, to produce the electronic data in a form—
  - (i) in which it can be taken away, and
  - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) In subsection (2)(b), “specified” means specified in the overseas production order by virtue of section 5(4)(a).
- (4) The requirement to produce or, as the case may be, give access to electronic data imposed by an overseas production order on the person against whom it is made—
  - (a) applies regardless of where the electronic data is stored,
  - (b) does not require the person to produce or, as the case may be, give access to any electronic data that is excepted electronic data,
  - (c) does not require the person to do anything that (taking into account the existence of the overseas production order) would result in the person contravening the data protection legislation, and
  - (d) has effect, subject to paragraph (c), in spite of any restriction on the disclosure of information (however imposed).

## 7 Variation or revocation of order

- (1) A judge may, on an application by a person mentioned in subsection (2)—
  - (a) vary an overseas production order;
  - (b) revoke an overseas production order.
- (2) The persons who may apply are—
  - (a) the appropriate officer who applied for the order or an equivalent appropriate officer,
  - (b) any person affected by the order,
  - (c) in relation to England and Wales and Northern Ireland, the Secretary of State, and
  - (d) in relation to Scotland, the Lord Advocate or (if not otherwise able to apply by virtue of paragraph (a)) a procurator fiscal.
- (3) An application for the variation of an overseas production order must—
  - (a) specify the designated international co-operation arrangement by reference to which the application is made, and
  - (b) specify or describe the electronic data in respect of which the varied order is sought (which may include electronic data not specified or described in the original order).
- (4) A person applying for the variation of an overseas production order must not specify or describe in the application for the variation of the order electronic data that the person has reasonable grounds for believing consists of or includes excepted electronic data.
- (5) A judge may vary an overseas production order only if—
  - (a) the requirements in section 4(2) and (3) continue to be fulfilled,
  - (b) the requirements in section 4(4) to (7) are fulfilled in relation to the electronic data specified or described in the application for the variation of the order, and
  - (c) such additional requirements specified in regulations under section 4(1)(b) as are applicable—



- (i) continue to be fulfilled, or
  - (ii) where they relate to electronic data specified or described in an application for an order, are fulfilled in relation to the electronic data specified or described in the application for the variation of the order.
- (6) Unless the context otherwise requires, references in this Act to an overseas production order include one that is varied under this section and accordingly, in the application of this Act in relation to the variation of an overseas production order—
  - (a) references (however expressed) to an application for an overseas production order are to be read as references to the application for the variation of the order;
  - (b) references (however expressed) to the person against whom an overseas production order is sought are to be read as references to the person against whom the order was made;
  - (c) references (however expressed) to the making of an overseas production order are to be read as references to the variation of the order.
- (7) For the purpose of subsection (2)(a), an appropriate officer is an equivalent appropriate officer in relation to an application for the variation or revocation of an overseas production order if—
  - (a) the appropriate officer falls within the same sub-paragraph of section 2(1)(a) or (b) as the appropriate officer who applied for the order, and
  - (b) where that sub-paragraph is sub-paragraph (vii) of section 2(1)(a) or sub-paragraph (v) of section 2(1)(b), the appropriate officer is of the same description as the appropriate officer who applied for the order.

## **8 Inclusion of non-disclosure requirement in order**

- (1) A judge making an overseas production order may include a non-disclosure requirement in the order.
- (2) A non-disclosure requirement is a requirement imposed on the person against whom the order is made not to disclose the making of the order or its contents to any person except—
  - (a) with the leave of a judge, or
  - (b) with the written permission of the appropriate officer who applied for the order or an equivalent appropriate officer.
- (3) An overseas production order that includes a non-disclosure requirement must specify or describe when the requirement is to expire.
- (4) A judge revoking an overseas production order that includes an unexpired non-disclosure requirement may order that the person against whom the overseas production order was made is to remain subject to the non-disclosure requirement.
- (5) An order under subsection (4) may specify or describe a different time when the non-disclosure requirement is to expire than that specified or described in the overseas production order that is being revoked.
- (6) For the purpose of subsection (2)(b), an appropriate officer is an equivalent appropriate officer in relation to an overseas production order if—
  - (a) the appropriate officer falls within the same sub-paragraph of section 2(1)(a) or (b) as the appropriate officer who applied for the order, and



- (b) where that sub-paragraph is sub-paragraph (vii) of section 2(1)(a) or sub-paragraph (v) of section 2(1)(b), the appropriate officer is of the same description as the appropriate officer who applied for the order.