
STATUTORY INSTRUMENTS

2014 No. 3141

CRIMINAL LAW

DATA PROTECTION

The Criminal Justice and Data Protection
(Protocol No. 36) Regulations 2014

Made - - - - 2nd December 2014

Coming into force in accordance with regulation 1

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 ^{M1} in relation to criminal justice ^{M2} and data protection ^{M3}, in exercise of the powers conferred by that section, makes the following Regulations.

A draft of the Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 2(2) of, and paragraph 2(2) of Schedule 2 to, that Act.

Marginal Citations

- M1** 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 section 3(3) of, and Part 1 of the Schedule to, the [European Union \(Amendment\) Act 2008 \(c. 7\)](#).
- M2** S.I. 2012/2752.
- M3** S.I. 1998/2793.

PART 1

General

Citation and commencement

1. These Regulations—
 - (a) may be cited as the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014; and
 - (b) come into force on the day after the day on which they are made.

PART 2

Proceeds of Crime (Foreign Property and Foreign Orders)

CHAPTER 1

General

Extent

2. In this Part—
- (a) Chapter 2 and regulations 19 and 20 extend to England and Wales only;
 - (b) Chapter 3, Schedule 1 and regulations 21 and 22 extend to Scotland only; and
 - (c) Chapter 4, Schedule 2 and regulations 23 and 24 extend to Northern Ireland only.

Interpretation

- 3.—(1) In, and for the purposes, of this Part—
- “listed 2003 Framework Decision offence” means an offence described in Article 3(2) of the 2003 Framework Decision;
 - “listed 2006 Framework Decision offence” means an offence described in Article 6(1) of the 2006 Framework Decision;
 - “the 1995 Act” means the Proceeds of Crime (Scotland) Act 1995 ^{M4};
 - “the 2002 Act” means the Proceeds of Crime Act 2002 ^{M5};
 - “the 2003 Framework Decision” means Council Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence ^{M6};
 - “the 2006 Framework Decision” means Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders ^{M7};
- F1**
...
- (2) A reference in this Part to—
- (a) property includes a reference to property of any description, whether corporeal or incorporeal, moveable or immovable, and legal documents and instruments evidencing title to or interest in such property;
 - (b) property used for the purposes of an offence includes a reference to property part of which has been used for those purposes;
 - (c) the proceeds of an offence or criminal conduct includes a reference to—
 - (i) any property which wholly or partly, and directly or indirectly, represents the proceeds of an offence (including payments or other rewards in connection with the commission of an offence); and
 - (ii) any property which is the equivalent to the full value or part of the value of the property specified in paragraph (i).

F1 Words in reg. 3(1) omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(2)**

Marginal Citations

M4 1995 c. 43.

- M5** 2002 c. 29.
M6 OJ No. L 196, 2.8.2003, p. 45.
M7 OJ No. L 328, 24.11.2006, p. 59.

Consequential amendments

4. In the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 ^{M8}—
- (a) in article 20 (applications to give effect to external orders), in paragraph (2), after “an order” insert “ under this Order ”;
 - (b) in article 66 (applications to give effect to external orders), in paragraph (2), after “an order” insert “ under this Order ”; and
 - (c) in article 106 (applications to give effect to external orders), in paragraph (2), after “an order” insert “ under this Order ”.

Marginal Citations

- M8** [S.I. 2005/3181](#), to which there are amendments not relevant to these Regulations.

CHAPTER 2

England and Wales

Interpretation

5. In this Chapter—
- “domestic confiscation order” means a confiscation order under section 6 of the 2002 Act (making of order) ^{M9} (but see regulation 20);
- “domestic restraint order” means a restraint order under section 41 of the 2002 Act (restraint orders) ^{M10} (but see regulation 19);
- “relevant prosecutor” means the Director of Public Prosecutions or the Director of the Serious Fraud Office;
- “specified information” means—
- (a) in relation to a certificate under regulation 6, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;
 - (b) in relation to a certificate under regulation 11, any information required to be given by the form of certificate annexed to the 2006 Framework Decision^{F2};
- “working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971]

- F2** Words in [reg. 5](#) inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(3)**

Marginal Citations

- M9** Section 6 was amended by section 41 of, and paragraph 75 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), section 74 of, and paragraphs 1 and 2 of Schedule 8 to, the [Serious Crime Act 2007 \(c. 27\)](#), and section 10 of, and paragraphs 11 and 12 of the Schedule to, the [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#).

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

M10 Section 41 was amended by section 46 of the [Crime and Courts Act 2013 \(c. 22\)](#) on a day to be appointed.

Domestic restraint orders: certification

6.—(1) If any of the property to which an application for a domestic restraint order relates is property in a member State other than the United Kingdom, the prosecutor may ask the Crown Court to make a certificate under this regulation.

(2) The Crown Court may make a certificate under this regulation if—

- (a) it makes a domestic restraint order in relation to property in the other member State, and
- (b) it is satisfied that there is a good arguable case that the property—
 - (i) has been or is likely to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.

(3) A certificate under this regulation is a certificate which—

- (a) is made for the purposes of the 2003 Framework Decision, and
- (b) gives the specified information.

(4) If the Crown Court makes a certificate under this regulation, the domestic restraint order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic restraint order is to have the same relevant powers in respect of a certificate under this regulation.

(6) For that purpose “relevant powers” means the powers—

- (a) to consider an appeal,
- (b) to consider an application for reconsideration, variation or discharge, and
- (c) to make an order on any such appeal or application.

Sending domestic restraint orders and certificates overseas

7.—(1) If a certificate is made under regulation 6, the domestic restraint order and the certificate are to be forwarded by the prosecutor to—

- (a) a court exercising jurisdiction in the other member State where the property is situated, or
- (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The domestic restraint order and the certificate must be accompanied by a domestic confiscation order, unless the certificate indicates when the Crown Court expects a domestic confiscation order to be sent.

(3) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(4) The certificate must be signed by or on behalf of the Crown Court and must include a statement as to the accuracy of the information given in it.

(5) The signature may be an electronic signature.

(6) If the domestic restraint order and the certificate are not accompanied by a domestic confiscation order, but a domestic confiscation order is subsequently made, it is to be sent to the prosecutor for forwarding as mentioned in paragraph (1).

Sending overseas restraint orders to the court

8.—(1) In a case where—

- (a) a relevant prosecutor receives an overseas restraint order from the court or authority which made or confirmed the order, and
- (b) conditions A to C are met,

the relevant prosecutor must send a copy of the order to the Crown Court.

(2) An overseas restraint order is an order made by an appropriate court or authority in a member State which—

- (a) relates to—
 - (i) criminal proceedings instituted in the member State, or
 - (ii) a criminal investigation being carried on there; and
- (b) prohibits dealing with property which is in England and Wales and which the appropriate court or authority considers to be property that—
 - (i) has been or is likely to be used for the purposes of criminal conduct, or
 - (ii) is the proceeds of criminal conduct.

(3) Condition A is that the action which the appropriate court or authority considered would constitute or, as the case may be, constituted the criminal conduct is not action done as an act of terrorism or for the purposes of terrorism (within the meaning of paragraph 11D(3) of Schedule 4 to the Terrorism Act 2000^{M11} (overseas freezing orders)).

(4) Condition B is that the order received by the relevant prosecutor is accompanied by a certificate which—

- (a) gives the specified information;
- (b) is signed by or on behalf of the court or authority which made or confirmed the order;
- (c) includes a statement as to the accuracy of the information given in it; and
- (d) if it is not in English, includes a translation of it into English (or, if appropriate, Welsh).

(5) For the purposes of Condition B—

- (a) the certificate may be treated as giving any specified information which is not given in it if the relevant prosecutor has the information in question;
- (b) the signature may be an electronic signature.

(6) Condition C is that—

- (a) the order is accompanied by another order made by [^{F3}an appropriate court or authority] in the member State for the confiscation of the property; or
- (b) such an order for the confiscation of the property may be made and the certificate indicates when that order is expected to be sent.

(7) An appropriate court or authority in a member State in relation to an overseas restraint order is—

- (a) a court exercising criminal jurisdiction in the country,
- (b) a prosecuting authority in the country, or
- (c) any other authority in the country which appears to the relevant prosecutor to have the function of making such orders.

(8) References in this Chapter to an overseas restraint order include its accompanying certificate.

(9) In this regulation “criminal conduct” means—

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (a) a listed 2003 Framework Decision offence; or
- (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there.

F3 Words in [reg. 8\(6\)\(a\)](#) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), [regs. 1\(b\), 2\(4\)](#)

Marginal Citations

M11 [2000 c. 11](#); paragraph 11D was inserted by section 90 of, and paragraphs 1 and 3 of Schedule 4 to, the [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#).

Giving effect to overseas restraint orders

9.—(1) Subject to paragraph (2), where the Crown Court receives a copy of an overseas restraint order sent by the relevant prosecutor in accordance with regulation 8, the Court must consider giving effect to the order no later than the end of the next working day after the relevant day.

(2) In exceptional circumstances, the Crown Court may delay its consideration of the overseas restraint order, provided that it does consider giving effect to the order no later than the end of the fifth working day after the relevant day.

(3) Subject to paragraph (4), the Crown Court may consider giving effect to the overseas restraint order—

- (a) at a hearing, which must be in private unless the Court directs otherwise; or
- (b) without a hearing.

(4) The Crown Court must not consider giving effect to the overseas restraint order unless the relevant prosecutor—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(5) The Crown Court may decide not to give effect to the overseas restraint order only if, in its opinion, giving effect to it would be—

- (a) impossible as a consequence of an immunity under the law of England and Wales; or
- (b) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 ^{M12}).

(6) The Crown Court may postpone giving effect to an overseas restraint order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.

(7) In this regulation, “relevant day” means the day on which a copy of an overseas restraint order sent by the relevant prosecutor in accordance with regulation 8 is received by the court.

Marginal Citations

M12 [1998 c. 42](#).

Registration and enforcement of overseas restraint orders

10.—(1) Where the Crown Court decides to give effect to an overseas restraint order, it must—

- (a) direct its registration as an order in that court, and
- (b) give directions for notice of the order to be given to any person affected by it.

(2) For the purpose of enforcing an overseas restraint order registered in the Crown Court, the order is to have effect as if it were an order made by that court.

(3) Subject to paragraph (4), the Crown Court may cancel the registration of the order, or vary the property to which the order applies, on an application by a relevant prosecutor, or any other person affected by it, if or to the extent that—

- (a) the Crown Court is of the opinion mentioned in regulation 9(5), or
- (b) the Crown Court is of the opinion that the order has ceased to have effect in the member State.

(4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the Crown Court;
 - (ii) the relevant prosecutor (if the applicant is not the relevant prosecutor); and
 - (iii) any person who will or may be affected by the application;
- (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
- (d) set out the proposed terms of any variation; and
- (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.

(5) Subject to paragraph (6), Part 2 of the 2002 Act (confiscation: England and Wales) applies (with the appropriate modifications and subject to the preceding provisions of this Chapter) in relation to an overseas restraint order registered in the Crown Court as it applies in relation to a domestic restraint order.

(6) No challenge to the substantive reasons in relation to which an overseas restraint order has been made by an appropriate court or authority in a member State may be considered by the court.

Domestic confiscation orders: certification

11.—(1) If any of the property to which an application for a domestic confiscation order relates is property in a member State other than the United Kingdom, the prosecutor may ask the Crown Court to make a certificate under this regulation.

(2) The Crown Court may make a certificate under this regulation if—

- (a) it makes a domestic confiscation order in relation to property in the other member State, and
- (b) it is satisfied that there is a good arguable case that the property—
 - (i) was used or was intended to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.

(3) A certificate under this regulation is a certificate which—

- (a) is made for the purposes of the 2006 Framework Decision, and
- (b) gives the specified information.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

(4) If the Crown Court makes a certificate under this regulation, the domestic confiscation order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic confiscation order is to have the same relevant powers in respect of a certificate under this regulation.

(6) For that purpose “relevant powers” means the powers—

- (a) to consider an appeal,
- (b) to consider an application for reconsideration, variation or discharge, and
- (c) to make an order on any such appeal or application.

Sending domestic confiscation orders and certificates overseas

12.—(1) If a certificate is made under regulation 11, the domestic confiscation order and the certificate are to be forwarded by the prosecutor to—

- (a) a court exercising jurisdiction in the other member State where the property is situated, or
- (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(3) The certificate must be signed by or on behalf of the Crown Court and must include a statement as to the accuracy of the information given in it.

(4) The signature may be an electronic signature.

Sending overseas confiscation orders to the court

13.—(1) In a case where—

- (a) a relevant prosecutor receives an overseas confiscation order from the court or authority which made or confirmed the order, and
- (b) conditions A to C are met,

the relevant prosecutor must send a copy of the order to the Crown Court.

(2) An overseas confiscation order is an order made by an appropriate court or authority in a member State for the confiscation of property which is in England and Wales, or is the property of a resident of England and Wales, and which the appropriate court or authority considers—

- (a) was used or intended to be used for the purposes of criminal conduct, or
- (b) is the proceeds of criminal conduct.

(3) Condition A is that a person has been convicted of that criminal conduct in the member State.

(4) Condition B is that the overseas confiscation order was made at the conclusion of the proceedings that gave rise to the conviction.

(5) Condition C is that the order is accompanied by a certificate which—

- (a) gives the specified information;
- (b) is signed by or on behalf of the court or authority which made or confirmed the order,
- (c) includes a statement as to the accuracy of the information given in it, and
- (d) if it is not in English, includes a translation of it into English (or, if appropriate, Welsh).

(6) For the purposes of Condition C—

- (a) the certificate may be treated as giving any specified information which is not given in it if the relevant prosecutor has the information in question;

- (b) the signature may be an electronic signature.
- (7) An appropriate court or authority in a member State in relation to an overseas confiscation order is—
 - (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country, or
 - (c) any other authority in the country which appears to the relevant prosecutor to have the function of making such orders.
- (8) References in this Chapter to an overseas confiscation order include its accompanying certificate.
- (9) In this regulation—
 - “resident of England and Wales” means—
 - (a) an individual who is normally resident in England and Wales, or
 - (b) a body of persons (whether corporate or not) established in England and Wales (including a company registered in England and Wales);
 - “criminal conduct” means—
 - (a) a listed 2006 Framework Decision offence; or
 - (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there.

Giving effect to overseas confiscation orders

14.—(1) Where the Crown Court receives a copy of an overseas confiscation order sent by the relevant prosecutor in accordance with regulation 13, the Court must consider giving effect to the order.

(2) Subject to paragraph (3), the Crown Court may consider giving effect to the overseas confiscation order—

- (a) at a hearing, which must be in private unless the Court directs otherwise; or
- (b) without a hearing.

(3) The Crown Court must not consider giving effect to the overseas confiscation order unless the relevant prosecutor—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(4) The Crown Court may decide not to give effect to the overseas confiscation order only if, in its opinion, giving effect to it would be—

- (a) statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of England and Wales;
- (b) impossible as a consequence of an immunity under the law of England and Wales; or
- (c) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

(5) The Crown Court may postpone giving effect to an overseas confiscation order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom;

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (b) where it considers that there is a risk that the amount recovered through the execution of the order in England and Wales may exceed the amount specified in the order because of simultaneous execution of the order in more than one member State;
- (c) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with, or the property is subject to proceedings for such an order; or
- (d) if a person affected by the order has applied to cancel the registration of the order, or vary the property to which the order applies, in accordance with regulation 15.

Registration and enforcement of overseas confiscation orders

15.—(1) Where the Crown Court decides to give effect to an overseas confiscation order, it must—

- (a) direct its registration as an order in that court, and
- (b) give directions for notice of the order to be given to any person affected by it.

(2) For the purpose of enforcing an overseas confiscation order registered in the Crown Court, the order is to have effect as if it were an order made by that court.

(3) Subject to paragraph (4), the Crown Court may cancel the registration of the order, or vary the property to which the order applies, on an application by a relevant prosecutor, or any other person affected by it, if or to the extent that—

- (a) the Crown Court is of the opinion mentioned in regulation 14(4), or
- (b) the Crown Court is of the opinion that the order has ceased to have effect in the member State.

(4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the Crown Court;
 - (ii) the relevant prosecutor (if the applicant is not the relevant prosecutor); and
 - (iii) any person who will or may be affected by the application;
- (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
- (d) set out the proposed terms of any variation; and
- (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.

(5) Subject to paragraphs (6) and (7), Part 2 of the 2002 Act (confiscation: England and Wales) applies (with the appropriate modifications and subject to the preceding provisions of this Chapter) in relation to an overseas confiscation order registered in the Crown Court as it applies in relation to a domestic confiscation order.

(6) Sections 12 (interest on unpaid sums), 35 (enforcement as fines), 38 (provisions about imprisonment or detention) and 39 (reconsideration etc: variation of prison term) of the 2002 Act do not apply to an overseas confiscation order registered in the Crown Court^{M13}.

(7) No challenge to the substantive reasons in relation to which an overseas confiscation order has been made by an appropriate court or authority in a member State may be considered by the court.

Marginal Citations

M13 Section 35 was amended by section 74 of, and paragraphs 1 and 19 of Schedule 8 to, the Serious Crime Act 2007. Section 38 was amended by section 304 of, and paragraph 141 of Schedule 32 to, the Criminal Justice Act 2003. Section 39 was amended by section 74 of, and paragraphs 1 and 21 of Schedule 8 to, the Serious Crime Act 2007.

CHAPTER 3

Scotland

Provision in relation to the proceeds of crime as respects Scotland

16. Schedule 1 (Proceeds of Crime (Foreign Property and Foreign Orders): Scotland) makes provision in relation to the proceeds of crime as respects Scotland.

CHAPTER 4

Northern Ireland

Provision in relation to the proceeds of crime in relation to Northern Ireland

17. Schedule 2 (Proceeds of Crime (Foreign Property and Foreign Orders): Northern Ireland) makes provision in relation to the proceeds of crime in relation to Northern Ireland.

CHAPTER 5

Notification, communication etc., and application to saved orders

Notification, communication etc.

18.—(1) Where proceedings are started in relation to an overseas restraint order or an overseas confiscation order—

- (a) the relevant court must notify the relevant authority; and
- (b) the relevant authority must notify the court or authority which made or confirmed the overseas restraint order or the overseas confiscation order (as the case may be).

(2) Where the relevant court makes a relevant decision, the relevant authority must communicate that decision with reasons to the court or authority which made or confirmed the overseas restraint order or the overseas confiscation order to which the decision relates as soon as reasonably practicable.

(3) Where an overseas confiscation order provides for the confiscation of one or more specified items of property from the subject of the order, the relevant authority must seek the consent of the court or authority which made or confirmed the overseas confiscation order to replace such provision with a requirement that the subject of the order pay a sum of money equivalent to the value of any such specified items of property.

(4) Where an overseas confiscation order provides for the confiscation of a sum of money, the relevant authority must—

- (a) seek the consent of the court or authority which made or confirmed the overseas confiscation order to convert the amount provided into the currency of that member State; and
- (b) where consent is granted, arrange for such conversion at a rate of exchange that was available on the date that the overseas confiscation order was [^{F4}made or confirmed] .

(5) Where the amount obtained in relation to an overseas confiscation order is greater than or equal to an amount equivalent to 10,000 Euros, the relevant authority must transfer to the court or authority which made or confirmed the order 50% of the amount obtained, unless otherwise agreed with that court or authority.

(6) Where a domestic confiscation order certified in accordance with regulation 11, paragraph 7 of Schedule 1 or paragraph 7 of Schedule 2 ceases to have effect or has been part satisfied, the relevant authority must notify any court or authority to whom the order has been sent in accordance with regulation 12, paragraph 8 of Schedule 1 or paragraph 8 of Schedule 2 (as the case may be) as soon as reasonably practicable.

(7) Where, in the opinion of the relevant authority, giving effect to a domestic confiscation order certified in accordance with regulation 11, paragraph 7 of Schedule 1 or paragraph 7 of Schedule 2 may lead to more than the amount specified in that order being confiscated, the relevant authority must notify any court or authority to whom the order has been sent in accordance with regulation 12, paragraph 8 of Schedule 1 or paragraph 8 of Schedule 2 (as the case may be) as soon as reasonably practicable.

(8) In this regulation—

“overseas restraint order” and “overseas confiscation order” have the meanings given in regulations 8 and 13, paragraphs 4 and 9 of Schedule 1 or paragraphs 4 and 9 of Schedule 2 (as the case may be);

“relevant authority” means—

(a) in England and Wales—

- (i) for the purposes of paragraphs (1) to (5), the “relevant prosecutor”, as defined in regulation 5; and
- (ii) for the purposes of paragraphs (6) and (7), the prosecutor;

(b) in Scotland, the Lord Advocate;

(c) in Northern Ireland, the “relevant prosecutor”, as defined in paragraph 1 of Schedule 2;

“relevant court” means—

(a) in England and Wales, the Crown Court;

(b) in Scotland, the “court”, as defined in paragraph 1 of Schedule 1;

(c) in Northern Ireland, the “court”, as defined in paragraph 1 of Schedule 2;

“relevant decision” means—

- (a) a decision to give effect to, or to not give effect to, an overseas restraint order,
- (b) a decision to postpone giving effect to an overseas restraint order, or to end any such postponement,
- (c) a decision to discharge (or in Scotland, to recall) an overseas restraint order,
- (d) a decision to consider an appeal against, or an application to [^{F5}cancel the registration of] or vary an overseas restraint order,
- (e) a decision not to recognise or give effect to, or to give limited effect to, an overseas confiscation order,
- (f) a decision to postpone giving effect to an overseas confiscation order, or to end any such postponement, or
- (g) a decision to consider an appeal against, or an application to [^{F6}cancel the registration of] or vary an overseas confiscation order.

- F4** Words in [reg. 18\(4\)\(b\)](#) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(5)(a)**
- F5** Words in [reg. 18\(8\)\(d\)](#) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(5)(b)**
- F6** Words in [reg. 18\(8\)\(g\)](#) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(5)(b)**

England and Wales

Saved restraint orders

19.—(1) Chapter 2 of this Part applies in relation to a saved order under—

- (a) section 77 of the Criminal Justice Act 1988 ^{M14} (restraint orders), or
- (b) section 26 of the Drug Trafficking Act 1994 ^{M15} (restraint orders),

as it applies in relation to a restraint order under section 41 of the 2002 Act (restraint orders).

(2) Accordingly, a reference in Chapter 2 of this Part to a domestic restraint order includes a reference to a saved order of either of those kinds.

(3) A reference in this regulation to a saved order is a reference to an order as it continues to have effect by virtue of articles 5 and 10 of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003 ^{M16} (transitional provision and savings: England and Wales).

Marginal Citations

- M14** [1988 c. 33](#); [section 77](#) was repealed by sections 456 and 457 of, and paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.
- M15** [1994 c. 37](#); [section 26](#) was repealed by sections 456 and 457 of, and paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.
- M16** [S.I. 2003/333](#) (C. 20).

Saved confiscation orders

20.—(1) Chapter 2 of this Part applies to a saved order under—

- (a) section 71 of the Criminal Justice Act 1988 ^{M17} (confiscation orders), or
- (b) section 2 of the Drug Trafficking Act 1994 ^{M18} (confiscation orders),

as it applies to an order under section 6 of the 2002 Act (making of order).

(2) Accordingly, a reference in Chapter 2 of this Part to a domestic confiscation order includes a reference to a saved order of either of those kinds.

(3) A reference in this regulation to a saved order is a reference to an order as it continues to have effect by virtue of articles 3 and 10 of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003 (transitional provision and savings: England and Wales).

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

Marginal Citations

- M17** [Section 71](#) was repealed by sections 456 and 457 of, and paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.
- M18** [Section 2](#) was repealed by sections 456 and 457 of, and paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.

Scotland

Saved restraint orders

21.—(1) Schedule 1 applies in relation to a saved order under section 28 of the 1995 Act ^{M19} (restraint orders) as it applies in relation to a restraint order under section 120 of the 2002 Act (restraint orders).

(2) Accordingly, a reference in Schedule 1 to a domestic restraint order includes a reference to a saved order under section 28 of the 1995 Act.

(3) A reference in this regulation to a saved order is a reference to an order as it continues to have effect by virtue of articles 4 and 7 of the Proceeds of Crime Act 2002 (Commencement No. 6, Transitional Provisions and Savings) (Scotland) Order 2003 ^{M20} (transitional provision and savings).

Marginal Citations

- M19** [Section 28](#) has been amended by sections 456 and 457 of, and paragraphs 1 and 28 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.
- M20** [S.S.I. 2003/210](#).

Saved confiscation orders

22.—(1) Schedule 1 applies to a saved order under section 1 of the 1995 Act ^{M21} (confiscation orders) as it applies in relation to a confiscation order under section 92 of the 2002 Act.

(2) Accordingly, a reference in Schedule 1 to a domestic confiscation order includes a reference to a saved order under section 1 of the 1995 Act.

(3) A reference in this regulation to a saved order is a reference to an order as it continues to have effect by virtue of articles 3 and 7 of the Proceeds of Crime Act 2002 (Commencement No. 6, Transitional Provisions and Savings) (Scotland) Order 2003 (transitional provision and savings).

Marginal Citations

- M21** [Section 1](#) was repealed by sections 456 and 457 of, and paragraphs 1 and 28 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.

Northern Ireland

Saved restraint orders

23.—(1) Schedule 2 applies in relation to a saved order under article 31 of the Proceeds of Crime (Northern Ireland) Order 1996 ^{M22} (restraint orders) as it applies in relation to a restraint order under section 190 of the 2002 Act (restraint orders).

(2) Accordingly, a reference in Schedule 2 to a domestic restraint order includes a reference to a saved order under article 31 of the 1996 Order.

(3) A reference in this regulation to a saved order is a reference to an order as it continues to have effect by virtue of articles 6 and 10 of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003 (transitional provision and savings: Northern Ireland).

Marginal Citations

M22 [S.I. 1996/1299 \(N.I. 9\)](#); [Article 31](#) was revoked by sections 456 and 457 of, and paragraphs 1 and 31 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.

Saved confiscation orders

24.—(1) Schedule 2 applies to a saved order under article 8 of the Proceeds of Crime (Northern Ireland) Order 1996 ^{M23} (confiscation orders) as it applies to an order under section 156 of the 2002 Act.

(2) Accordingly, a reference in Schedule 2 to a domestic confiscation order includes a reference to a saved order under article 8 of the 1996 Order.

(3) A reference in this regulation to a saved order is a reference to an order as it continues to have effect by virtue of articles 4 and 10 of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003 (transitional provision and savings: Northern Ireland).

Marginal Citations

M23 [Article 8](#) was revoked by sections 456 and 457 of, and paragraphs 1 and 31 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002.

PART 3

Mutual Recognition of Financial Penalties

Extent

25. Any amendment or repeal made by Schedule 3 (mutual recognition of financial penalties: amendments of Criminal Justice and Immigration Act 2008) has the same extent as the enactment to which it relates, except that the amendment made by paragraph 9(2) of that Schedule extends to England and Wales and Northern Ireland.

Mutual recognition of financial penalties

26. Schedule 3 amends provisions of the Criminal Justice and Immigration Act 2008 ^{M24} relating to mutual recognition of financial penalties.

Marginal Citations

M24 [2008 c. 4](#).

PART 4

Data Protection in relation to Police and Judicial Cooperation in Criminal Matters

CHAPTER 1

General

Interpretation

27.—(1) In this Part—

“the Act” means the Data Protection Act 1998 ^{M25};

“the Commissioner” means the Information Commissioner established by section 6 of the Act (the Commissioner);

“data” and “data subject” have the meanings given by section 1 of the Act (basic interpretative provisions);

“the Data Protection Framework Decision” means Council Framework Decision 2008/977/JHA of 27th November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ^{M26};

“Member State” means an EEA State;

“non-UK competent authority” means—

- (a) any of the police, customs, judicial or other competent authorities of a Member State other than the United Kingdom authorised by that State's national law to process personal data within the scope of the Data Protection Framework Decision; and
- (b) an agency or other body established by a legal instrument adopted under Title VI of the Treaty on European Union (as it had effect before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union that is not in the UK;

“personal data” has the meaning given by section 1 of the Act;

“the relevant conditions” has the meaning given by section 33(1) of the Act (research, history and statistics);

“sensitive personal data” has the meaning given by section 2 of the Act (sensitive personal data); and

“UK competent authority” means an authority referred to in Schedule 4.

(2) Other expressions used in this Part which are defined in the Data Protection Framework Decision have the same meaning as in that Decision.

Marginal Citations

M25 1998 c. 29.

M26 OJ No. L 350, 30.12.2008, p. 60.

Scope

28.—(1) Subject to paragraph (3), this Part applies in relation to the processing of personal data by a UK competent authority which is carried out—

- (a) for the purposes of the prevention, investigation, detection or prosecution of a criminal offence or the execution of a criminal penalty;

- (b) in the circumstances set out in paragraph (2); and
 - (c) in the course of activities within the scope of a relevant EU measure.
- (2) The circumstances are that the processing of personal data is or has been transmitted or made available—
- (a) between Member States;
 - (b) to an authority or information system established on the basis of Title VI of the Treaty on European Union (as it had effect before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union; or
 - (c) to a UK competent authority by an authority or information system established on the basis of Title VI of the Treaty on European Union (as it had effect before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union.
- (3) This Part does not apply to the processing of personal data transmitted to or made available to a UK competent authority that is subject to the Data Protection Framework Decision if those data originated in the United Kingdom.
- (4) In this regulation, a relevant EU measure is—
- (a) any measure adopted under Chapter 4 (judicial cooperation in criminal matters) or Chapter 5 (police cooperation) of Title V of Part Three of the Treaty on the Functioning of the European Union which binds the United Kingdom;
 - (b) any act of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted on the basis of Title V or VI of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon in which the UK participates by virtue of Title VII of Protocol 36 (transitional provisions) to the EU Treaties.

CHAPTER 2

Duties of competent authorities and rights of data subjects

Duties of competent authorities

29. When undertaking activities in relation to the processing of personal data to which this Part applies, a UK competent authority must comply with regulations 30 to 42, 43(2), 44, 45, 47 and 48.

Principles of lawfulness, proportionality and purpose

- 30.**—(1) Personal data must be—
- (a) processed lawfully;
 - (b) collected only for specified, explicit and legitimate purposes;
 - (c) processed only for the purposes for which the data were collected;
 - (d) adequate, relevant and not excessive in relation to the purposes for which they were collected.
- (2) Further processing of personal data may only be undertaken—
- (a) for historical, statistical or scientific purposes, if the relevant conditions are complied with;
 - (b) for any other purpose, if—
 - (i) the processing is not incompatible with the purposes for which the data were collected;
 - (ii) the competent authority is permitted by law to carry it out; and
 - (iii) the processing is necessary and proportionate to that other purpose.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

(3) When undertaking further processing for historical, statistical or scientific purposes, consideration must be given to whether the purpose can be achieved by making the data anonymous.

Rectification, erasure and blocking

31.—(1) A UK competent authority must—

- (a) rectify personal data which are inaccurate;
- (b) complete or update personal data where that is possible and necessary;
- (c) erase personal data or make them anonymous where they are no longer required for the purposes for which they were lawfully collected or are lawfully further processed.

(2) Nothing in paragraph (1)(c) precludes a competent authority from archiving the data in a separate dataset for an appropriate period in accordance with an enactment or rule of law.

(3) Personal data must be blocked instead of erased if the competent authority has reasonable grounds to believe that erasure could affect the legitimate interests of the data subject and, once blocked, that data shall be processed only for the purpose which prevented their erasure.

(4) When the personal data are contained in a judicial decision or record related to the issuance of a judicial decision, rectification, erasure or blocking is permitted only where it complies with an enactment or rule of law regarding judicial proceedings.

(5) A competent authority which refuses to rectify, erase or block data under paragraph (1), having been asked by the data subject to do so, must give notice of its decision in writing to the data subject within a reasonable period of making it.

(6) That notice must inform the data subject that they may make a complaint about the refusal to the Commissioner.

(7) The Commissioner must examine any such complaint and, having done so, inform the data subject of whether or not the competent authority acted properly.

(8) If the accuracy of an item of personal data is contested by the data subject and its accuracy or inaccuracy cannot be ascertained, that item may be marked for the purpose of indicating that its accuracy or inaccuracy cannot be ascertained.

Establishment of time limits for erasure and review

32. A UK competent authority must—

- (a) establish time limits for the periodic review of the need for continued storage of personal data and for its erasure; and
- (b) ensure that those time limits are observed.

Processing of sensitive personal data

33. Sensitive personal data may be processed only if—

- (a) necessary; and
- (b) at least one of the conditions in Schedule 3 to the Act (conditions relevant for the processing of sensitive personal data), with the exception of the condition in paragraph 8 of that Schedule, is satisfied.

Automated individual decisions

34.—(1) A decision which produces an adverse legal effect for the data subject or significantly affects them and which is based solely on automated processing of data intended to evaluate

certain personal aspects relating to the data subject shall be permitted where it aids the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

(2) A UK competent authority which proposes to make a decision permitted by paragraph (1) must take steps to safeguard the legitimate interests of the data subject (for example, by allowing them to make representations).

Verification of quality of data that are transmitted or made available

35.—(1) A UK competent authority must take all reasonable steps to ensure that personal data which are inaccurate, incomplete or no longer up-to-date are not transmitted or made available.

(2) Where a UK competent authority transmits or makes available personal data it should, as far as practicable, verify the quality of personal data before transmitting it or making it available.

(3) Where a UK competent authority transmits or makes available personal data, it must, as far as possible, add available information which enables the recipient to assess the degree of accuracy, completeness and reliability of the data, including whether they are up-to-date.

(4) If personal data are transmitted or made available to a competent authority without that authority having requested them, that authority must verify without delay whether the data are necessary for the purpose for which they were transmitted.

(5) This paragraph applies where a UK competent authority transmits or makes available personal data to a non-UK competent authority and it becomes apparent that the transmitted data—

- (a) are incorrect; or
- (b) have been unlawfully transmitted.

(6) Where paragraph (5) applies, the UK competent authority must without delay—

- (a) notify the recipient of the inaccuracy or unlawful transmission; and
- (b) rectify, erase or block the data in accordance with regulation 31.

Time limits

36.—(1) A UK competent authority transmitting or making available personal data to a non-UK competent authority or to a UK competent authority referred to in Part 2 of Schedule 4 must when doing so notify the recipient of the time limits established for its retention.

(2) If—

- (a) a non-UK competent authority transmits or makes available data to a UK competent authority that is subject to the Data Protection Framework Decision; and
- (b) when doing so, indicates a time limit for the retention of that data,

the UK competent authority must take steps on the expiry of that time limit to erase or block the data, or review whether they are still needed.

(3) The obligation in paragraph (2) does not apply if, on the expiry of the time limit, the data are required for a current investigation, the prosecution of a criminal offence or enforcement of a criminal penalty.

(4) If a non-UK competent authority transmits or makes available data to a UK competent authority that is subject to the Data Protection Framework Decision without indicating a time limit for its retention, the UK competent authority shall apply any relevant time limits provided for under any enactment or rule of law.

Logging and documentation

37.—(1) Any transmission of personal data by a UK competent authority must be logged or documented by that authority for the purposes of verifying the lawfulness of the processing and self-monitoring, and ensuring proper data integrity and security.

(2) A log or documentation prepared under paragraph (1) must be sent on request to the Commissioner, who may use the information only for the control of data protection and for ensuring proper data processing as well as data integrity and security.

Processing of personal data received from or made available by an authority in another Member State

38.—(1) A UK competent authority may only process personal data received from or made available by a non-UK competent authority for the purpose for which they were transmitted or made available, or for any of the following purposes—

- (a) the prevention, investigation, detection or prosecution of a criminal offence, or the execution of a criminal penalty, other than that for which the data were transmitted or made available;
- (b) other judicial and administrative proceedings directly linked to the prevention, investigation, detection or prosecution of a criminal offence or execution of a criminal penalty;
- (c) prevention of an immediate and serious threat to public security;
- (d) any other purpose only with the prior consent of the transmitting authority or the data subject's consent given in accordance with national law.

(2) A UK competent authority may undertake further processing of personal data for historical, statistical or scientific purposes if the relevant conditions are complied with.

(3) When undertaking further processing for historical, statistical or scientific purposes, consideration must be given to whether the purpose can be achieved by making the data anonymous.

Compliance with national processing restrictions

39.—(1) Where a non-UK competent authority—

- (a) transmits or makes available data to a UK competent authority in accordance with the Data Protection Framework Decision; and
- (b) notifies the UK competent authority of specific processing restrictions that would apply in the specific circumstances under the law of its Member State to the exchange of that data had it been made within that State,

the UK competent authority shall comply with those restrictions.

(2) Where—

- (a) a UK competent authority transmits or makes available data to a non-UK competent authority in accordance with the Data Protection Framework Decision; and
- (b) in the specific circumstances, the exchange of that data would have been subject to specific processing restrictions by virtue of or under any enactment or rule of law had it been made to another UK competent authority,

the UK competent authority shall notify the recipient of those restrictions.

(3) The restrictions referred to in paragraphs (1) and (2) are limited to those applying under the law of the Member State of the competent authority transmitting or making available the data to such exchanges of data between competent authorities within that State.

Transfer to competent authorities in third countries or to international bodies

40.—(1) Personal data transmitted or made available to a UK competent authority by a non-UK competent authority may be transferred to a third country or an international body only if—

- (a) it is necessary for the prevention, investigation, detection or prosecution of a criminal offence or the execution of a criminal penalty;
- (b) the receiving authority in the recipient third country or receiving international body is responsible for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
- (c) subject to paragraph (2), the competent authority from which the data were obtained has given its prior consent to the transfer in compliance with the applicable national law; and
- (d) subject to paragraph [F7(4)], the third country or international body concerned ensures an adequate level of protection for the intended data processing.

(2) Transfer without prior consent is permitted only if—

- (a) transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third country or to essential interests of a Member State; and
- (b) such consent cannot be obtained in good time.

(3) Where a transfer is made without prior consent, the authority otherwise responsible for giving it must be informed without delay.

(4) Paragraph (1)(d) does not apply where—

- (a) the transfer is necessary to pursue—
 - (i) the legitimate specific interests of the data subject; or
 - (ii) other legitimate prevailing interests, especially important public interests; or
- (b) the third country or receiving international body provides safeguards which are deemed adequate by the person or body that intends to make the transfer.

(5) The adequacy of the level of protection referred to in paragraph (1)(d) shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations including, in particular—

- (a) the nature of the data;
- (b) the purpose and duration of the proposed processing operation or operations;
- (c) the State of origin and the State or international body of final destination of the data;
- (d) the rules of law in force in the third country or which apply to the international body in question; and
- (e) the professional rules and security measures which apply.

(6) In this regulation, “third country” means a State other than a Member State.

F7 Word in reg. 40(1)(d) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(6)**

Transmission to private parties

41.—(1) A UK competent authority may transmit to a private party personal data received from or made available to it by a non-UK competent authority only if—

- (a) the authority from which the data were obtained has consented in compliance with the applicable national law to its transmission;

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (b) no legitimate specific interests of the data subject prevent transmission; and
- (c) in the particular case, transmission by the UK competent authority is essential for—
 - (i) performance of a task lawfully assigned to it;
 - (ii) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
 - (iii) prevention of an immediate and serious threat to public security; or
 - (iv) prevention of serious harm to the rights of individuals.

(2) The UK competent authority transmitting the data to a private party shall inform the private party of the purposes for which the data may exclusively be used.

(3) In this regulation, “private party” does not include a body which exercises functions of a public nature, whether under contract or otherwise, when engaging in an activity that involves the exercise of those functions.

Information on request of the competent authority

42. The recipient of any data transmitted or made available by a UK competent authority shall, on request by that authority, inform it about their processing of that data.

Information for the data subject

43.—(1) A data subject must be informed regarding the collection or processing of personal data by a UK competent authority in accordance with national law.

(2) A UK competent authority to which personal data have been transmitted or made available by a non-UK competent authority must not inform the data subject of that fact without the prior consent of the non-UK competent authority.

Right of access

44.—(1) Sections 7 (right of access to personal data), 8 (provisions supplementary to section 7) and 67 (orders, regulations and rules) of the Act apply in relation to the processing of personal data to which this Part applies, with the following modifications.

(2) Section 7 shall have effect as if—

- (a) a reference to a “data controller” were a reference to a “UK competent authority” within the meaning of regulation 27(1);
- (b) in subsection (1)—
 - (i) the references to sections 9 and 9A of the Act were omitted; and
 - (ii) in paragraph (d), the words between “relating to him” and “has constituted or is likely to constitute” were omitted;
- (c) after subsection (4) there was inserted—

“(4A) Subsection (1) does not require a UK competent authority to provide any information if, having due regard to the legitimate interests of the person concerned, refusal to do so is a necessary and proportionate measure to—

- (a) avoid obstructing an official or legal inquiry, investigation or procedure;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect public security;
- (d) protect national security; or

- (e) protect the data subject or the rights and freedoms of others.
- (4B) Where a UK competent authority refuses to provide information or restricts access to it in response to a request made under subsection (1), the authority must give the data subject written notice of its decision, which must also set out—
 - (a) except where a reason under subsection (4A) exists, the factual or legal reasons on which the decision is based; and
 - (b) notice of the data subject's entitlement to appeal to the Commissioner or to a court.”; and
- (d) subsection (12) were omitted.
- (3) Section 8 shall have effect as if—
 - (a) a reference to a “data controller” were a reference to a “UK competent authority” within the meaning of regulation 27(1); and
 - (b) subsection (5) were omitted.

Right to compensation

- 45.**—(1) An individual who suffers damage by reason of any contravention by a UK competent authority of any of the requirements of this Part is entitled to compensation from that authority—
- (a) for that damage; and
 - (b) for any distress suffered in addition to that damage.
- (2) In proceedings brought by virtue of paragraph (1), it is not a defence to prove that any data transmitted or made available were inaccurate.
- (3) If—
- (a) a UK competent authority incorrectly transmits personal data to a non-UK competent authority; and
 - (b) the latter authority is required, in accordance with the Data Protection Framework Decision, to pay compensation to the data subject for damage caused by use of the incorrectly transmitted data,

the former must pay to the latter, on request and the provision of satisfactory evidence, an amount not exceeding the sum awarded in respect of that damage.

Confidentiality of processing

- 46.**—(1) A person who has access to personal data in connection with activities referred to in regulation 29 may process that data only if that person is a member of, or acts on instructions of, a UK competent authority, unless he is required to do so by an enactment or rule of law.
- (2) A person working for a UK competent authority may only process such personal data in accordance with this Part.

Security of processing

- 47.**—(1) A UK competent authority must implement appropriate technical and organisational measures to protect personal data against—
- (a) accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves transmission of that data over a network or making it available by granting direct automated access; and
 - (b) all other unlawful forms of processing.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

(2) In doing so, that authority must take into account, in particular, the risks represented by the processing and the nature of the data to be protected.

(3) Such measures must ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

(4) A UK competent authority must in respect of automated data processing adopt measures, policies and practices designed to—

- (a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);
- (b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
- (e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish the bodies to which personal data have been or may be transmitted or made available using data communication equipment (communication control);
- (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);
- (h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- (i) ensure that installed systems may, in case of interruption, be restored (recovery);
- (j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored data cannot be corrupted by means of a malfunctioning of the system (integrity).

(5) Where a UK competent authority wishes to designate a data processor to carry out processing on its behalf, the authority—

- (a) may do so only if the processor guarantees that it will—
 - (i) observe the requisite technical and organisational measures required by virtue of paragraph (1); and
 - (ii) comply with instructions given by that competent authority; and
- (b) must monitor the processor in those respects.

(6) Personal data may be processed by a processor only on the basis of a legal act or a written contract.

Prior consultation

48.—(1) A UK competent authority that wishes to process personal data in the circumstances described in paragraph (2) must consult the Commissioner before doing so.

(2) Those circumstances are that the processing of the data will form part of a new filing system to be created where—

- (a) sensitive personal data are to be processed; or

- (b) the type of processing, in particular using new technologies, mechanisms or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the privacy, of the data subject.

CHAPTER 3

Miscellaneous

Unlawful obtaining etc. of personal data within the scope of this Part

49.—(1) This regulation applies in relation to personal data processed by a UK competent authority which falls within regulation 28(1).

(2) A person shall not knowingly or recklessly, without the consent of a UK competent authority—

- (a) obtain or disclose personal data to which this regulation applies or the information contained in such data; or
- (b) procure the disclosure to another person of the information contained in personal data.

(3) Paragraph (2) does not apply to a person who shows—

- (a) that the obtaining, disclosing or procuring—
 - (i) was necessary for the purpose of preventing or detecting crime; or
 - (ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court;
- (b) that he acted in the reasonable belief that he had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person;
- (c) that he acted in the reasonable belief that he would have had the consent of the relevant UK competent authority if that authority had known of the obtaining, disclosing or procuring and the circumstances of it; or
- (d) that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.

(4) A person who contravenes paragraph (2) is guilty of an offence.

(5) A person who sells personal data is guilty of an offence if he has obtained the data in contravention of paragraph (2).

(6) A person who offers to sell personal data is guilty of an offence if—

- (a) he has obtained the data in contravention of paragraph (2); or
- (b) he subsequently obtains the data in contravention of that subsection.

(7) For the purposes of paragraph (6), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

(8) For the purposes of paragraphs (5) to (7), “personal data” includes information extracted from personal data.

Application of the Data Protection Act 1998

50.—(1) The Act shall not apply to the processing of personal data to which this Part applies, except so far as regulations 27, 44 or 51 provide otherwise.

(2) Paragraph (1) is without prejudice to section 54 of the Act.

Other functions of the Commissioner

51.—(1) The following provisions of the Act apply for the purposes of this Part as they apply for the purposes of the Act, with the modifications set out in paragraph (2)—

- (a) in Part 5 (enforcement)—
 - (i) sections 40, except subsections (4)(b), (9) and (10), and 41 (enforcement notices);
 - (ii) sections 42 (request for assessment) and 43, except subsection (10) (information notices);
 - (iii) section 47 (failure to comply with notice); and
 - (iv) sections 48, except subsection (4), and 49, except subsection (5) (appeals);
- (b) in Part 6 (miscellaneous and general)—
 - (i) sections 51 to 52E (functions of the Commissioner);
 - (ii) section 54A (inspection of overseas information systems);
 - (iii) sections 55A to 55E (monetary penalties);
 - (iv) sections 58 and 59 (information);
 - (v) section 60 (except for subsection (4)(a) and (b)) (prosecutions and penalties);
 - (vi) section 63(1), (2) and (5) (application to Crown); and
 - (vii) sections 64(1)(c), (2) and (3) (transmission of notices etc. by electronic or other means) and 65 (service of notices by Commissioner).

(2) The modifications referred to in paragraph (1) are—

- (a) any reference to a matter listed in the first column of the table in Schedule 5 is to be construed as a reference to the matter in the corresponding entry in the second column of that table; and
- (b) a provision including a reference to a “special information notice” is to be read as if that reference were omitted.

Consequential provisions

52. The Act is amended as follows—

- (a) in section 5(1) (application of Act), after subsection (1) insert—

“(1A) Subsection (1) is subject to regulation 50 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.”;
- (b) in section 54 (international co-operation)—
 - (i) in subsection (1)(b), after “the Data Protection Directive” insert “ and the Data Protection Framework Decision ”;
 - (ii) in subsection (3) omit the “and” after paragraph (a);
 - (iii) after subsection (3)(b) insert—

“, and

 - (c) the exercise within the United Kingdom at the request of a supervisory authority in another EEA State, in cases falling within the scope of the Data Protection Framework Decision as it applies to that State, of functions of the Commissioner specified in the order.”;
 - (iv) in subsection (8), after the definition of “the Convention” insert—

“the Data Protection Framework Decision” means the Council Framework Decision 2008/977/JHA of 27th November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters;”.

PART 5

Exchange of Information and Intelligence between Law Enforcement Authorities

Interpretation

53. In this Part—

“the Framework Decision” means Council Framework Decision 2006/960/JHA of 18th December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the member States of the European Union ^{M27};

“Annex A” means Annex A in the Framework Decision;

“Annex B” means Annex B in the Framework Decision;

“competent authority” means an authority declared under Article 2(a) of the Framework Decision (definitions) as a “competent law enforcement authority” in an EEA State;

“EEA State” means—

- (a) a member State, other than the United Kingdom;
- (b) Norway, Iceland or Liechtenstein; or
- (c) Switzerland;

“information” and “intelligence” have the meanings set out in Article 2(d) of the Framework Decision;

“serious offence” means any offence in the European Framework List referred to in section 215(1) of the Extradition Act 2003 ^{M28} (European framework list);

“UK competent authority” means any of the Secretary of State, the chief officer of police for a police area in England and Wales, the Chief Constable of the Police Service of Scotland, the Chief Constable of the Police Service of Northern Ireland, the National Crime Agency, Her Majesty's Revenue and Customs and the Serious Fraud Office.

Marginal Citations

M27 OJ No. L 386, 29.12.2006, p. 89.

M28 2003 c. 41.

Duty to provide information or intelligence

54.—(1) Subject to regulation 55, a UK competent authority which receives a request within its competence in accordance with the Framework Decision must ensure that information or intelligence is provided to the requesting competent authority in accordance with this Part.

(2) A UK competent authority must not apply conditions stricter than those applicable at national level for providing and requesting information or intelligence to a competent authority in accordance with this Part.

Time limits**55.** Subject to regulation 59—

- (a) in an urgent case regarding a serious offence—
 - (i) a UK competent authority must respond within eight hours of a request when the information or intelligence requested in accordance with the Framework Decision is held in a database directly accessible by the UK competent authority; but
 - (ii) where the provision of the information or intelligence requested in accordance with the Framework Decision within the period of eight hours would put a disproportionate burden on the UK competent authority, the UK competent authority—
 - (aa) may postpone the provision of the information or intelligence for up to three days;
 - (bb) must immediately inform the requesting competent authority of this postponement; and
 - (cc) must provide reasons on the form set out in Annex A;
- (b) in a non-urgent case regarding a serious offence—
 - (i) a UK competent authority must ensure that a request for information or intelligence in accordance with the Framework Decision is responded to within one week if the requested information or intelligence is held in a database directly accessible by the UK competent authority; but
 - (ii) if the UK competent authority is unable to respond within seven days, it must provide reasons for that on the form set out in Annex A; and
- (c) in all other cases—
 - (i) a UK competent authority must ensure that the information requested in accordance with the Framework Decision is communicated to the requesting competent authority within 14 days; but
 - (ii) if the UK competent authority is unable to respond within 14 days, it must provide reasons on the form set out in Annex A.

Requests for information or intelligence**56.** For the purpose of detection, prevention or investigation of an offence, a UK competent authority—

- (a) must use Annex B for the purpose of requesting information and intelligence from a competent authority and such a request must contain at least the information set out in Annex B; and
- (b) must not request more information and intelligence or set narrower timeframes than necessary for the purpose of the request.

Spontaneous exchange of information or intelligence

57. Subject to regulation 59, a UK competent authority must, without the need for any prior request, provide such relevant information or intelligence to a competent authority where the UK competent authority has reasonable grounds to believe that such information or intelligence could assist in the detection, prevention or investigation of a serious offence.

Requirements for the sharing of information or intelligence

58.—(1) A UK competent authority must use information or intelligence provided in accordance with the Framework Decision only for the purposes for which, and subject to the conditions on which, it has been supplied unless—

- (a) such use may assist in preventing an immediate and serious threat to public security; or
- (b) processing for other purposes is authorised by the EEA State which has provided the information or intelligence.

(2) When providing information or intelligence to a competent authority in accordance with the Framework Decision, a UK competent authority may impose conditions—

- (a) on the use of the information or intelligence; and
- (b) on reporting the result of the criminal investigation or criminal intelligence operation for which the provision of information and intelligence has taken place.

(3) Where—

- (a) a receiving competent authority is not bound by the conditions imposed by the UK competent authority under paragraph (2); and
- (b) the national law of the competent authority lays down that the restrictions on use are waived for judicial authorities, legislative bodies or any other independent body established by law and made responsible for supervising the competent authority,

the UK competent authority may make representations to the competent authority concerning the use of the information or intelligence.

(4) Where, on receiving information or intelligence, a UK competent authority is not bound by the conditions imposed by a competent authority because the law in the relevant part of the United Kingdom provides that the restrictions on use are waived for judicial authorities, legislative bodies or any other independent body established by law and made responsible for supervising the UK competent authority, the UK competent authority must consult the EEA State from whom it has received the information or intelligence and take into account, so far as possible, its representations before so using the information or intelligence.

(5) A UK competent authority which receives information or intelligence from a competent authority must give the competent authority which provided the information or intelligence information about the use and further processing of the transmitted information or intelligence if requested to do so by the competent authority.

(6) A UK competent authority which provides information or intelligence to a competent authority may request information about the use and further processing of the transmitted information or intelligence.

Reasons to withhold information or intelligence

59.—(1) A UK competent authority may refuse to provide information or intelligence only where it has reasonable grounds to believe that the provision of information or intelligence would—

- (a) harm essential national security interests of the United Kingdom;
- (b) jeopardise the success of a current investigation or a criminal intelligence operation or the safety of individuals; or
- (c) clearly be disproportionate or irrelevant with regard to the purposes for which it has been requested.

(2) Where a request pertains to an offence punishable by a term of imprisonment of one year or less under the law of any part of the United Kingdom, the UK competent authority may refuse to provide the requested information or intelligence.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

(3) A UK competent authority may refuse to transmit under the Framework Decision information or intelligence received from an EEA State or third country where it does not have the consent of that EEA State or third country to do so.

(4) A UK competent authority may refuse to transmit under the Framework Decision information or intelligence where otherwise prohibited by law.

Circulars

60.—(1) The appropriate authority may issue circulars in relation to the implementation of the Framework Decision to which relevant UK competent authorities must have regard insofar as relevant to their functions.

(2) In paragraph (1), the “appropriate authority” means—

(a) in relation to England and Wales, the Secretary of State;

(b) as respects Scotland—

(i) in relation to reserved matters within the meaning of the Scotland Act 1998 ^{M29} the Secretary of State;

(ii) for any other matters, the Scottish Ministers;

(c) in relation to Northern Ireland—

(i) for excepted matters within the meaning of the Northern Ireland Act 1998 ^{M30}, the Secretary of State;

(ii) for reserved matters within the meaning of the Northern Ireland Act 1998—

(aa) the Secretary of State; or

(bb) the Department of Justice with the consent of the Secretary of State;

(iii) for any other matters, the Department of Justice.

(3) In [^{F8}paragraphs (1) and (4)] , the “relevant UK competent authorities” means—

(a) in relation to England and Wales, the Secretary of State, the chief officer of police for a police area in England and Wales, the National Crime Agency, Her Majesty's Revenue and Customs and the Serious Fraud Office;

(b) as respects Scotland, the Secretary of State, the Chief Constable of the Police Service of Scotland, the National Crime Agency and Her Majesty's Revenue and Customs;

(c) in relation to Northern Ireland, the Secretary of State, the Chief Constable of the Police Service of Northern Ireland, the National Crime Agency, Her Majesty's Revenue and Customs and the Serious Fraud Office.

(4) Relevant [^{F9}UK] competent authorities must have regard to any circular previously issued in relation to the implementation of the Framework Decision.

F8 Words in [reg. 60\(3\)](#) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), [regs. 1\(b\)](#), [2\(7\)\(a\)](#)

F9 Word in [reg. 60\(4\)](#) inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), [regs. 1\(b\)](#), [2\(7\)\(b\)](#)

Marginal Citations

M29 1998 c. 46.

M30 1998 c. 47.

Joint investigation teams

61.—(1) For the purposes of this regulation—

“international joint investigation team” has the same meaning as in section 88(7) of the Police Act 1996^{M31};

“UK competent authority” means any of the Secretary of State, the chief officer of police for a police area in England and Wales, the Chief Constable of the Police Service of Scotland, the Chief Constable of the Police Service of Northern Ireland, the National Crime Agency, Her Majesty’s Revenue and Customs and the Serious Fraud Office;

“UK member” means a member of an international joint investigation team from a UK competent authority or a member of a UK competent authority who has been seconded to an international joint investigation team.

(2) Information lawfully obtained by a UK member which is not otherwise available to the UK competent authority participating in an international joint investigation team may be used for any of the following purposes—

- (a) for the purposes for which the team has been set up;
- (b) subject to the lawful prior consent of the member State where the information became available, for detecting, investigating and prosecuting other criminal offences;
- (c) for preventing an immediate and serious threat to public security and, subject to the consent condition in sub-paragraph (b), for any criminal investigation arising if subsequently opened;
- (d) for other purposes to the extent that this is agreed between the member States setting up the team.

Marginal Citations

M31 1996 c. 16; section 88(7) was amended by S.I. 2012/1809.

PART 6

Exchange of Information Relating to Criminal Convictions

Interpretation

62. In this Part—

“the Framework Decision” means Council Framework Decision 2009/315/JHA of 26th February 2009 on the organisation and content of the exchange of information extracted from the criminal record between member States^{M32};

“central authority” means an authority designated under Article 3 of the Framework Decision;

“conviction”, except where otherwise provided, has the meaning given in Article 2(a) of the Framework Decision (definitions);

“criminal proceedings” has the meaning given in Article 2(b) of the Framework Decision;

“criminal record” has the meaning given in Article 2(c) of the Framework Decision;

“third country” means a state other than a member State;

“UK Central Authority” means the body designated under regulation 63;

“UK criminal record” means—

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (a) in relation to England and Wales, information in any form relating to convictions on a names database held by the Secretary of State for the use of police forces generally;
- (b) in relation to Scotland, the criminal history database of the Police Service of Scotland for the use of the police forces generally;
- (c) in relation to Northern Ireland, the Northern Ireland Criminal History Database of the Causeway System.

Marginal Citations

M32 OJ No. L 93, 7.4.2009, p. 23.

Designation as a “central authority”

63. The Chief Constable of Hampshire Constabulary is designated as the “central authority” for the United Kingdom.

Obligations upon conviction of a national of a member State

64.—(1) Where a conviction is entered on the UK criminal record, it must be accompanied where available by information on the nationality or nationalities of the convicted person if he or she is a national of another member State.

(2) The UK Central Authority must, as soon as possible, inform the central authorities of the other member States, in accordance with regulation 73, of any convictions against the nationals of those member States within the United Kingdom, as entered in the UK criminal record.

(3) In relation to information contained in the UK criminal record by virtue of paragraph (1), any subsequent alteration or deletion of such information must be immediately transmitted by the UK Central Authority, in accordance with regulation 73, to the central authority of the member State of the person's nationality.

(4) Where the UK Central Authority has provided information to another member State under paragraphs (2) or (3), it must communicate to the central authority of the member State of the person's nationality, on that member State's request, a copy of the conviction and subsequent measures as well as any other relevant information in order to enable it to consider whether it necessitates any measure at national level.

Obligations upon receipt of information under Article 4(2) and (3) of the Framework Decision

65.—(1) Where the UK Central Authority receives, under Article 4(2) or (3) of the Framework Decision (obligations of the convicting member State), information from another member State, the UK Central Authority—

- (a) must store the information listed in regulation 73(1)(a) and (b) for the purpose of retransmission in accordance with regulations 67, 68 or 69; and
- (b) may store the information listed in regulation 73(1)(c) and (d) for the purpose of retransmission in accordance with regulations 67, 68 or 69.

(2) Where the UK Central Authority receives information in accordance with Article 4(3) of the Framework Decision, it must make identical alteration or deletion of the relevant information stored in accordance with paragraph (1).

(3) For the purpose of retransmission in accordance with regulations 67, 68 or 69, the UK Central Authority may, where relevant, only use information which has been updated in accordance with paragraph (2).

Requests for information under Article 6 of the Framework Decision for the purposes of criminal proceedings, other purposes and by a person

66.—(1) When information from the UK criminal record is requested for the purposes of criminal proceedings against a person or for any purposes other than criminal proceedings, the UK Central Authority may submit a request to the central authority of another member State for information and related data to be extracted from the criminal record, under Article 6(1) of the Framework Decision (request for information on convictions).

(2) When a person asks for information on their own UK criminal record under Article 6(2) of the Framework Decision, the UK Central Authority may submit a request to the central authority of another member State for information and related data to be extracted from the criminal record of that member State, provided that the person concerned is or was a resident, or a national, of the United Kingdom or that other member State.

(3) The UK Central Authority must submit the request using the form set out in the Annex to the Framework Decision.

Replies to a request for information under Article 6 of the Framework Decision in relation to criminal proceedings and proceedings other than criminal proceedings

67.—(1) When information is requested under Article 6 of the Framework Decision (request for information on convictions) from the UK Central Authority in relation to a national of the United Kingdom for the purposes of criminal proceedings, the UK Central Authority must transmit to the central authority of the requesting member State information on the following—

- (a) convictions handed down in the United Kingdom and entered in the UK criminal record;
- (b) any convictions handed down in other member States which were transmitted to the UK Central Authority after 27th April 2012, in application of Article 4 of the Framework Decision (obligations of the convicting member State), and stored in accordance with regulation 65;
- (c) any convictions handed down in other member States which were transmitted to the UK Central Authority on or before 27th April 2012 and entered in the UK criminal record;
- (d) any convictions handed down in a country which is not a member State and subsequently transmitted to the UK Central Authority and entered in the UK criminal record.

(2) When information is requested under Article 6 of the Framework Decision from the UK Central Authority in relation to a national of the United Kingdom for any purposes other than that of criminal proceedings, the UK Central Authority must transmit to the central authority of the requesting member State information on the following—

- (a) convictions handed down in the United Kingdom and entered in the UK criminal record;
- (b) any convictions handed down in other member States—
 - (i) which were transmitted to the UK Central Authority after 27th April 2012, in application of Article 4 of the Framework Decision, and stored in accordance with regulation 65; and
 - (ii) in respect of which, the central authority of the member State which transmitted the information has not stated that such information may not be retransmitted for any purposes other than that of criminal proceedings;

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (c) any convictions handed down in other member States which were transmitted to the UK Central Authority [^{F10}on or before] 27th April 2012 and entered in the UK criminal record;
- (d) any conviction handed down in a country which is not a member State and subsequently transmitted to the UK Central Authority and entered in the UK criminal record.

(3) For the purposes of paragraph (2), “conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974 ^{M33} which is not spent within the meaning of that Act.

(4) Where information under paragraph (2)(b) has not been transmitted because the central authority of the member State which transmitted the information has stated that such information may not be retransmitted for any purposes other than that of criminal proceedings, the UK Central Authority must, in respect of such convictions, inform the requesting member State which other member State had transmitted such information so as to enable the requesting member State to submit a request directly to the convicting member State in order to receive information on these convictions.

F10 Words in reg. 67(2)(c) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(8)**

Marginal Citations

M33 1974 c. 53. Relevant amendments have been made by paragraph 1 of Schedule 15 to the [Children Act 1989 \(c. 41\)](#), [paragraph 1](#) of Schedule 13 to, and paragraph 20(c) of Schedule 11 to, the [Criminal Justice Act 1991 \(c. 53\)](#), [paragraph 47](#) of Schedule 9 to the [Powers of Criminal Courts \(Sentencing\) Act 2000 \(c. 6\)](#), [paragraph 63](#) of Schedule 16 to the [Armed Forces Act 2006 \(c. 52\)](#), [section 24\(1\)](#) of, and paragraph 8 of Schedule 7 to, the [Criminal Justice and Licensing \(Scotland\) Act 2010 asp 13](#) and paragraph 134(3) of Schedule 9 to the [Protection of Freedoms Act 2012 \(c. 9\)](#).

Replies to a request for information under Article 6 of the Framework Decision by a third country

68. When information extracted from the UK criminal record is requested from the UK Central Authority in relation to a national of the United Kingdom by a third country, the UK Central Authority may reply in respect of convictions transmitted by another member State as if the request were made by a member State.

Replies to a request for information under Article 6 of the Framework Decision to a central authority of a member State other than the member State of the person's nationality

69. When information from the UK criminal record is requested under Article 6 of the Framework Decision (request for information on convictions) from the UK Central Authority in relation to a person who is not a national of the United Kingdom, the UK Central Authority must transmit information on convictions handed down in the United Kingdom and on convictions handed down against third country nationals and against stateless persons contained in its UK criminal record to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20th April 1959 (judicial records).

Form of reply to a request for information under Article 6 of the Framework Decision

70. The reply to a request for information under regulations 67, 68 or 69 must be made using the form set out in the Annex to the Framework Decision.

Deadlines for replies to a request for information under Article 6 of the Framework Decision

71.—(1) Subject to paragraph (2), replies to the requests referred to in [F11 Article 6(1) of the Framework Decision] must be transmitted by the UK Central Authority to the central authority of the requesting member State immediately and in any event within a period not exceeding ten working days from the date the request was received.

(2) If the UK Central Authority requires further information to identify the person involved in the request, it must immediately consult the requesting member State with a view to providing a reply within ten working days from the date the additional information is received.

(3) Replies to the request referred to in [F12 Article 6(2) of the Framework Decision] must be transmitted to the central authority of the requesting member State within twenty working days from the date the request was received.

(4) For the purposes of this Part, “working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971.

F11 Words in reg. 71(1) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), 2(9)(a)

F12 Words in reg. 71(3) substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), 2(9)(b)

Conditions for the use of personal data

72.—(1) Subject to paragraph (3), personal data provided to the UK Central Authority under Article 7(1) and (4) of the Framework Decision (reply to a request for information on convictions) for the purposes of criminal proceedings may be used only for the purposes of the criminal proceedings for which it was requested (as specified in the form set out in the Annex to the Framework Decision).

(2) Subject to paragraph (3), personal data provided to the UK Central Authority under Article 7(2) and (4) of the Framework Decision for any purposes other than that of criminal proceedings may be used only for the purposes for which it was requested and within the limits specified by the requested member State in the form set out in the Annex to the Framework Decision.

(3) Personal data provided to the UK Central Authority under Article 7(1), (2) and (4) may be used for preventing an immediate and serious threat to public security.

(4) Where personal data received from another member State under Article 4 of the Framework Decision (obligations of the convicting member State) is transmitted to a third country in accordance with regulation 68, the UK Central Authority must—

- (a) take the necessary measures to ensure that such personal data is subject to the same usage limitations as those applicable in a requesting member State in accordance with paragraph (2) of this regulation;
- (b) specify that personal data, if transmitted to a third country in accordance with regulation 68 for the purposes of criminal proceedings, may be further used by that third country only for the purposes of criminal proceedings.

(5) This regulation does not apply to personal data obtained by the UK Central Authority under the Framework Decision that originated from the United Kingdom.

Format and other ways of organising and facilitating exchanges of information on convictions

73.—(1) When transmitting information in accordance with regulation 64(2) and (3), the UK Central Authority must transmit—

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (a) the following information—
 - (i) the convicted person's—
 - (aa) full name;
 - (bb) date of birth;
 - (cc) town and country of birth;
 - (dd) gender;
 - (ee) nationality;
 - (ff) if applicable, previous names;
 - (ii) the date of conviction;
 - (iii) the name of the convicting court;
 - (iv) the date on which the decision of the convicting court became final;
 - (v) the date of the offence underlying the conviction;
 - (vi) the name or legal classification of the offence;
 - (vii) reference to the applicable legal provisions relating to the offence;
 - (viii) the sentence imposed in respect of the conviction, as well as any supplementary penalties, security measures and all subsequent decisions modifying the enforcement of the sentence.
- (b) if entered on the UK criminal record, the following information—
 - (i) the convicted person's parents' names;
 - (ii) the reference number of the conviction;
 - (iii) the place of the offence;
 - (iv) any disqualifications arising from the conviction;
- (c) if available to the UK Central Authority, the following information—
 - (i) the convicted person's identity number, or the type and number of the person's identification document;
 - (ii) fingerprints which have been taken from that person;
 - (iii) if applicable, pseudonym and any alias names;
- (d) at the discretion of the UK Central Authority, any other information concerning the conviction or convictions entered in the UK criminal record.

(2) The UK Central Authority must store all information listed in sub-paragraphs (a) and (b) of paragraph (1), which it has received in accordance with Article 5(1) of the Framework Decision (obligations of the member State of the person's nationality), for the purpose of retransmission in accordance with regulations 67, 68 or 69; for the same purpose it may store information of the types listed in sub-paragraph (c) of paragraph (1).

Further rules relating to the format of transmission of information: legal classification, etc

74. For the purposes of Article 4 of Council Decision 2009/316/JHA of 6th April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of the Framework Decision 2009/315/JHA^{M34}, the Chief Constable of Hampshire Constabulary is responsible for the functions of the member State.

Marginal Citations

M34 OJ No. L 93 7.4.2009, p. 33.

PART 7

European Supervision Order

CHAPTER 1

Extent

Extent

75.—(1) Chapter 2 (European supervision orders: England and Wales) extends to England and Wales only.

(2) Chapter 3 (European supervision orders: Northern Ireland) extends to Northern Ireland only.

(3) Schedule 6 (European supervision orders: grounds for refusal to monitor supervision measures) extends to England and Wales and Northern Ireland.

CHAPTER 2

European supervision orders: England and Wales

Interpretation

76. In this Chapter—

“central authority”, in relation to a member State other than the United Kingdom, means an authority designated by the State as a central authority for the purposes of the Framework Decision;

“the central authority for England and Wales” means the Lord Chancellor;

“certificate requesting monitoring under the Framework Decision” means the certificate required by Article 10 of the Framework Decision;

“competent authority”, in relation to a member State, means an authority designated by the State as a competent authority for the purposes of the Framework Decision;

“court” means a magistrates' court, the Crown Court, the High Court or the Court of Appeal; and references to a court include a judge of such a court or a justice of the peace and a judge or justice having powers to act in connection with proceedings before such a court;

“the Framework Decision” means Council Framework Decision 2009/829/JHA of 23rd October 2009 on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ^{M35};

“notify” means notify in writing (and “notification” is to be read accordingly).

Marginal Citations

M35 OJ No. L 294, 11.11.2009, p. 20.

*Recognition of supervision measures: requests to other member States***Requests to other member States for monitoring supervision measures**

77.—(1) A court which makes a decision on supervision measures may request a competent authority of a member State other than the United Kingdom (“the executing State”) to monitor the supervision measures under the Framework Decision where—

- (a) the measures are suitable for monitoring in the executing State, and
 - (b) the executing State is one to which the request may be made.
- (2) To make the request, the court must—
- (a) issue a certificate requesting monitoring under the Framework Decision in respect of the decision on supervision measures, and
 - (b) give the following documents to the competent authority or to the central authority of the executing State.
- (3) The documents are—
- (a) the decision on supervision measures or a certified copy of it,
 - (b) the certificate, and
 - (c) a copy of the certificate translated into the official language, or one of the official languages, of the executing State.
- (4) But paragraph (3)(c) does not apply if—
- (a) English is an official language of the executing State, or
 - (b) the executing State has declared under Article 24 of the Framework Decision that it will accept a certificate translated into English.
- (5) A court makes a “decision on supervision measures” if—
- (a) it grants bail in accordance with the Bail Act 1976 ^{M36}, as modified by regulation 78, to a person who is charged with an offence, and
 - (b) requirements are imposed on the person in accordance with section 3(6) of that Act ^{M37} (general provisions), as so modified, as a condition of bail.
- (6) “Supervision measures” means the requirements imposed on the person as a condition of bail.
- (7) A supervision measure is “suitable for monitoring in the executing State” if it constitutes—
- (a) a supervision measure of a kind mentioned in Article 8(1) of the Framework Decision (types of supervision measures), or
 - (b) a supervision measure of a kind which the executing State has given notice, under Article 8(2) of that Decision, that it is prepared to monitor.
- (8) The executing State is “one to which the request may be made” if—
- (a) the person is lawfully and ordinarily resident in the executing State and consents to return to that State with a view to the supervision measures being monitored there under the Framework Decision, or
 - (b) the person is not lawfully and ordinarily resident in the executing State but—
 - (i) the person asks for the request to be made to a competent authority of the executing State, and
 - (ii) the competent authority consents to the making of the request.
- (9) In regulations 78 to 84—

“the competent authority of the executing State”, in relation to a request under this regulation, means the competent authority to which the request is made;

“decision on supervision measures” and “supervision measures” are to be read in accordance with this regulation;

“the executing State”, in relation to a request under this regulation, means the member State of the competent authority to which the request is made.

Marginal Citations

M36 1976 c. 63.

M37 Section 3(6) was amended by the [Criminal Justice and Public Order Act 1994 \(c.33\)](#), [sections 27\(2\)](#) and [168\(3\)](#) and [Schedule 11](#); the [Crime and Disorder Act 1998 \(c.37\)](#), [section 54\(2\)](#); the [Criminal Justice Act 2003 \(c.44\)](#), [section 13\(1\)](#) and [Part 2 of Schedule 37](#); and the [Legal Services Act 2007 \(c.29\)](#), [section 208\(1\)](#) and [Schedule 21, paragraph 34](#).

Requirements that may be imposed in connection with a request

78.—(1) This regulation applies where a court is considering making a request under regulation 77 for a competent authority of a member State other than the United Kingdom to monitor supervision measures under the Framework Decision in relation to the grant of bail to a person who is charged with an offence.

(2) The requirements that may be imposed on the person under section 3(6) of the Bail Act 1976 (general provisions) include requirements which can only be complied with in the other State.

(3) Where the court is considering imposing requirements on the person which would involve electronic monitoring of the person in a particular area in the other State—

- (a) sections 3AA(4)^{M38} and 3AB(3)^{M39} of the Bail Act 1976 (conditions for the imposition of electronic monitoring requirements) have effect as if for references to each local justice area which is a relevant area there were substituted references to that area in the other State, and
- (b) section 3AC of that Act^{M40} (electronic monitoring: general provisions) has effect as if subsection (2) were omitted.

Marginal Citations

M38 Section 3AA(4) was inserted by the [Criminal Justice and Immigration Act 2008 \(c.4\)](#), [section 51](#) and [Schedule 11 paragraph 3\(4\)](#).

M39 Section 3AB(3) was inserted by the [Criminal Justice and Immigration Act 2008](#), [section 51](#) and [Schedule 11 paragraph \(4\)](#).

M40 Section 3AC was inserted by the [Criminal Justice and Immigration Act 2008](#), [section 51](#) and [Schedule 11 paragraph \(4\)](#) and amended by the [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c.10\)](#) [Schedule 11 paragraph 7](#).

Recognition of request

79.—(1) A court which has made a decision on supervision measures ceases to be responsible for monitoring the supervision measures if—

- (a) the court makes a request under regulation 77 for the competent authority of the executing State to monitor those measures under the Framework Decision, and

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- (b) the competent authority notifies the court that it has decided to recognise the decision on supervision measures under the Framework Decision.
- (2) The fact that the court has ceased to be responsible for monitoring the supervision measures does not affect the court's jurisdiction to take subsequent decisions in relation to the decision on supervision measures, including decisions about—
- (a) renewal, review or withdrawal of the decision on supervision measures,
 - (b) modification of the supervision measures, and
 - (c) the issue of a warrant for the arrest of the person subject to the decision.
- (3) Where the person subject to the decision on supervision measures is in the executing State, the court may permit the person to attend through a live link any hearing as to whether or not to take a subsequent decision in relation to the decision.
- (4) The person is to be treated as present in court when attending a hearing through a live link by virtue of paragraph (3).
- (5) “Live link” means an arrangement by which a person (when not in the place where a hearing is being held) is able—
- (a) to see and hear the court during the hearing, and
 - (b) to be seen and heard by the court during the hearing;
- (and for this purpose any impairment of eyesight or hearing is to be disregarded).
- (6) Where a subsequent decision relating to a person is a decision to withhold bail, the court making the decision must require the person to surrender to custody in England and Wales at a time appointed by the court.
- (7) The fact that the court has ceased to be responsible for monitoring the supervision measures does not affect any power conferred on a constable by the Bail Act 1976 to arrest without warrant the person subject to the decision on supervision measures.

Power to withdraw certificate

- 80.**—(1) A court which has made a request under regulation 77 for the competent authority of the executing State to monitor supervision measures under the Framework Decision must consider whether to withdraw the certificate requesting monitoring under that Decision if the competent authority informs the court that—
- (a) the competent authority could refuse to monitor the supervision measures on the ground mentioned in Article 15(1)(h) of that Decision (grounds for non-recognition) but is nevertheless willing to monitor them,
 - (b) the competent authority has taken a decision, in accordance with Article 13 (adaptation of supervision measures) of that Decision, adapting the supervision measures, or
 - (c) there is a maximum period during which, under the law of the executing State, the supervision measures may be monitored.
- (2) But a decision to withdraw the certificate under paragraph (1)(b) or (c) may be made only if monitoring of the supervision measures in the executing State has not yet started.
- (3) If the court withdraws the certificate under this regulation, it must inform the competent authority.
- (4) A decision to withdraw the certificate under this regulation must be taken, and the competent authority must be informed under paragraph (3), no later than 10 days after the day on which the competent authority informs the court as mentioned in paragraph (1).
- (5) This regulation applies where a court informs the competent authority of the executing State under regulation 81(2)(b) that it has renewed a decision on supervision measures, or modified

supervision measures, as it applies where the court makes a request under regulation 77 in relation to the original decision on supervision measures.

Duties where measures being monitored by executing State

81.—(1) This regulation applies in relation to any time when a court which has made a decision on supervision measures—

- (a) has ceased under regulation 79 to be responsible for monitoring the supervision measures, and
 - (b) has not yet become responsible under regulation 83 for monitoring them again.
- (2) The court must immediately inform the competent authority of the executing State if—
- (a) legal proceedings are brought in relation to the decision on supervision measures, or
 - (b) the court takes a subsequent decision in relation to the decision on supervision measures, as mentioned in regulation 79(2) (a “supervening decision”).
- (3) The court must consider whether to take a supervening decision if the competent authority of the executing State notifies the court, using the form set out in Annex II to the Framework Decision, of—
- (a) a breach of the supervision measures, or
 - (b) any other finding which could result in the court taking a supervening decision.
- (4) Where the decision on supervision measures provides for the measures to have effect for a specified period, the court must, before the expiry of that period, inform the competent authority of the executing State—
- (a) as to whether the court expects the monitoring of the supervision measures to be necessary for a further period, and
 - (b) if so, of the expected length of that period.
- (5) The court must inform the competent authority under paragraph (4)—
- (a) following a request from that authority, or
 - (b) if no such request is made, on the initiative of the court.
- (6) If the competent authority of the executing State requests information from the court as to whether monitoring of the supervision measures is still necessary in the circumstances of the case, the court must respond without delay.
- (7) If—
- (a) the law of the executing State requires periodic confirmation of the need to prolong the monitoring of the supervision measures, and
 - (b) the competent authority of the executing State requests that confirmation from the court and sets a reasonable time limit for the request to be complied with,
- the court must respond within that time limit.

Request to extend maximum period for which measures may be monitored

82.—(1) This regulation applies in relation to any time when a court which has made a decision on supervision measures—

- (a) has ceased under regulation 79 to be responsible for monitoring the supervision measures, and
 - (b) has not yet become responsible under regulation 83 for monitoring them again.
- (2) The court may make a request under this regulation if—

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- (a) under the law of the executing State, there is a maximum period during which the supervision measures may be monitored,
 - (b) the period is due to expire, and
 - (c) the court considers that the supervision measures are still needed.
- (3) A request under this regulation is a request to the competent authority of the executing State for the period to be extended.
- (4) The request must specify the period for which an extension is likely to be needed.

Court becoming responsible again for monitoring measures

83.—(1) A court which—

- (a) has made a decision on supervision measures, and
 - (b) has ceased under regulation 79 to be responsible for monitoring the supervision measures,
- becomes responsible for monitoring them again in any of the following cases.

(2) The first case is where the person subject to the decision on supervision measures becomes lawfully and ordinarily resident in a State other than the executing State.

(3) The second case is where the competent authority of the executing State notifies the court, in accordance with Article 20(2)(c) of the Framework Decision (information from the executing State), that it is not possible, in practice, to monitor the supervision measures.

(4) The third case is where the competent authority of the executing State informs the court that it has decided, in accordance with Article 23 of the Framework Decision (unanswered notices), to stop monitoring the supervision measures.

(5) The fourth case is where—

- (a) the court takes a decision modifying the supervision measures, and
- (b) the competent authority of the executing State informs the court that it has decided, in accordance with Article 18(4)(b) of the Framework Decision (competence to take all subsequent decisions and governing law), to refuse to monitor the modified supervision measures.

(6) The fifth case is where the court—

- (a) withdraws the certificate requesting monitoring under the Framework Decision (whether in accordance with regulation 80 or otherwise), and
- (b) informs the competent authority of the executing State of its withdrawal.

(7) The sixth case is where the court—

- (a) withdraws the decision on supervision measures, and
- (b) informs the competent authority of the executing State of its withdrawal.

(8) The seventh case is where—

- (a) under the law of the executing State, there is a maximum period during which the supervision measures may be monitored, and
- (b) that period expires.

(9) The court must consult the competent authority of the executing State with a view to avoiding as far as possible any interruption in the monitoring of the supervision measures as a result of this regulation.

Consultation and exchange of information

84.—(1) A court which is considering making a request under regulation 77 for a competent authority of a member State other than the United Kingdom to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—

- (a) while preparing the documents mentioned in paragraph (3) of that regulation, or
- (b) at the latest, before giving those documents to the competent authority or to the central authority of that State.

(2) A court which has made a request under regulation 77 for the competent authority of the executing State to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—

- (a) at such times as it considers necessary, with a view to facilitating the smooth and efficient monitoring of the supervision measures;
- (b) if the competent authority notifies it, in accordance with Article 19(3) of the Framework Decision (obligations of the authorities involved), of a serious breach of those measures.

(3) In consulting under this regulation, the court must co-operate with the competent authority with a view to the exchange of any useful information, including—

- (a) information for verifying the identity and place of residence of the person concerned, and
- (b) relevant information taken from the person's criminal records in accordance with applicable legislation including Part 6 of these Regulations.

(4) The court must take due account of any indications communicated by the competent authority as to the risk the person may pose to victims and the general public.

Recognition of supervision measures: requests from other member States

Requests from other member States for monitoring supervision measures

85.—(1) This regulation applies if a competent authority of a member State other than the United Kingdom (“the issuing State”)—

- (a) makes a decision on supervision measures, and
- (b) makes a request for monitoring of supervision measures under the Framework Decision.

(2) The competent authority makes a “request for monitoring of supervision measures under the Framework Decision” if it or the central authority of the issuing State gives the central authority for England and Wales—

- (a) the decision on supervision measures or a certified copy of it,
- (b) a certificate requesting monitoring under the Framework Decision, and
- (c) if the certificate is not in English, a copy of the certificate translated into English.

(3) The central authority for England and Wales must give those documents to a magistrates' court.

(4) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal in Schedule 6 apply.

(5) If the magistrates' court decides that none of the grounds for refusal applies, it must notify the competent authority without delay that it has decided to recognise the decision on supervision measures and, accordingly, to take the measures necessary for securing that the supervision measures are monitored.

(6) If the magistrates' court decides that the only ground for refusal which applies is that mentioned in paragraph 8 of Schedule 6, it may inform the competent authority that—

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(a) it could refuse to monitor the supervision measures on the ground mentioned in Article 15(1)(h) of the Framework Decision (giving reasons for the possible refusal), but

(b) it is nevertheless willing to monitor them.

(7) If—

(a) the magistrates' court informs the competent authority under paragraph (6), and

(b) the competent authority does not inform the magistrates' court that it has withdrawn the certificate requesting monitoring under the Framework Decision in accordance with Article 15(3) of that Decision,

the magistrates' court must notify the competent authority without delay that it has decided to recognise the decision on supervision measures and, accordingly, to take the measures necessary for securing that the supervision measures are monitored.

(8) If the magistrates' court decides that one or more of the grounds for refusal applies and does not inform the competent authority under paragraph (6), it must notify the competent authority without delay—

(a) that it has decided not to recognise the decision on supervision measures and, accordingly, not to assume responsibility for monitoring the supervision measures, and

(b) of the reasons for its decision.

(9) The magistrates' court must notify the competent authority without delay if, at any time after receiving the documents mentioned in paragraph (2) and before making a notification under paragraph (5), (7) or (8), it becomes aware of any change of residence of the person subject to the decision on supervision measures.

(10) In this regulation, regulations 86 to 94 and Schedule 6 (so far as relating to England and Wales), “decision on supervision measures” and “supervision measures” have the meanings given by Article 4 of the Framework Decision (definitions).

(11) In regulations 86 to 94 and Schedule 6 (so far as relating to England and Wales)—

“the competent authority of the issuing State”, in relation to a request for monitoring of supervision measures under the Framework Decision, means the competent authority which makes the request;

“the issuing State”, in relation to a request for monitoring of supervision measures under the Framework Decision, means the member State of the competent authority which makes the request;

“request for monitoring of supervision measures under the Framework Decision” is to be read in accordance with this regulation.

Procedural requirements relating to decision under regulation 85(4)

86.—(1) A magistrates' court must take a decision under regulation 85(4) as soon as possible and, in any event—

(a) within 20 working days of the day on which the central authority for England and Wales receives the documents mentioned in regulation 85(2), or

(b) if legal proceedings in relation to the decision on supervision measures are brought before the end of that period, within 40 working days of that day.

(2) If, in exceptional circumstances, it is not possible to comply with that time limit, the magistrates' court must immediately inform the competent authority of the issuing state of—

(a) that fact,

(b) the reasons for the delay, and

- (c) the time by which it expects the decision to be taken.
- (3) If the magistrates' court is of the view that one or more of the grounds for refusal mentioned in paragraphs 1 to 4 of Schedule 6 may apply, it must, before taking a decision under regulation 85(4)—
 - (a) inform the competent authority,
 - (b) request the competent authority to supply without delay any further information required, and
 - (c) in the case of the ground for refusal mentioned in paragraph 1 of Schedule 6, specify a reasonable period within which the certificate must be completed or corrected.
- (4) Where the magistrates' court specifies under paragraph (3)(c) a period within which the certificate must be completed or corrected, the decision must be taken—
 - (a) if a completed or corrected certificate is received by the magistrates' court within the specified period, as soon as reasonably practicable after its receipt;
 - (b) otherwise, as soon as reasonably practicable after the specified period ends.
- (5) In this regulation “working day” means a day other than—
 - (a) a Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

Adaptation of supervision measures

- 87.**—(1) This regulation applies if a magistrates' court, when making a decision under regulation 85(4) in relation to a decision on supervision measures, considers that—
- (a) none of the grounds for refusal apply, but
 - (b) one or more of the supervision measures is not compatible with the law of England and Wales.
- (2) The magistrates' court must take a decision adapting the supervision measures to bring them into line with the kind of supervision measures that are available under the law of England and Wales in relation to alleged offences corresponding to the alleged offences to which the decision on supervision measures relates.
- (3) For this purpose, the adapted measures—
- (a) must correspond as far as possible to the original measures, but
 - (b) must not be more severe than the original measures.
- (4) The magistrates' court must, in its notification under regulation 85(5) or (7), notify the competent authority of the issuing State of the decision adapting the supervision measures.
- (5) Where a decision to adapt supervision measures is taken under this regulation, references in regulations 88 to 94 to monitoring or breach of supervision measures are to be read as references to monitoring or breach of the adapted measures.

Recognition of decision on supervision measures

- 88.**—(1) If a magistrates' court notifies the competent authority of the issuing State under regulation 85(5) or (7) that it has decided to recognise the decision on supervision measures—
- (a) it becomes responsible for monitoring the supervision measures, and
 - (b) it must without delay take the measures it considers necessary for securing that the supervision measures are monitored.

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(2) But the magistrates' court must notify the competent authority without delay if it is not possible, in practice, to monitor the supervision measures because the person subject to the decision on supervision measures cannot be found in England and Wales.

(3) The law of England and Wales which applies in relation to the monitoring of requirements imposed on a person as a condition of bail also applies, with any necessary modifications, in relation to the monitoring of the supervision measures by virtue of paragraph (1).

(4) In particular—

- (a) a magistrates' court may, if it considers it necessary to do so for the purpose of any supervision measure, impose electronic monitoring requirements on a person,
- (b) sections 3AA^{M41}, 3AB(1) and (3)^{M42} and 3AC(1)^{M43} of the Bail Act 1976 apply to electronic monitoring requirements relating to supervision measures, and
- (c) section 3AC(2) of that Act, and orders and rules under section 3AC(2) and (3) of that Act, apply to electronic monitoring relating to supervision measures.

Marginal Citations

- M41** Section 3AA was inserted by the [Criminal Justice and Police Act 2001 \(c. 16\)](#), [section 131\(2\)](#) and subsequently amended by the Criminal Justice and Immigration Act 2008, Schedule 11 paragraphs 1, 3 and 4.
- M42** Section 3AB was inserted by the Criminal Justice and Immigration Act 2008, Schedule 11 paragraphs 1 and 4.
- M43** Section 3AC was inserted by the Criminal Justice and Immigration Act 2008, Schedule 11 paragraphs 1 and 4.

Duties of court responsible for monitoring supervision measures

89.—(1) This regulation applies in relation to any time when a magistrates' court which has decided to recognise a decision on supervision measures—

- (a) has become responsible under regulation 88 for monitoring the supervision measures, and
- (b) has not yet ceased under regulation 93 to be responsible for monitoring them.

(2) The magistrates' court must immediately notify the competent authority of the issuing State, using the form set out in Annex II to the Framework Decision, if it becomes aware of—

- (a) a breach of the supervision measures, or
- (b) any other finding which could result in the competent authority taking a subsequent decision in relation to the decision on supervision measures, as mentioned in Article 18(1) of the Framework Decision (competence to take all subsequent decisions and governing law).

(3) The magistrates' court must notify the competent authority of the issuing State without delay if—

- (a) legal proceedings are brought in relation to the decision to recognise the decision on supervision measures, or
- (b) it becomes aware of any change of residence of the person subject to the decision on supervision measures.

Power to stop monitoring where no response to notification of breach

90.—(1) This regulation applies if—

- (a) a magistrates' court makes several notifications to the competent authority of the issuing State under regulation 89(2) in relation to a particular breach or other finding, and
 - (b) the competent authority does not take a supervening decision in response to the breach or other finding.
- (2) The magistrates' court may—
- (a) make a further notification in relation to the breach or other finding,
 - (b) invite the competent authority to take a supervening decision in response to the breach or other finding, and
 - (c) give the competent authority a reasonable period in which to do so.
- (3) If the competent authority does not take a supervening decision within that period, the magistrates' court may decide to stop monitoring the supervision measures.
- (4) If the magistrates' court decides to stop monitoring the supervision measures under this regulation, it must inform the competent authority of its decision.
- (5) In this regulation a “supervening decision” means a subsequent decision in relation to a decision on supervision measures, as mentioned in Article 18(1) of the Framework Decision (competence to take all subsequent decisions and governing law).

Power of arrest where magistrates' court responsible for monitoring supervision measures

- 91.**—(1) Paragraph (2) applies in relation to any time when a magistrates' court which has decided to recognise a decision on supervision measures—
- (a) has become responsible under regulation 88 for monitoring the supervision measures, and
 - (b) has not yet ceased under regulation 93 to be responsible for monitoring them.
- (2) The person subject to the decision on supervision measures may be arrested without warrant by a constable if—
- (a) the constable has reasonable grounds for believing that the person is likely to breach any of the supervision measures or has reasonable grounds for suspecting that the person has breached any of those measures, and
 - (b) the constable considers the arrest necessary for the protection of victims or the general public or for the safeguarding of internal security.
- (3) A person arrested under paragraph (2) must be brought before a magistrates' court—
- (a) as soon as possible, and
 - (b) in any event, within 24 hours after the person's arrest (not counting Sundays, Christmas Day, or Good Friday).
- (4) The magistrates' court may require the person to be detained if it is of the opinion that—
- (a) the person has breached or is likely to breach any of the supervision measures, and
 - (b) the detention is necessary for the protection of victims or the general public or for the safeguarding of internal security.
- (5) A magistrates' court must give its reasons for requiring a person to be detained under paragraph (4).
- (6) If the magistrates' court does not require the person to be detained, the person must be released.
- (7) A person's detention under paragraph (4) must be brought to an end if—
- (a) having been notified under regulation 89(2) of the matter that resulted in the person's detention, the competent authority of the issuing State informs the magistrates' court that

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it has taken a subsequent decision in relation to the decision on supervision measures, as mentioned in Article 18(1) of the Framework Decision, or

- (b) the magistrates' court ceases under regulation 93 to be responsible for monitoring the supervision measures.

(8) A person may not be detained under paragraph (4) for more than 28 days or, in the case of a person under the age of 18, 21 days beginning with the day of the person's first appearance before the court under paragraph (3).

(9) Section 128 of the Magistrates' Courts Act 1980^{M44} applies in relation to a magistrates' court's power to require a person to be detained under paragraph (4) as if—

- (a) in subsections (1A), (3A), (3C) and (3E) references to adjournment of a case under section 10(1), 17C, 18(4) or 24C of that Act were to adjournment pending a decision by the [F13 competent authority of the] issuing State referred to in paragraph (7)(a) above;

- (b) the following provisions were omitted—

in subsection (1), paragraphs (b) and (c) and the words following paragraph (c);
subsection (2);
subsections (4) and (5).

(10) In the case of a person under the age of 18, the court's power to require the person to be detained under paragraph (4) is subject to section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012^{M45} (and that section and the remainder of Chapter 3 of Part 3 of that Act, so far as relating to that section, are to apply as if the person had been remanded in connection with extradition proceedings).

- (11) Nothing in this regulation affects any other power of arrest conferred on a constable.

F13 Words in reg. 91(9)(a) inserted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014 (S.I. 2014/3191), regs. 1(b), 2(10)

Marginal Citations

M44 1980 c. 43. Section 128 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 9 paragraphs 2, 3 and 4; the Police and Criminal Evidence Act 1984 (c. 60), section 48; the Criminal Justice Act 1988 (c. 33), Schedule 15 paragraph 69; the Courts and Legal Services Act 1990 (c. 41), Schedule 18 paragraph 25; the Criminal Procedure and Investigations Act 1996 (c. 25), sections 49 and 52 and Schedule 5; the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 168; the Criminal Justice Act 2003 (c. 44), Schedule 3 paragraph 51(7) and Schedule 37 Part 4.

M45 2012 c. 10.

Renewal or modification of supervision measures which are being monitored

92.—(1) This regulation applies in relation to any time when a magistrates' court which has decided to recognise a decision on supervision measures—

- (a) has become responsible under regulation 88 for monitoring the supervision measures, and
(b) has not yet ceased under regulation 93 to be responsible for monitoring them.

(2) If the competent authority of the issuing State informs the magistrates' court that it has taken a decision renewing the decision on supervision measures, or modifying the supervision measures—

- (a) that decision does not (subject as follows) affect the court's responsibility for monitoring the renewed or modified supervision measures, and
(b) references in regulations 88 to 94 to monitoring or breach of the supervision measures are to be read as references to monitoring or breach of the renewed or modified measures.

(3) If the magistrates' court had adapted the supervision measures under regulation 87 and the decision renews the measures—

- (a) the adaptations apply to the renewed decision as they applied to the original decision, and
- (b) regulation 87(5) applies accordingly.

(4) If the decision modifies the supervision measures and the magistrates' court considers that the modified supervision measures include measures other than those of a kind mentioned in Article 8(1) of the Framework Decision, the magistrates' court must—

- (a) decide to refuse to monitor the modified supervision measures, and
- (b) inform the competent authority of that decision.

(5) If the decision modifies the supervision measures and the magistrates' court—

- (a) does not decide to refuse to monitor the modified supervision measures, but
- (b) considers that one or more of those measures is not compatible with the law of England and Wales,

regulation 87(2) to (5) applies in relation to those measures.

Court ceasing to be responsible for monitoring measures

93.—(1) A magistrates' court which—

- (a) has decided to recognise a decision on supervision measures, and
- (b) has become responsible under regulation 88 for monitoring the supervision measures,

ceases to be responsible for monitoring them in any of the following cases.

(2) The first case is where the person subject to the decision on supervision measures becomes lawfully and ordinarily resident in a State other than the United Kingdom.

(3) The second case is where the magistrates' court notifies the competent authority of the issuing State under regulation 88(2) that it is not possible, in practice, to monitor the supervision measures.

(4) The third case is where the magistrates' court informs the competent authority of the issuing State that it has decided, in accordance with regulation 90, to stop monitoring the supervision measures.

(5) The fourth case is where—

- (a) the supervision measures have been modified, and
- (b) the magistrates' court informs the competent authority of the issuing State that it has decided, in accordance with regulation 92(4), to refuse to monitor the modified supervision measures.

(6) The fifth case is where the competent authority of the issuing State, within the period of 10 days after the day on which the magistrates' court gives notification to the competent authority under regulation 85(5) or (7) (recognition of supervision measures)—

- (a) withdraws, subject to paragraph (7), the certificate requesting monitoring under the Framework Decision (whether in response to a decision under regulation 87 adapting the supervision measures or otherwise), and
- (b) informs the magistrates' court of its withdrawal.

(7) For the fifth case to apply, where the decision to withdraw the certificate referred to in paragraph (6)(a) is because the competent authority of the issuing State has been informed of—

- (a) a decision to adapt under regulation 87, or
- (b) a maximum period during which the supervision measures may be monitored,

the decision to withdraw the certificate must also be made before monitoring starts.

(8) The sixth case is where the competent authority of the issuing State—

- (a) withdraws the decision on supervision measures, and
- (b) informs the magistrates' court of its withdrawal.

(9) The magistrates' court must consult the competent authority with a view to avoiding as far as possible any interruption in the monitoring of the supervision measures as a result of this regulation.

(10) The magistrates' court may at any time ask the competent authority for information as to whether monitoring of the supervision measures is still necessary.

Consultation and exchange of information

94.—(1) If a competent authority of a member State other than the United Kingdom consults the central authority for England and Wales about a request for monitoring of supervision measures under the Framework Decision which it is considering making, a magistrates' court specified by the central authority must, unless impracticable, co-operate in that consultation.

(2) Where a competent authority has made a request for monitoring of supervision measures under the Framework Decision, the magistrates' court to which the documents mentioned in regulation 85(2) were given must, unless impracticable, consult the competent authority—

- (a) at such times as it considers necessary, with a view to facilitating the smooth and efficient monitoring of the supervision measures;
- (b) if it notifies the competent authority under regulation 89(2) of a serious breach of those measures.

(3) In consulting or co-operating in consultation under this regulation, the magistrates' court must co-operate with the competent authority with a view to the exchange of any useful information, including—

- (a) information for verifying the identity and place of residence of the person concerned, and
- (b) relevant information taken from the person's criminal records in accordance with applicable legislation including Part 6 of these Regulations.

CHAPTER 3

European supervision orders: Northern Ireland

Interpretation

95. In this Chapter—

“central authority”, in relation to a member State other than the United Kingdom, means an authority designated by the State as a central authority for the purposes of the Framework Decision;

“the central authority for Northern Ireland” means the Department of Justice in Northern Ireland;

“certificate requesting monitoring under the Framework Decision” means the certificate required by Article 10 of the Framework Decision;

“competent authority”, in relation to a member State, means an authority designated by the State as a competent authority for the purposes of the Framework Decision;

“court” means a magistrates' court, a county court, the Crown Court, the High Court or the Court of Appeal; and references to a court include a judge of such a court and a judge having powers to act in connection with proceedings before such a court;

“the Framework Decision” means Council Framework Decision 2009/829/JHA of 23rd October 2009 on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention^{M46};

“notify” means notify in writing (and “notification” is to be read accordingly).

Marginal Citations

M46 OJ No. L 294, 11.11.2009, p. 20.

Recognition of supervision measures: requests to other member States

Requests to other member States for monitoring supervision measures

96.—(1) A court which makes a decision on supervision measures may request a competent authority of a member State other than the United Kingdom (“the executing State”) to monitor the supervision measures under the Framework Decision where—

- (a) the measures are suitable for monitoring in the executing State, and
 - (b) the executing State is one to which the request may be made.
- (2) To make the request, the court must—
- (a) issue a certificate requesting monitoring under the Framework Decision in respect of the decision on supervision measures, and
 - (b) give the following documents to the competent authority or to the central authority of the executing State.
- (3) The documents are—
- (a) the decision on supervision measures or a certified copy of it,
 - (b) the certificate, and
 - (c) a copy of the certificate translated into the official language, or one of the official languages, of the executing State.
- (4) But paragraph (3)(c) does not apply if—
- (a) English is an official language of the executing State, or
 - (b) the executing State has declared under Article 24 of the Framework Decision that it will accept a certificate translated into English.
- (5) A court makes a “decision on supervision measures” if—
- (a) it grants bail under the law for the time being in force to a person who is charged with an offence, and
 - (b) requirements are imposed on the person as a condition of bail (as to which, see regulation 97).
- (6) “Supervision measures” means the requirements imposed on the person as a condition of bail.
- (7) A supervision measure is “suitable for monitoring in the executing State” if it constitutes—
- (a) a supervision measure of a kind mentioned in Article 8(1) of the Framework Decision (types of supervision measures), or
 - (b) a supervision measure of a kind which the executing State has given notice, under Article 8(2) of that Decision, that it is prepared to monitor.

- (8) The executing State is “one to which the request may be made” if—
- (a) the person is lawfully and ordinarily resident in the executing State and consents to return to that State with a view to the supervision measures being monitored there under the Framework Decision, or
 - (b) the person is not lawfully and ordinarily resident in the executing State but—
 - (i) the person asks for the request to be made to a competent authority of the executing State, and
 - (ii) the competent authority consents to the making of the request.
- (9) In regulations 97 to 103—
- “the competent authority of the executing State”, in relation to a request under this regulation, means the competent authority to which the request is made;
- “decision on supervision measures” and “supervision measures” are to be read in accordance with this regulation;
- “the executing State”, in relation to a request under this regulation, means the member State of the competent authority to which the request is made.

Requirements that may be imposed in connection with a request

97.—(1) This regulation applies where a court is considering making a request under regulation 96 for a competent authority of a member State other than the United Kingdom to monitor supervision measures under the Framework Decision in relation to the grant of bail to a person who is charged with an offence.

(2) The requirements that may be imposed on the person as a condition of bail include requirements which can only be complied with in the other State.

(3) Where the court is considering imposing requirements on the person which would involve electronic monitoring of the person in a particular area in the other State, article 40 of the Criminal Justice (Northern Ireland) Order 2008^{M47} (electronic monitoring requirement) has effect as if in paragraph (3), the words from “and a person” to the end were omitted.

Marginal Citations

M47 [S.I. 2008/1216 \(N.I. 1\)](#).

Recognition of request

98.—(1) A court which has made a decision on supervision measures ceases to be responsible for monitoring the supervision measures if—

- (a) the court makes a request under regulation 96 for the competent authority of the executing State to monitor those measures under the Framework Decision, and
- (b) the competent authority notifies the court that it has decided to recognise the decision on supervision measures under the Framework Decision.

(2) The fact that the court has ceased to be responsible for monitoring the supervision measures does not affect the court's jurisdiction to take subsequent decisions in relation to the decision on supervision measures, including decisions about—

- (a) renewal, review or withdrawal of the decision on supervision measures,
- (b) modification of the supervision measures, and
- (c) the issue of a warrant for the arrest of the person subject to the decision.

(3) Where the person subject to the decision on supervision measures is in the executing State, the court may permit the person to attend through a live link any hearing as to whether or not to take a subsequent decision in relation to the decision.

(4) The person is to be treated as present in court when attending a hearing through a live link by virtue of paragraph (3).

(5) “Live link” means an arrangement by which a person (when not in the place where a hearing is being held) is able—

(a) to see and hear the court during the hearing, and

(b) to be seen and heard by the court during the hearing;

(and for this purpose any impairment of eyesight or hearing is to be disregarded).

(6) Where a subsequent decision relating to a person is a decision to withhold bail, the court making the decision must require the person to surrender to custody in Northern Ireland at a time appointed by the court.

(7) The fact that the court has ceased to be responsible for monitoring the supervision measures does not affect any power conferred on a constable by the Criminal Justice (Northern Ireland) Order 2003^{M48} or the Prison Act (Northern Ireland) 1953^{M49} to arrest without warrant the person subject to the decision on supervision measures.

(8) Where the court has ceased to be responsible for monitoring the supervision measures, the Extradition Act 2003 has effect in relation to the person subject to the decision on supervision measures as if the provisions listed in section 142(8A) of that Act included article 6 of the Criminal Justice (Northern Ireland) Order 2003 (even if the court subsequently becomes responsible for monitoring the supervision measures again).

Marginal Citations

M48 S.I. 2003/1247 (N.I. 13).

M49 1953 c.18 (N.I.).

Power to withdraw certificate

99.—(1) A court which has made a request under regulation 96 for the competent authority of the executing State to monitor supervision measures under the Framework Decision must consider whether to withdraw the certificate requesting monitoring under that Decision if the competent authority informs the court that—

(a) the competent authority could refuse to monitor the supervision measures on the ground mentioned in Article 15(1)(h) of that Decision (grounds for non-recognition) but is nevertheless willing to monitor them,

(b) the competent authority has taken a decision, in accordance with Article 13 (adaptation of supervision measures) of that Decision, adapting the supervision measures, or

(c) there is a maximum period during which, under the law of the executing State, the supervision measures may be monitored.

(2) But a decision to withdraw the certificate under paragraph (1)(b) or (c) may be made only if monitoring of the supervision measures in the executing State has not yet started.

(3) If the court withdraws the certificate under this regulation, it must inform the competent authority.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

(4) A decision to withdraw the certificate under this regulation must be taken, and the competent authority must be informed under paragraph (3), no later than 10 days after the day on which the competent authority informs the court as mentioned in paragraph (1).

(5) This regulation applies where a court informs the competent authority of the executing State under regulation 100(2)(b) that it has renewed a decision on supervision measures, or modified supervision measures, as it applies where the court makes a request under regulation 96 in relation to the original decision on supervision measures.

Duties where measures being monitored by executing State

100.—(1) This regulation applies in relation to any time when a court which has made a decision on supervision measures—

(a) has ceased under regulation 98 to be responsible for monitoring the supervision measures, and

(b) has not yet become responsible under regulation 102 for monitoring them again.

(2) The court must immediately inform the competent authority of the executing State if—

(a) legal proceedings are brought in relation to the decision on supervision measures, or

(b) the court takes a subsequent decision in relation to the decision on supervision measures, as mentioned in regulation 98(2) (a “supervening decision”).

(3) The court must consider whether to take a supervening decision if the competent authority of the executing State notifies the court, using the form set out in Annex II to the Framework Decision, of—

(a) a breach of the supervision measures, or

(b) any other finding which could result in the court taking a supervening decision.

(4) Where the decision on supervision measures provides for the measures to have effect for a specified period, the court must, before the expiry of that period, inform the competent authority of the executing State—

(a) as to whether the court expects the monitoring of the supervision measures to be necessary for a further period, and

(b) if so, of the expected length of that period.

(5) The court must inform the competent authority under paragraph (4)—

(a) following a request from that authority, or

(b) if no such request is made, on the initiative of the court.

(6) If the competent authority of the executing State requests information from the court as to whether monitoring of the supervision measures is still necessary in the circumstances of the case, the court must respond without delay.

(7) If—

(a) the law of the executing State requires periodic confirmation of the need to prolong the monitoring of the supervision measures, and

(b) the competent authority of the executing State requests that confirmation from the court and sets a reasonable time limit for the request to be complied with,

the court must respond within that time limit.

Request to extend maximum period for which measures may be monitored

101.—(1) This regulation applies in relation to any time when a court which has made a decision on supervision measures—

- (a) has ceased under regulation 98 to be responsible for monitoring the supervision measures, and
- (b) has not yet become responsible under regulation 102 for monitoring them again.

(2) The court may make a request under this regulation if—

- (a) under the law of the executing State, there is a maximum period during which the supervision measures may be monitored,
- (b) the period is due to expire, and
- (c) the court considers that the supervision measures are still needed.

(3) A request under this regulation is a request to the competent authority of the executing State for the period to be extended.

(4) The request must specify the period for which an extension is likely to be needed.

Court becoming responsible again for monitoring measures

102.—(1) A court which—

- (a) has made a decision on supervision measures, and
- (b) has ceased under regulation 98 to be responsible for monitoring the supervision measures,

becomes responsible for monitoring them again in any of the following cases.

(2) The first case is where the person subject to the decision on supervision measures becomes lawfully and ordinarily resident in a State other than the executing State.

(3) The second case is where the competent authority of the executing State notifies the court, in accordance with Article 20(2)(c) of the Framework Decision (information from the executing State), that it is not possible, in practice, to monitor the supervision measures.

(4) The third case is where the competent authority of the executing State informs the court that it has decided, in accordance with Article 23 of the Framework Decision (unanswered notices), to stop monitoring the supervision measures.

(5) The fourth case is where—

- (a) the court takes a decision modifying the supervision measures, and
- (b) the competent authority of the executing State informs the court that it has decided, in accordance with Article 18(4)(b) of the Framework Decision (competence to take all subsequent decisions and governing law), to refuse to monitor the modified supervision measures.

(6) The fifth case is where the court—

- (a) withdraws the certificate requesting monitoring under the Framework Decision (whether in accordance with regulation 99 or otherwise), and
- (b) informs the competent authority of the executing State of its withdrawal.

(7) The sixth case is where the court—

- (a) has withdrawn the decision on supervision measures, and
- (b) informs the competent authority of the executing State of its withdrawal.

(8) The seventh case is where—

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Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (a) under the law of the executing State, there is a maximum period during which the supervision measures may be monitored, and
- (b) that period expires.

(9) The court must consult the competent authority of the executing State with a view to avoiding as far as possible any interruption in the monitoring of the supervision measures as a result of this regulation.

Consultation and exchange of information

103.—(1) A court which is considering making a request under regulation 96 for a competent authority of a member State other than the United Kingdom to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—

- (a) while preparing the documents mentioned in paragraph (3) of that regulation, or
- (b) at the latest, before giving those documents to the competent authority or to the central authority of that State.

(2) A court which has made a request under regulation 96 for the competent authority of the executing State to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—

- (a) at such times as it considers necessary, with a view to facilitating the smooth and efficient monitoring of the supervision measures;
- (b) if the competent authority notifies it, in accordance with Article 19(3) of the Framework Decision (obligations of the authorities involved), of a serious breach of those measures.

(3) In consulting under this regulation, the court must co-operate with the competent authority with a view to the exchange of any useful information, including—

- (a) information for verifying the identity and place of residence of the person concerned, and
- (b) relevant information taken from the person's criminal records in accordance with applicable legislation including Part 6 of these Regulations.

(4) The court must take due account of any indications communicated by the competent authority as to the risk the person may pose to victims and the general public.

Recognition of supervision measures: requests from other member States

Requests from other member States for monitoring supervision measures

104.—(1) This regulation applies if a competent authority of a member State other than the United Kingdom (“the issuing State”)—

- (a) makes a decision on supervision measures, and
- (b) makes a request for monitoring of supervision measures under the Framework Decision.

(2) The competent authority makes a “request for monitoring of supervision measures under the Framework Decision” if it or the central authority of the issuing State gives the central authority for Northern Ireland—

- (a) the decision on supervision measures or a certified copy of it,
- (b) a certificate requesting monitoring under the Framework Decision, and
- (c) if the certificate is not in English, a copy of the certificate translated into English.

(3) The central authority for Northern Ireland must give those documents to a magistrates' court acting for the petty sessions district in which it appears that the person subject to the supervision measures is normally resident.

(4) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal in Schedule 6 apply.

(5) If the magistrates' court decides that none of the grounds for refusal applies, it must notify the competent authority without delay that it has decided to recognise the decision on supervision measures and, accordingly, to take the measures necessary for securing that the supervision measures are monitored.

(6) If the magistrates' court decides that the only ground for refusal which applies is that mentioned in paragraph 8 of Schedule 6, it may inform the competent authority that—

- (a) it could refuse to monitor the supervision measures on the ground mentioned in Article 15(1)(h) of the Framework Decision (giving reasons for the possible refusal), but
- (b) it is nevertheless willing to monitor them.

(7) If—

- (a) the magistrates' court informs the competent authority under paragraph (6), and
- (b) the competent authority does not inform the magistrates' court that it has withdrawn the certificate requesting monitoring under the Framework Decision in accordance with Article 15(3) of that Decision,

the magistrates' court must notify the competent authority without delay that it has decided to recognise the decision on supervision measures and, accordingly, to take the measures necessary for securing that the supervision measures are monitored.

(8) If the magistrates' court decides that one or more of the grounds for refusal applies and does not inform the competent authority under paragraph (6), it must notify the competent authority without delay—

- (a) that it has decided not to recognise the decision on supervision measures and, accordingly, not to assume responsibility for monitoring the supervision measures, and
- (b) of the reasons for its decision.

(9) The magistrates' court must notify the competent authority without delay if, at any time after receiving the documents mentioned in paragraph (2) and before making a notification under paragraph (5), (7) or (8), it becomes aware of any change of residence of the person subject to the decision on supervision measures.

(10) In this regulation, regulations 105 to 113 and Schedule 6 “decision on supervision measures” and “supervision measures” have the meanings given by Article 4 of the Framework Decision (definitions).

(11) In regulations 105 to 113 and Schedule 6 (so far as relating to Northern Ireland)—

“the competent authority of the issuing State”, in relation to a request for monitoring of supervision measures under the Framework Decision, means the competent authority which makes the request;

“the issuing State”, in relation to a request for monitoring of supervision measures under the Framework Decision, means the member State of the competent authority which makes the request;

“request for monitoring of supervision measures under the Framework Decision” is to be read in accordance with this regulation.

Procedural requirements relating to decision under regulation 104(4)

105.—(1) A magistrates' court must take a decision under regulation 104(4) as soon as possible and, in any event—

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (a) within 20 working days of the day on which the central authority for Northern Ireland receives the documents mentioned in regulation 104(2), or
 - (b) if legal proceedings in relation to the decision on supervision measures are brought before the end of that period, within 40 working days of that day.
- (2) If, in exceptional circumstances, it is not possible to comply with that time limit, the magistrates' court must immediately inform the competent authority of the issuing state of—
- (a) that fact,
 - (b) the reasons for the delay, and
 - (c) the time by which it expects the decision to be taken.
- (3) If the magistrates' court is of the view that one or more of the grounds for refusal mentioned in paragraphs 1 to 4 of Schedule 6 may apply, it must, before taking a decision under regulation 104(4) —
- (a) inform the competent authority,
 - (b) request the competent authority to supply without delay any further information required, and
 - (c) in the case of the ground for refusal mentioned in paragraph 1 of Schedule 6, specify a reasonable period within which the certificate must be completed or corrected.
- (4) Where the magistrates' court specifies under paragraph (3)(c) a period within which the certificate must be completed or corrected, the decision must be taken—
- (a) if a completed or corrected certificate is received by the magistrates' court within the specified period, as soon as reasonably practicable after its receipt;
 - (b) otherwise, as soon as reasonably practicable after the specified period ends.
- (5) In this regulation “working day” means a day other than—
- (a) a Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.

Adaptation of supervision measures

106.—(1) This regulation applies if a magistrates' court, when making a decision under regulation 104(4) in relation to a decision on supervision measures, considers that—

- (a) none of the grounds for refusal apply, but
- (b) one or more of the supervision measures is not compatible with the law of Northern Ireland.

(2) The magistrates' court must take a decision adapting the supervision measures to bring them into line with the kind of supervision measures that are available under the law of Northern Ireland in relation to alleged offences corresponding to the alleged offences to which the decision on supervision measures relates.

(3) For this purpose, the adapted measures—

- (a) must correspond as far as possible to the original measures, but
- (b) must not be more severe than the original measures.

(4) The magistrates' court must, in its notification under regulation 104(5) or (7), notify the competent authority of the issuing State without delay of the decision adapting the supervision measures.

(5) Where a decision to adapt supervision measures is taken under this regulation, references in regulations 107 to 113 to monitoring or breach of supervision measures are to be read as references to monitoring or breach of the adapted measures.

Effect of recognition of decision on supervision measures

107.—(1) If a magistrates' court notifies the competent authority of the issuing State under regulation 104(5) or (7) that it has decided to recognise the decision on supervision measures—

- (a) it becomes responsible for monitoring the supervision measures, and
- (b) it must without delay take the measures it considers necessary for securing that the supervision measures are monitored.

(2) But the magistrates' court must notify the competent authority without delay if it is not possible, in practice, to monitor the supervision measures because the person subject to the decision on supervision measures cannot be found in Northern Ireland.

(3) The law of Northern Ireland which applies in relation to the monitoring of requirements imposed on a person as a condition of bail also applies, with any necessary modifications, in relation to the monitoring of the supervision measures by virtue of paragraph (1).

(4) In particular—

- (a) a magistrates' court may, if it considers it necessary to do so for the purpose of any supervision measure, impose electronic monitoring requirements on a person,
- (b) articles 40 to 43 of the 2008 Order apply to electronic monitoring requirements relating to supervision measures, and
- (c) orders under article 40(3) of the 2008 Order, and rules under article 44 of the 2008 Order, apply to electronic monitoring relating to supervision measures.

(5) In this regulation—

- (a) “electronic monitoring requirements” has the same meaning as in Part 2 of the 2008 Order, and
- (b) “the 2008 Order” means the Criminal Justice (Northern Ireland) Order 2008.

Duties of court responsible for monitoring supervision measures

108.—(1) This regulation applies in relation to any time when a magistrates' court which has decided to recognise a decision on supervision measures—

- (a) has become responsible under regulation 107 for monitoring the supervision measures, and
- (b) has not yet ceased under regulation 112 to be responsible for monitoring them.

(2) The magistrates' court must immediately notify the competent authority of the issuing State, using the form set out in Annex II to the Framework Decision, if it becomes aware of—

- (a) a breach of the supervision measures, or
- (b) any other finding which could result in the competent authority taking a subsequent decision in relation to the decision on supervision measures, as mentioned in Article 18(1) of the Framework Decision (competence to take all subsequent decisions and governing law).

(3) The magistrates' court must notify the competent authority of the issuing State without delay if—

- (a) legal proceedings are brought in relation to the decision to recognise the decision on supervision measures, or

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Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (b) it becomes aware of any change of residence of the person subject to the decision on supervision measures.

Power to stop monitoring where no response to notification of breach

109.—(1) This regulation applies if—

- (a) a magistrates' court makes several notifications to the competent authority of the issuing State under regulation 108(2) in relation to a particular breach or other finding, and
- (b) the competent authority does not take a supervening decision in response to the breach or other finding.

(2) The magistrates' court may—

- (a) make a further notification in relation to the breach or other finding,
- (b) invite the competent authority to take a supervening decision in response to the breach or other finding, and
- (c) give the competent authority a reasonable period in which to do so.

(3) If the competent authority does not take a supervening decision within that period, the magistrates' court may decide to stop monitoring the supervision measures.

(4) If the magistrates' court decides to stop monitoring the supervision measures under this regulation, it must inform the competent authority of its decision.

(5) In this regulation a “supervening decision” means a subsequent decision in relation to a decision on supervision measures, as mentioned in Article 18(1) of the Framework Decision (competence to take all subsequent decisions and governing law).

Power of arrest where magistrates' court responsible for monitoring supervision measures

110.—(1) Paragraph (2) applies in relation to any time when a magistrates' court which has decided to recognise a decision on supervision measures—

- (a) has become responsible under regulation 107 for monitoring the supervision measures, and
- (b) has not yet ceased under regulation 112 to be responsible for monitoring them.

(2) The person subject to the decision on supervision measures may be arrested without warrant by a constable if—

- (a) the constable has reasonable grounds for believing that the person is likely to breach any of the supervision measures or has reasonable grounds for suspecting that the person has breached any of those measures, and
- (b) the constable considers the arrest necessary for the protection of victims or the general public or for the safeguarding of internal security.

(3) A person arrested under paragraph (2) must be brought before a magistrates' court—

- (a) as soon as possible, and
- (b) in any event, within 24 hours after the person's arrest (not counting Sundays, Christmas Day or Good Friday).

(4) The magistrates' court may require the person to be detained if it is of the opinion that—

- (a) the person has breached or is likely to breach any of the supervision measures, and
- (b) the detention is necessary for the protection of victims or the general public or for the safeguarding of internal security.

(5) A magistrates' court must give its reasons for requiring a person to be detained under paragraph (4).

- (6) If the magistrates' court does not require the person to be detained, the person must be released.
- (7) A person's detention under paragraph (4) must be brought to an end if—
- (a) having been notified under regulation 108(2) of the matter that resulted in the person's detention, the competent authority of the issuing State informs the magistrates' court that it has taken a subsequent decision in relation to the decision on supervision measures, as mentioned in Article 18(1) of the Framework Decision, or
 - (b) the magistrates' court ceases under regulation 112 to be responsible for monitoring the supervision measures.
- (8) Article 47 of the Magistrates' Courts (Northern Ireland) Order 1981 ^{M50} applies in relation to a magistrates' court's power to require a person to be detained under paragraph (4) as if—
- (a) in paragraph (1) of that article, the reference to adjourning proceedings for an offence were to adjournment pending a decision by the [^{F14}competent authority of the] issuing State referred to in paragraph (7)(a) above;
 - (b) the following provisions of that article were omitted—
 - in paragraph (1), paragraph (b) and the words following it;
 - paragraph (4).
- (9) Article 49 of that Order (remand in case of illness or accident) applies in relation to a person required to be detained under paragraph (4).
- (10) Articles 79 and 80 of the Criminal Justice (Northern Ireland) Order 2008 (live links) apply in relation to proceedings relating to a person who has been required to be detained under paragraph (4) as in relation to a “preliminary hearing” within the meaning of those articles.
- (11) In the case of a person under the age of 18, the court's power to require the person to be detained under paragraph (4) is subject to articles 12 and 13 of the Criminal Justice (Children) (Northern Ireland) Order 1998 ^{M51}.
- (12) Nothing in this regulation affects any other power of arrest conferred on a constable.

F14 Words in [reg. 110\(8\)\(a\)](#) inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(10)**

Marginal Citations

M50 [S.I. 1981/1675 \(N.I. 26\)](#).

M51 [S.I. 1998/1504 \(N.I. 9\)](#).

Renewal or modification of supervision measures which are being monitored

- 111.**—(1) This regulation applies in relation to any time when a magistrates' court which has decided to recognise a decision on supervision measures—
- (a) has become responsible under regulation 107 for monitoring the supervision measures, and
 - (b) has not yet ceased under regulation 112 to be responsible for monitoring them.
- (2) If the competent authority of the issuing State informs the magistrates' court that it has taken a decision renewing the decision on supervision measures, or modifying the supervision measures—
- (a) that decision does not (subject as follows) affect the court's responsibility for monitoring the renewed or modified supervision measures, and
 - (b) references in regulations 107 to 113 to monitoring or breach of the supervision measures are to be read as references to monitoring or breach of the renewed or modified measures.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

(3) If the magistrates' court had adapted the supervision measures under regulation 106 and the decision renews the measures—

- (a) the adaptations apply to the renewed decision as they applied to the original decision, and
- (b) regulation 106(5) applies accordingly.

(4) If the decision modifies the supervision measures and the magistrates' court considers that the modified supervision measures include measures other than those of a kind mentioned in Article 8(1) of the Framework Decision, the magistrates' court must—

- (a) decide to refuse to monitor the modified supervision measures, and
- (b) inform the competent authority of that decision.

(5) If the decision modifies the supervision measures and the magistrates' court—

- (a) does not decide to refuse to monitor the modified supervision measures, but
- (b) considers that one or more of those measures is not compatible with the law of Northern Ireland,

regulation 106(2) to (5) applies in relation to those measures.

Court ceasing to be responsible for monitoring measures

112.—(1) A magistrates' court which—

- (a) has decided to recognise a decision on supervision measures, and
- (b) has become responsible under regulation 107 for monitoring the supervision measures,

ceases to be responsible for monitoring them in any of the following cases.

(2) The first case is where the person subject to the decision on supervision measures becomes lawfully and ordinarily resident in a State other than the United Kingdom.

(3) The second case is where the magistrates' court notifies the competent authority of the issuing State under regulation 107(2) that it is not possible, in practice, to monitor the supervision measures.

(4) The third case is where the magistrates' court informs the competent authority of the issuing State that it has decided, in accordance with regulation 109, to stop monitoring the supervision measures.

(5) The fourth case is where—

- (a) the supervision measures have been modified, and
- (b) the magistrates' court informs the competent authority of the issuing State that it has decided, in accordance with regulation 111(4), to refuse to monitor the modified supervision measures.

(6) The fifth case is where the competent authority of the issuing State, within the period of 10 days after the day on which the magistrates' court gives notification to the competent authority under regulation 104(5) or (7) (recognition of supervision measures)—

- (a) withdraws, subject to paragraph (7), the certificate requesting monitoring under the Framework Decision (whether in response to a decision under regulation 106 adapting the supervision measures or otherwise), and
- (b) informs the magistrates' court of its withdrawal.

(7) For the fifth case to apply, where the decision to withdraw the certificate referred to in paragraph (6)(a) is because the competent authority of the issuing State has been informed of—

- (a) a decision to adapt under regulation 106, or
- (b) a maximum period during which the supervision measures may be monitored,

the decision to withdraw the certificate must also be made before monitoring starts.

(8) The sixth case is where the competent authority of the issuing State—

- (a) withdraws the decision on supervision measures, and
- (b) informs the magistrates' court of its withdrawal.

(9) The magistrates' court must consult the competent authority with a view to avoiding as far as possible any interruption in the monitoring of the supervision measures as a result of this regulation.

(10) The magistrates' court may at any time ask the competent authority for information as to whether monitoring of the supervision measures is still necessary.

Consultation and exchange of information

113.—(1) If a competent authority of a member State other than the United Kingdom consults the central authority for Northern Ireland about a request for monitoring of supervision measures under the Framework Decision which it is considering making, a magistrates' court specified by the central authority must, unless impracticable, co-operate in that consultation.

(2) Where a competent authority has made a request for monitoring of supervision measures under the Framework Decision, the magistrates' court to which the documents mentioned in regulation 104(2) were given must, unless impracticable, consult the competent authority—

- (a) at such times as it considers necessary, with a view to facilitating the smooth and efficient monitoring of the supervision measures;
- (b) if it notifies the competent authority under regulation 108(2) of a serious breach of those measures.

(3) In consulting or co-operating in consultation under this regulation, the magistrates' court must co-operate with the competent authority with a view to the exchange of any useful information, including—

- (a) information for verifying the identity and place of residence of the person concerned, and
- (b) relevant information taken from the person's criminal records in accordance with applicable legislation including Part 6 of these Regulations.

PART 8

Prisoner Transfer

Transfer of prisoners

114.—(1) The Repatriation of Prisoners Act 1984 ^{M52} is amended as follows.

(2) In section 3A ^{M53} (prosecution of other offences), in subsections (1)(a) and (3)(d) (in both places), for “Great Britain” substitute “ the United Kingdom ”.

(3) In section 6A ^{M54} (transit)—

- (a) in subsections (1)(b) and (3)(b), for “Great Britain” substitute “ the United Kingdom ”;
- (b) in subsection (6), for “Great Britain” substitute “ the United Kingdom ”;
- (c) in subsection (7), for “Great Britain” substitute “ the United Kingdom ”;
- (d) in subsection (9)—
 - (i) in paragraph (a)(ii), for “Great Britain” substitute “ the United Kingdom ”;
 - (ii) after paragraph (a) insert—

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Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

“(aa) the Department of Justice in Northern Ireland, in a case where it is proposed that the person who is the subject of a request under subsection (1)(b) or (3)(b) will, whilst in transit—

- (i) be present only in Northern Ireland, or
- (ii) arrive in Northern Ireland before being taken to another part of the United Kingdom;”;

(e) in subsection (10) for “Great Britain”, in both places, substitute “ the United Kingdom ”.

(4) In section 6B (transit: supplementary), in subsections (4) and (11)(a) (in both places), for “Great Britain” substitute “ the United Kingdom ”.

(5) For section 6C substitute—

“6C Transit through different parts of the United Kingdom

(1) Where—

- (a) a transit order is issued by the Minister for one part of the United Kingdom (“jurisdiction A”), and
- (b) it is proposed that the person who is the subject of the order will whilst in transit be taken to another part of the United Kingdom (“jurisdiction B”),

the Minister for jurisdiction A must notify the Minister for jurisdiction B.

(2) Notification need not be given where the Minister for jurisdiction B has agreed in writing to the transit order.

(3) Unless the Minister for jurisdiction B agrees in writing to the transit order, the order authorises the detention of the person subject to it in jurisdiction A only.

(4) But where the person escapes or is unlawfully at large, the order also authorises—

- (a) the arrest of the person under section 6B(5) in a part of the United Kingdom other than jurisdiction A, and
- (b) the detention of the person in that part by a constable (within the meaning of that section) for the purpose of taking the person to jurisdiction A.

(5) For the purposes of this section—

- (a) the Minister for England and Wales, is the Secretary of State,
- (b) the Minister for Scotland is the Scottish Ministers, and
- (c) the Minister for Northern Ireland is the Department of Justice in Northern Ireland.”

(6) In section 6D (transit: unscheduled arrivals), in subsections (1)(c), (2), (3) (in both places) and (4), for “Great Britain” substitute “ the United Kingdom ”.

(7) In section 8 (interpretation and certificates) ^{M55}—

- (a) in subsection (1), omit the definition of “international arrangements”, and
- (b) after subsection (2) insert—

“(2A) In this Act—

- (a) “international arrangements” includes any arrangements between the United Kingdom and a British overseas territory, and
- (b) references to a country or territory being a party to international arrangements include references to the country or territory being required to comply with provisions of a Framework Decision of the Council of the European Union (and references to international arrangements are to be construed accordingly).”.

- (8) In section 9^{M56} (short title, commencement and extent)—
- (a) in subsection (3), omit “Subject to subsection (3A)”;
 - (b) omit subsection (3A).

Marginal Citations

M52 1984 c. 47.

M53 Section 3A was inserted by the [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [section 130](#).

M54 Sections 6A to 6D were inserted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 131(1).

M55 Section 8 was amended by section 96 of, and Schedule 26 and Schedule 28 to, the Criminal Justice and Immigration Act 2008; [S.I. 1999/1820](#); and [S.I. 2010/976](#).

M56 Section 9 was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 131(2).

Home Office

Karen Bradley
Parliamentary Under Secretary of State

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

SCHEDULE 1

Regulation 16

Proceeds of Crime (Foreign Property and Foreign Orders): Scotland

Interpretation

1. In this Schedule—

“court” means—

- (a) in paragraphs 2 and 3, the Court of Session or the sheriff exercising his civil jurisdiction;
- (b) in paragraphs 4 to 6, the Court of Session;
- (c) in paragraphs 7 and 8, the High Court of Justiciary or the sheriff; and
- (d) in paragraphs 9 to 11, the Court of Session;

“domestic confiscation order” means a confiscation order under section 92 of the 2002 Act (making of order) (but see regulation 22);

“domestic restraint order” means a restraint order under section 120 of the 2002 Act (restraint orders etc) (but see regulation 21);

“specified information” means—

- (a) in relation to a certificate under paragraph 2, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;
- (b) in relation to a certificate under paragraph 7, any information required to be given by the form of certificate annexed to the 2006 Framework Decision [^{F15};

“working day” means a day other than a Saturday, Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971]

F15 Words in Sch. 1 para. 1 inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(11)**

Domestic restraint orders: certification

2.—(1) If any of the property to which an application for a domestic restraint order relates is property in a member State other than the United Kingdom, the prosecutor may apply to the court for a certificate under this paragraph to be made.

(2) The court may make a certificate under this paragraph if—

- (a) it makes a domestic restraint order in relation to property in the other member State, and
- (b) it is satisfied that there is a good arguable case that the property—
 - (i) has been or is likely to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.

(3) A certificate under this paragraph is a certificate which—

- (a) is made for the purposes of the 2003 Framework Decision, and
- (b) gives the specified information.

(4) If the court makes a certificate under this paragraph, the domestic restraint order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic restraint order is to have the same relevant powers in respect of a certificate under this paragraph.

(6) For that purpose “relevant powers” means the powers—

- (a) to consider an appeal,
- (b) to consider an application for reconsideration, variation or recall, and
- (c) to make an order on any such appeal or application.

Sending domestic restraint orders and certificates overseas

3.—(1) If a certificate is made under paragraph 2, the domestic restraint order and the certificate are to be forwarded by the Lord Advocate to—

- (a) a court exercising jurisdiction in the other member State where the property is situated, or
- (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The domestic restraint order and the certificate must be accompanied by a domestic confiscation order, unless the certificate indicates when the court expects a domestic confiscation order to be sent.

(3) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.

(5) The signature may be an electronic signature.

(6) If the domestic restraint order and the certificate are not accompanied by a domestic confiscation order, but a domestic confiscation order is subsequently made, it is to be sent to the Lord Advocate for forwarding as mentioned in sub-paragraph (1).

Sending overseas restraint orders to the court

4.—(1) In a case where—

- (a) the Lord Advocate receives an overseas restraint order from the court or authority which made or confirmed the order, and
- (b) conditions A to C are met,

the Lord Advocate must send a copy of the order to the court.

(2) An overseas restraint order is an order made by an appropriate court or authority in a member State which—

- (a) relates to—
 - (i) criminal proceedings instituted in the member State, or
 - (ii) a criminal investigation being carried on there; and
- (b) prohibits dealing with property which is in Scotland and which the appropriate court or authority considers to be property that—
 - (i) has been or is likely to be used for the purposes of criminal conduct, or
 - (ii) is the proceeds of criminal conduct.

(3) Condition A is that the action which the appropriate court or authority considered would constitute or, as the case may be, constituted the criminal conduct is not action done as an act of terrorism or for the purposes of terrorism (within the meaning of paragraph 25D(3) of Schedule 4 to the Terrorism Act 2000 (overseas freezing orders) ^{M57}).

(4) Condition B is that the order received by the Lord Advocate is accompanied by a certificate which—

- (a) gives the specified information;

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- (b) is signed by or on behalf of the court or authority which made or confirmed the order;
 - (c) includes a statement as to the accuracy of the information given in it; and
 - (d) if it is not in English, includes a translation of it into English.
- (5) For the purposes of Condition B—
- (a) the certificate may be treated as giving any specified information which is not given in it if the Lord Advocate has the information in question;
 - (b) the signature may be an electronic signature.
- (6) Condition C is that—
- (a) the order is accompanied by another order made by [^{F16}an appropriate court or authority] in the member State for the confiscation of the property; or
 - (b) such an order for the confiscation of the property may be made and the certificate indicates when that order is expected to be sent.
- (7) An appropriate court or authority in a member State in relation to an overseas restraint order is—
- (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country, or
 - (c) any other authority in the country which appears to the Lord Advocate to have the function of making such orders.
- (8) References in this Schedule to an overseas restraint order include its accompanying certificate.
- (9) In this paragraph “criminal conduct” means—
- (a) a listed 2003 Framework Decision offence; or
 - (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there.

F16 Words in Sch. 1 para. 4(6)(a) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014 (S.I. 2014/3191), regs. 1(b), 2(4)

Marginal Citations

M57 Paragraph 25D(3) was inserted by section 90 of, and paragraphs 1 and 5 of Schedule 4 to, the Crime (International Co-operation) Act 2003.

Giving effect to overseas restraint orders

5.—(1) Subject to sub-paragraph (2), where the court receives a copy of an overseas restraint order sent by the Lord Advocate in accordance with paragraph 4, the court must consider giving effect to the order no later than the end of the next working day after the relevant day.

(2) In exceptional circumstances, the court may delay its consideration of the overseas restraint order, provided that it does consider giving effect to the order no later than the end of the fifth working day after the relevant day.

(3) Subject to sub-paragraph (4), the court may consider giving effect to the overseas restraint order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or
- (b) without a hearing.

(4) The court must not consider giving effect to the overseas restraint order unless the Lord Advocate—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(5) The court may decide not to give effect to the overseas restraint order only if, in its opinion, giving effect to it would be—

- (a) impossible as a consequence of an immunity under the law of Scotland; or
- (b) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

(6) The court may postpone giving effect to an overseas restraint order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.

(7) In this paragraph, “relevant day” means the day on which a copy of an overseas restraint order sent by the Lord Advocate in accordance with paragraph 4 is received by the court.

Registration and enforcement of overseas restraint orders

6.—(1) Where the court decides to give effect to an overseas restraint order, it must—

- (a) direct its registration as an order in that court, and
- (b) give directions for notice of the order to be given to any person affected by it.

(2) For the purpose of enforcing an overseas restraint order registered in accordance with sub-paragraph (1), the order is to have effect as if it were an order made by the court.

(3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate, or any other person affected by it, if or to the extent that—

- (a) the court is of the opinion mentioned in paragraph 5(5), or
- (b) the court is of the opinion that the order has ceased to have effect in the member State.

(4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the Lord Advocate or person affected by the order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the court;
 - (ii) the Lord Advocate (if the applicant is not the Lord Advocate); and
 - (iii) any person who will or may be affected by the application;
- (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
- (d) set out the proposed terms of any variation; and
- (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.

(5) Subject to sub-paragraph (6), Part 3 of the 2002 Act (confiscation: Scotland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in relation to an overseas restraint order registered in accordance with this paragraph as it applies in relation to a domestic restraint order.

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Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

(6) No challenge to the substantive reasons in relation to which an overseas restraint order has been made by an appropriate court or authority in a member State may be considered by the court.

Domestic confiscation orders: certification

7.—(1) If any of the property to which an application for a domestic confiscation order relates is property in a member State other than the United Kingdom, the prosecutor may apply to the court for a certificate under this paragraph to be made.

(2) The court may make a certificate under this paragraph if—

- (a) it makes a domestic confiscation order in relation to property in the other member State, and
- (b) it is satisfied that there is a good arguable case that the property—
 - (i) was used or was intended to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.

(3) A certificate under this paragraph is a certificate which—

- (a) is made for the purposes of the 2006 Framework Decision, and
- (b) gives the specified information.

(4) If the court makes a certificate under this paragraph, the domestic confiscation order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic confiscation order is to have the same relevant powers in respect of a certificate under this paragraph.

(6) For that purpose “relevant powers” means the powers—

- (a) to consider an appeal,
- (b) to consider an application for reconsideration, variation or discharge, and
- (c) to make an order on any such appeal or application.

Sending domestic confiscation orders and certificates overseas

8.—(1) If a certificate is made under paragraph 7, the domestic confiscation order and the certificate are to be forwarded by the Lord Advocate to—

- (a) a court exercising jurisdiction in the other member State where the property is situated, or
- (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(3) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.

(4) The signature may be an electronic signature.

Sending overseas confiscation orders to the court

9.—(1) In a case where—

- (a) the Lord Advocate receives an overseas confiscation order from the court or authority which made or confirmed the order, and
- (b) conditions A to C are met,

the Lord Advocate must send a copy of the order to the court.

(2) An overseas confiscation order is an order made by an appropriate court or authority in a member State for the confiscation of property which is in Scotland, or is the property of a resident of Scotland, and which the appropriate court or authority considers—

- (a) was used or intended to be used for the purposes of criminal conduct, or
- (b) is the proceeds of criminal conduct.

(3) Condition A is that a person has been convicted of that criminal conduct in the member State.

(4) Condition B is that the overseas confiscation order was made at the conclusion of the proceedings that gave rise to the conviction.

(5) Condition C is that the order is accompanied by a certificate which—

- (a) gives the specified information;
- (b) is signed by or on behalf of the court or authority which made or confirmed the order,
- (c) includes a statement as to the accuracy of the information given in it, and
- (d) if it is not in English, includes a translation of it into English.

(6) For the purposes of Condition C—

- (a) the certificate may be treated as giving any specified information which is not given in it if the Lord Advocate has the information in question;
- (b) the signature may be an electronic signature.

(7) An appropriate court or authority in a member State in relation to an overseas confiscation order is—

- (a) a court exercising criminal jurisdiction in the country,
- (b) a prosecuting authority in the country, or
- (c) any other authority in the country which appears to the Lord Advocate to have the function of making such orders.

(8) References in this Schedule to an overseas confiscation order include its accompanying certificate.

(9) In this paragraph—

“criminal conduct” means—

- (a) a listed 2006 Framework Decision offence; or
- (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there;

“resident of Scotland” means—

- (a) an individual who is normally resident in Scotland, or
- (b) a body of persons (whether corporate or not) established in Scotland (including a company registered in Scotland).

Giving effect to overseas confiscation orders

10.—(1) Where the court receives a copy of an overseas confiscation order sent by the Lord Advocate in accordance with paragraph 9, the court must consider giving effect to the order.

(2) Subject to sub-paragraph (3), the court may consider giving effect to the overseas confiscation order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or

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- (b) without a hearing.
- (3) The court must not consider giving effect to the overseas confiscation order unless the Lord Advocate—
 - (a) is present; or
 - (b) has had a reasonable opportunity to make representations.
- (4) The court may decide not to give effect to the overseas confiscation order only if, in its opinion, giving effect to it would be—
 - (a) statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of Scotland;
 - (b) impossible as a consequence of an immunity under the law of Scotland; or
 - (c) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- (5) The court may postpone giving effect to an overseas confiscation order in respect of any property—
 - (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom;
 - (b) where it considers that there is a risk that the amount recovered through the execution of the order in Scotland may exceed the amount specified in the order because of simultaneous execution of the order in more than one member State;
 - (c) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with, or the property is subject to proceedings for such an order; or
 - (d) if a person affected by the order has applied to cancel the registration of the order, or vary the property to which the order applies, in accordance with paragraph 11.

Registration and enforcement of overseas confiscation orders

- 11.**—(1) Where the court decides to give effect to an overseas confiscation order, it must—
- (a) direct its registration as an order in that court,
 - (b) give directions for notice of the order to be given to any person affected by it, and
 - (c) appoint a sheriff clerk for the purpose of receiving payment of any amount due under the order.
- (2) For the purpose of enforcing an overseas confiscation order registered in accordance with this paragraph, the order is to have effect as if it were a domestic confiscation order.
- (3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate, or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 10(4), or
 - (b) the court is of the opinion that the order has ceased to have effect in the member State.
- (4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the Lord Advocate or person affected by the order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court;
 - (ii) the Lord Advocate (if the applicant is not the Lord Advocate); and

- (iii) any person who will or may be affected by the application;
 - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
 - (d) set out the proposed terms of any variation; and
 - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.
- (5) Subject to sub-paragraphs (6) and (7), Part 3 of the 2002 Act (confiscation: Scotland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in relation to an overseas confiscation order registered in accordance with this paragraph as it applies in relation to a domestic confiscation order.
- (6) Sections 117 (interest on unpaid sums) and 118 (application of provisions about fine enforcement) of the 2002 Act do not apply to an overseas confiscation order registered in the court in accordance with this paragraph.
- (7) No challenge to the substantive reasons in relation to which an overseas confiscation order has been made by an appropriate court or authority in a member State may be considered by the court.

SCHEDULE 2

Regulation 17

Proceeds of Crime (Foreign Property and Foreign Orders): Northern Ireland

Interpretation

1. In this Schedule—

“court” means—

- (a) in paragraphs 2 to 6, the High Court;
- (b) in paragraphs 7 to 11, the Crown Court;

“domestic confiscation order” means a confiscation order under section 156 of the 2002 Act (making of order) ^{M58} (but see regulation 24);

“domestic restraint order” means a restraint order under section 190 of the 2002 Act (restraint orders) (but see regulation 23);

“relevant prosecutor” means the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office;

“specified information” means—

- (c) in relation to a certificate under paragraph 2, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;
- (d) in relation to a certificate under paragraph 7, any information required to be given by the form of certificate annexed to the 2006 Framework Decision [^{F17}];

“working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971]

F17 Words in Sch. 2 para. 1 inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(3)**

Marginal Citations

M58 Section 156 was amended by section 74 of, and paragraphs 1 and 36 of Schedule 8 to, the Serious Crime Act 2007.

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Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

Domestic restraint orders: certification

2.—(1) If any of the property to which an application for a domestic restraint order relates is property in a member State other than the United Kingdom, the relevant prosecutor may ask the court to make a certificate under this paragraph.

- (2) The court may make a certificate under this paragraph if—
- (a) it makes a domestic restraint order in relation to property in the other member State, and
 - (b) it is satisfied that there is a good arguable case that the property—
 - (i) has been or is likely to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.

- (3) A certificate under this paragraph is a certificate which—
- (a) is made for the purposes of the 2003 Framework Decision, and
 - (b) gives the specified information.

(4) If the court makes a certificate under this paragraph, the domestic restraint order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic restraint order is to have the same relevant powers in respect of a certificate under this paragraph.

- (6) For that purpose “relevant powers” means the powers—
- (a) to consider an appeal,
 - (b) to consider an application for reconsideration, variation or discharge, and
 - (c) to make an order on any such appeal or application.

Sending domestic restraint orders and certificates overseas

3.—(1) If a certificate is made under paragraph 2, the domestic restraint order and the certificate are to be forwarded by the relevant prosecutor to—

- (a) a court exercising jurisdiction in the other member State where the property is situated, or
- (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The domestic restraint order and the certificate must be accompanied by a domestic confiscation order, unless the certificate indicates when the court expects a domestic confiscation order to be sent.

(3) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.

- (5) The signature may be an electronic signature.

(6) If the domestic restraint order and the certificate are not accompanied by a domestic confiscation order, but a domestic confiscation order is subsequently made, it is to be sent to the relevant prosecutor for forwarding as mentioned in sub-paragraph (1).

Sending overseas restraint orders to the court

- 4.—(1) In a case where—
- (a) the relevant prosecutor receives an overseas restraint order from the court or authority which made or confirmed the order, and

- (b) conditions A to C are met,
the relevant prosecutor must send a copy of the order to the court.
- (2) An overseas restraint order is an order made by an appropriate court or authority in a member State which—
- (a) relates to—
- (i) criminal proceedings instituted in the member State, or
 - (ii) a criminal investigation being carried on there; and
- (b) prohibits dealing with property which is in Northern Ireland and which the appropriate court or authority considers to be property that—
- (i) has been or is likely to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.
- (3) Condition A is that the action which the appropriate court or authority considered would constitute or, as the case may be, constituted the criminal conduct is not action done as an act of terrorism or for the purposes of terrorism (within the meaning of paragraph 41D(3) of Schedule 4 to the Terrorism Act 2000 (overseas freezing orders) ^{M59}).
- (4) Condition B is that the order received by the relevant prosecutor is accompanied by a certificate which—
- (a) gives the specified information;
 - (b) is signed by or on behalf of the court or authority which made or confirmed the order;
 - (c) includes a statement as to the accuracy of the information given in it; and
 - (d) if it is not in English, includes a translation of it into English.
- (5) For the purposes of condition B—
- (a) the certificate may be treated as giving any specified information which is not given in it if the relevant prosecutor has the information in question;
 - (b) the signature may be an electronic signature.
- (6) Condition C is that—
- (a) the order is accompanied by another order made by [^{F18}an appropriate court or authority] in the member State for the confiscation of the property; or
 - (b) such an order for the confiscation of the property may be made and the certificate indicates when that order is expected to be sent.
- (7) An appropriate court or authority in a member State in relation to an overseas restraint order is—
- (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country, or
 - (c) any other authority in the country which appears to the relevant prosecutor to have the function of making such orders.
- (8) References in this Schedule to an overseas restraint order include its accompanying certificate.
- (9) In this paragraph “criminal conduct” means—
- (a) a listed 2003 Framework Decision offence; or
 - (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

F18 Words in Sch. 2 para. 4(6)(a) substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014 (S.I. 2014/3191), regs. 1(b), 2(4)

Marginal Citations

M59 Paragraph 41D(3) was inserted by section 90 of, and paragraphs 1 and 7 of Schedule 4 to, the Crime (International Co-operation) Act 2003 (c. 32).

Giving effect to overseas restraint orders

5.—(1) Subject to sub-paragraph (2), where the court receives a copy of an overseas restraint order sent by the relevant prosecutor in accordance with paragraph 4, the court must consider giving effect to the order no later than the end of the next working day after the relevant day.

(2) In exceptional circumstances, the court may delay its consideration of the overseas restraint order, provided that it does consider giving effect to the order no later than the end of the fifth working day after the relevant day.

(3) Subject to sub-paragraph (4), the court may consider giving effect to the overseas restraint order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or
- (b) without a hearing.

(4) The court must not consider giving effect to the overseas restraint order unless the relevant prosecutor—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(5) The court may decide not to give effect to the overseas restraint order only if, in its opinion, giving effect to it would be—

- (a) impossible as a consequence of an immunity under the law of Northern Ireland; or
- (b) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

(6) The court may postpone giving effect to an overseas restraint order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.

(7) In this paragraph, “relevant day” means the day on which a copy of an overseas restraint order sent by the relevant prosecutor in accordance with paragraph 4 is received by the court.

Registration and enforcement of overseas restraint orders

6.—(1) Where the court decides to give effect to an overseas restraint order, it must—

- (a) direct its registration as an order in that court, and
- (b) give directions for notice of the order to be given to any person affected by it.

(2) For the purpose of enforcing an overseas restraint order registered in the court, the order is to have effect as if it were an order made by that court.

(3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the relevant prosecutor or any other person affected by it, if or to the extent that—

- (a) the court is of the opinion mentioned in paragraph 5(5), or
- (b) the court is of the opinion that the order has ceased to have effect in the member State.

(4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the court;
 - (ii) the relevant prosecutor (if the applicant is not the relevant prosecutor); and
 - (iii) any person who will or may be affected by the application;
- (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
- (d) set out the proposed terms of any variation; and
- (e) if a hearing is requested in relation to the application, explain why a hearing is necessary

(5) Subject to sub-paragraph (6), Part 4 of the 2002 Act (confiscation: Northern Ireland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in relation to an overseas restraint order registered in the court as it applies in relation to a domestic restraint order.

(6) No challenge to the substantive reasons in relation to which an overseas restraint order has been made by an appropriate court or authority in a member State may be considered by the court.

Domestic confiscation orders: certification

7.—(1) If any of the property to which an application for a domestic confiscation order relates is property in a member State other than the United Kingdom, the relevant prosecutor may ask the court to make a certificate under this paragraph.

- (2) The court may make a certificate under this paragraph if—
 - (a) it makes a domestic confiscation order in relation to property in the other member State, and
 - (b) it is satisfied that there is a good arguable case that the property—
 - (i) was used or was intended to be used for the purposes of an offence, or
 - (ii) is the proceeds of an offence.
- (3) A certificate under this paragraph is a certificate which—
 - (a) is made for the purposes of the 2006 Framework Decision, and
 - (b) gives the specified information.

(4) If the court makes a certificate under this paragraph, the domestic confiscation order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic confiscation order is to have the same relevant powers in respect of a certificate under this paragraph.

- (6) For that purpose “relevant powers” means the powers—
 - (a) to consider an appeal,
 - (b) to consider an application for reconsideration, variation or discharge, and
 - (c) to make an order on any such appeal or application.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

Sending domestic confiscation orders and certificates overseas

8.—(1) If a certificate is made under paragraph 7, the domestic confiscation order and the certificate are to be forwarded by the relevant prosecutor to—

- (a) a court exercising jurisdiction in the other member State where the property is situated, or
- (b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(3) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.

(4) The signature may be an electronic signature.

Sending overseas confiscation orders to the court

9.—(1) In a case where—

- (a) the relevant prosecutor receives an overseas confiscation order from the court or authority which made or confirmed the order, and
- (b) conditions A to C are met,

the relevant prosecutor must send a copy of the order to the court.

(2) An overseas confiscation order is an order made by an appropriate court or authority in a member State for the confiscation of property which is in Northern Ireland, or is the property of a resident of Northern Ireland, and which the appropriate court or authority considers—

- (a) was used or intended to be used for the purposes of a criminal conduct, or
- (b) is the proceeds of criminal conduct.

(3) Condition A is that a person has been convicted of that criminal conduct in the member State.

(4) Condition B is that the overseas confiscation order was made at the conclusion of the proceedings that gave rise to the conviction.

(5) Condition C is that the order is accompanied by a certificate which—

- (a) gives the specified information;
- (b) is signed by or on behalf of the court or authority which made or confirmed the order,
- (c) includes a statement as to the accuracy of the information given in it, and
- (d) if it is not in English, includes a translation of it into English.

(6) For the purposes of Condition C—

- (a) the certificate may be treated as giving any specified information which is not given in it if the relevant prosecutor has the information in question;
- (b) the signature may be an electronic signature.

(7) An appropriate court or authority in a member State in relation to an overseas confiscation order is—

- (a) a court exercising criminal jurisdiction in the country,
- (b) a prosecuting authority in the country, or
- (c) any other authority in the country which appears to the relevant prosecutor to have the function of making such orders.

(8) References in this Schedule to an overseas confiscation order include its accompanying certificate.

(9) In this paragraph—

“criminal conduct” means—

- (a) a listed 2006 Framework Decision offence; or
- (b) conduct which—
 - (i) constitutes an offence in any part of the United Kingdom; or
 - (ii) would constitute an offence in any part of the United Kingdom if it occurred there;

“resident of Northern Ireland” means—

- (a) an individual who is normally resident in Northern Ireland, or
- (b) a body of persons (whether corporate or not) established in Northern Ireland (including a company registered in Northern Ireland).

Giving effect to overseas confiscation orders

10.—(1) Where the court receives a copy of an overseas confiscation order sent by the relevant prosecutor in accordance with paragraph 9, the court must consider giving effect to the order.

(2) Subject to sub-paragraph (3), the court may consider giving effect to the overseas confiscation order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or
- (b) without a hearing.

(3) The court must not consider giving effect to the overseas confiscation order unless the relevant prosecutor—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(4) The court may decide not to give effect to the overseas confiscation order only if, in its opinion, giving effect to it would be—

- (a) statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of Northern Ireland;
- (b) impossible as a consequence of an immunity under the law of Northern Ireland; or
- (c) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

(5) The court may postpone giving effect to an overseas confiscation order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom;
- (b) where it considers that there is a risk that the amount recovered through the execution of the order in Northern Ireland may exceed the amount specified in the order because of simultaneous execution of the order in more than one member State;
- (c) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with, or the property is subject to proceedings for such an order; or
- (d) if a person affected by the order has applied to cancel the registration of the order, or vary the property to which the order applies, in accordance with paragraph 11.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

Registration and enforcement of overseas confiscation orders

- 11.—(1) Where the court decides to give effect to an overseas confiscation order, it must—
- (a) direct its registration as an order in that court, and
 - (b) give directions for notice of the order to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas confiscation order registered in the court, the order is to have effect as if it were an order made by that court.
- (3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the relevant prosecutor or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 10(4), or
 - (b) the court is of the opinion that the order has ceased to have effect in the member State.
- (4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court;
 - (ii) the relevant prosecutor (if the applicant is not the relevant prosecutor); and
 - (iii) any person who will or may be affected by the application;
 - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
 - (d) set out the proposed terms of any variation; and
 - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary
- (5) Subject to sub-paragraphs (6) and (7), Part 4 of the 2002 Act (confiscation: Northern Ireland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in relation to an overseas confiscation order registered in the court as it applies in relation to a domestic confiscation order.
- (6) Sections 162 (interest on unpaid sums), 185 (enforcement as fines), 187 (provisions about imprisonment or detention) and 188 (reconsideration etc: variation of prison term) of the 2002 Act do not apply to an overseas confiscation order registered in the Crown Court.
- (7) No challenge to the substantive reasons in relation to which an overseas confiscation order has been made by an appropriate court or authority in a member State may be considered by the court.

SCHEDULE 3

Regulation 26

Mutual recognition of financial penalties: amendments of Criminal Justice and Immigration Act 2008

1. The Criminal Justice and Immigration Act 2008 is amended as follows.
- 2.—(1) Section 81 (procedure on issue of certificate: England and Wales) is amended as follows.
 - (2) In subsection (2), for the words from “fines” to “other case)” substitute “ the relevant officer ”.
 - (3) After subsection (2) insert—
 - “(2A) The “relevant officer” means—
 - (a) the fines officer (in the case of a certificate issued by the officer), or

(b) the designated officer for the magistrates' court (in any other case).”.

(4) For subsection (4) substitute—

“(4) Subsections (4A) to (4C) apply where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3).

(4A) No further steps to enforce the decision may be taken in England and Wales unless—

- (a) an event mentioned in Article 15(2)(a) of the Framework Decision on financial penalties occurs in relation to the decision, or
- (b) the relevant officer or the Lord Chancellor informs the central authority or competent authority as mentioned in subsection (4C)(b).

(4B) The relevant officer or the Lord Chancellor must inform the central authority or competent authority without delay if the officer receives any sum of money which the person concerned has paid voluntarily in respect of the decision requiring payment of the financial penalty.

(4C) The relevant officer or the Lord Chancellor must inform the central authority or competent authority forthwith of any decision or measure as a result of which the decision requiring payment of the financial penalty—

- (a) ceases to be enforceable, or
- (b) is withdrawn from the competent authority for any other reason.”.

3.—(1) Section 83 (procedure on issue of certificate: Northern Ireland) ^{M60} is amended as follows.

(2) For subsection (4) substitute—

“(4) Subsections (4A) to (4C) apply where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3).

(4A) No further steps to enforce the decision may be taken in Northern Ireland unless—

- (a) an event mentioned in Article 15(2)(a) of the Framework Decision on financial penalties occurs in relation to the decision, or
- (b) the designated officer or the Department of Justice informs the central authority or competent authority as mentioned in subsection (4C)(b).

(4B) The designated officer or the Department of Justice must inform the central authority or competent authority without delay if the officer receives any sum of money which the person concerned has paid voluntarily in respect of the decision requiring payment of the financial penalty.

(4C) The designated officer or the Department of Justice must inform the central authority or competent authority forthwith of any decision or measure as a result of which the decision requiring payment of the financial penalty—

- (a) ceases to be enforceable, or
- (b) is withdrawn from the competent authority for any other reason.”.

Marginal Citations

M60 Section 83 was amended by [S.I. 2010/976](#).

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

4. In section 84 (requests from other member States: England and Wales) ^{M61}, in subsection (1) (a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

Marginal Citations

M61 Section 84 was amended by [S.I. 2010/976](#).

5.—(1) Section 85 (procedure on receipt of certificate by designated officer) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a decision, or a certified copy of a decision, requiring payment of a financial penalty,
- (b) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

(3) After subsection (4) insert—

“(4A) If the magistrates' court is of the view that one or more of the grounds for refusal mentioned in paragraphs A1, 2A and 6 of Schedule 19 may apply, the designated officer for the magistrates' court or the Lord Chancellor must, before the magistrates' court takes a decision under subsection (3)—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(4) After subsection (7) insert—

“(7A) But any power of a magistrates' court to impose a relevant alternative sanction in connection with a default in paying the financial penalty—

- (a) may be exercised only if its exercise is authorised by the certificate, and
- (b) is subject to any provision of the certificate specifying the maximum level of sanction that may be imposed.

(7B) “Any power of a magistrates' court to impose a relevant alternative sanction” means any of the following powers conferred on a magistrates' court by virtue of subsection (6)—

- (a) the power under section 76 of the Magistrates' Courts Act 1980 to issue a warrant committing a person to prison;
- (b) the power under Schedule 6 to the Courts Act 2003 to make an order requiring a person to perform unpaid work;
- (c) the power under section 300 of the Criminal Justice Act 2003 to order a person to comply with an unpaid work requirement, a curfew requirement or an attendance centre requirement;
- (d) the power under section 301 of that Act to order a person to be disqualified for holding or obtaining a driving licence;
- (e) the power under section 39 of this Act to order a person aged under 18 to comply with an unpaid work requirement, a curfew requirement or an attendance centre requirement.”.

(5) After subsection (7B) (as inserted by sub-paragraph (4) above) insert—

“(7C) If the person required to pay the financial penalty to which the certificate relates provides evidence that all or part of the penalty has been paid in any State, the designated officer for the magistrates' court or the Lord Chancellor must—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(6) For subsection (8) substitute—

“(8) If—

- (a) the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid,
- (b) the Lord Chancellor is informed, in accordance with Article 15(3) of that Decision, that all or part of the financial penalty has been paid, or
- (c) the magistrates' court is satisfied, having regard to evidence provided as mentioned in subsection (7C) and following consultation under that subsection, that all or part of the financial penalty has been paid in any State,

the references in subsections (6) and (7A) to the financial penalty are to be read as references to so much of the penalty as remains unpaid (and, accordingly, if none of the penalty remains unpaid, subsection (6) ceases to have effect in relation to the penalty).”.

(7) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution), section 85(7B) of the Criminal Justice and Immigration Act 2008 applies as if after paragraph (a) there were inserted—

“(aa) the power under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit a person to detention;”.

(8) In relation to any time before the coming into force of section 303(b)(iii) of the Criminal Justice Act 2003 (repeal of sections 35 and 40 of the Crime (Sentences) Act 1997), section 85(7B) of the Criminal Justice and Immigration Act 2008 applies as if after paragraph (aa), as treated as inserted by sub-paragraph (7) above, there were inserted—

- “(ab) the power under section 35 of the Crime (Sentences) Act 1997 to make a community service order or a curfew order;
- (ac) the power under section 40 of that Act to order a person to be disqualified for holding or obtaining a driving licence;”.

(9) In relation to any time before the coming into force of section 6(1) of the Criminal Justice and Immigration Act 2008 (abolition of certain youth orders) as respects the abolition of attendance centre orders, section 85(7B) of that Act applies as if after paragraph (ac), as treated as inserted by sub-paragraph (8) above, there were inserted—

“(ad) the power under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000 to order a person to attend an attendance centre;”.

6.—(1) Section 86 (modification of Magistrates' Courts Act 1980) is amended as follows.

(2) After subsection (2) insert—

“(3) Where a transfer of fine order is made under section 90 of the Magistrates' Courts Act 1980 as applied by section 85(6) of this Act—

- (a) subsections (6A) to (7) of section 88 of this Act apply in relation to the powers conferred by Article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (transfer of fines to Northern Ireland) as a result of the order as they apply in relation to the powers conferred on a magistrates' court by virtue of section 88(6) of this Act, and

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Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

- (b) for this purpose—
 - (i) references in those subsections to the financial penalty are to be treated as references to the financial penalty to which the order relates, and
 - (ii) references in those subsections to the certificate are to be treated as references to the certificate by virtue of which the order is made.”.

(3) In the heading, at the end insert “ etc ”.

7. In section 87 (requests from other member States: Northern Ireland) ^{M62}, in subsection (1)(a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

Marginal Citations

M62 Section 87 was amended by [S.I. 2010/976](#).

8.—(1) Section 88 (procedure on receipt of certificate by clerk of petty sessions) ^{M63} is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a decision, or a certified copy of a decision, requiring payment of a financial penalty,
- (b) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

(3) After subsection (4) insert—

“(4A) If the magistrates' court is of the view that one or more of the grounds for refusal mentioned in paragraphs A1, 2A and 6 of Schedule 19 may apply, the designated officer for the magistrates' court or the Department of Justice must, before the magistrates' court takes a decision under subsection (3)—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(4) After subsection (6) insert—

“(6A) But any power of a magistrates' court to impose a relevant alternative sanction in connection with a default in paying the financial penalty—

- (a) may be exercised only if its exercise is authorised by the certificate, and
- (b) is subject to any provision of the certificate specifying the maximum level of sanction that may be imposed.

(6B) “Any power of a magistrates' court to impose a relevant alternative sanction” means any of the following powers conferred on a magistrates' court by virtue of subsection (6)—

- (a) the power under Article 92(1)(b) or (c) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 12)) to issue a warrant committing a person to prison;
- (b) the power under Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) to make an attendance centre order;
- (c) the power under Article 48 of the Criminal Justice (Children) (Northern Ireland) Order 1998 to commit a person aged 16 to 18 to custody in a young offenders' institution.”.

- (5) After subsection (6B) (as inserted by sub-paragraph (4) above) insert—
- “(6C) If the person required to pay the financial penalty to which the certificate relates provides evidence that all or part of the penalty has been paid in any State, the designated officer for the magistrates' court or the Department of Justice must—
- (a) consult the competent authority or central authority concerned, and
 - (b) request the authority to supply without delay any further information required.”.

(6) For subsection (7) substitute—

“(7) If—

 - (a) the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid,
 - (b) the Department of Justice is informed, in accordance with Article 15(3) of that Decision, that all or part of the financial penalty has been paid, or
 - (c) the magistrates' court is satisfied, having regard to evidence provided as mentioned in subsection (6C) and following consultation under that subsection, that all or part of the financial penalty has been paid in any State,

the references in subsections (6) and (6A) to the financial penalty are to be read as references to so much of the penalty as remains unpaid (and, accordingly, if none of the penalty remains unpaid, subsection (6) ceases to have effect in relation to the penalty).”.

Marginal Citations

M63 Section 88 was amended by [S.I. 2010/976](#).

9.—(1) Section 89 (modification of Magistrates' Courts (Northern Ireland) Order 1981) ^{M64} is amended as follows.

- (2) After subsection (5) insert—
- “(6) Where a transfer of fine order is made under Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 as applied by section 88(6) of this Act—
- (a) subsections (7A) to (8) of section 85 of this Act apply in relation to the powers conferred by section 91 of the Magistrates' Courts Act 1980 (transfer of fines from Northern Ireland) as a result of the order as they apply in relation to the powers conferred on a magistrates' court by virtue of section 85(6) of this Act, and
 - (b) for this purpose—
 - (i) references in those subsections to the financial penalty are to be treated as references to the financial penalty to which the order relates, and
 - (ii) references in those subsections to the certificate are to be treated as references to the certificate by virtue of which the order is made.”.
- (3) In the heading, at the end insert “ etc ”.

Marginal Citations

M64 Section 89(5) was amended by [S.I. 2010/976](#).

10. In section 90 (transfer of certificates to central authority for Scotland) ^{M65}, in subsection (1) (a), for sub-paragraphs (i) and (ii) substitute—

“(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and

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- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, but”.

Marginal Citations

M65 Section 90 was amended by [S.I. 2010/976](#).

11.—(1) Section 90A (transfer of certificates by Department of Justice to Lord Chancellor and vice versa) ^{M66} is amended as follows.

(2) In subsection (1)(a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
(ii) a certificate requesting enforcement under the Framework Decision on financial penalties, or”.

(3) In subsection (3)(a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
(ii) a certificate requesting enforcement under the Framework Decision on financial penalties, or”.

Marginal Citations

M66 Section 90A was inserted by [S.I. 2010/976](#).

12.—(1) Section 91 (recognition of financial penalties: general) ^{M67} is amended as follows.

(2) In subsection (2), after “85(3)” insert “, (4A)” and after “ 88(3) ” insert “ , (4A) ”.

(3) In subsection (4), omit “81(4), 83(4)”.

Marginal Citations

M67 Section 91 was amended by [S.I. 2010/976](#).

13. In section 92 (interpretation of sections 80 to 91 etc) ^{M68}, in the definition of “decision” in subsection (2), for “in sections 85(4) and 88(4)” substitute “ where the context requires otherwise) ”.

Marginal Citations

M68 Section 92 was amended by [S.I. 2010/976](#).

14. In section 147 (orders, rules and regulations) ^{M69}, in subsection (5)(d), omit “81(4) or”.

Marginal Citations

M69 Section 147 was amended by [S.I. 2010/976](#).

15. In section 152 (extent)—

- (a) in subsection (3)(e), for “and (7)” substitute “ to (7B) ”, and
(b) in subsection (4)(b), for “to 89” substitute “ , 88 and 89(1) to (5) ”.

16.—(1) Schedule 19 (grounds for refusal to enforce financial penalties)^{M70} is amended as follows.

(2) Before paragraph 1 insert—

“**A1.** The certificate is incomplete or obviously does not correspond to the decision.”.

(3) After paragraph 2 insert—

“**2A.** Enforcement of the financial penalty is statute-barred under the law of the relevant part of the United Kingdom and the decision was made in respect of conduct that, under the law of that part of the United Kingdom, falls within its jurisdiction.”.

(4) In paragraph 3, omit sub-paragraph (2).

(5) After paragraph 3 insert—

“**3A.** The decision was made in respect of conduct—

(a) that occurred in the relevant part of the United Kingdom, and

(b) does not constitute an offence under the law of that part of the United Kingdom.”.

(6) In paragraph 4, omit sub-paragraph (2).

(7) After paragraph 5 insert—

“**5A.** It appears that the decision was in fact made for the purpose of punishing the liable person on account of the liable person's race, ethnic origin, religion, nationality, language, gender, sexual orientation or political opinions.”.

(8) For paragraph 6 substitute—

“**6.**—(1) The certificate indicates that the proceedings in which the decision was made were conducted in writing but does not confirm that the liable person was informed of—

(a) the right to contest the proceedings, and

(b) the time limits that applied to the exercise of that right.

(2) The certificate indicates that the proceedings in which the decision was made provided for a hearing to take place and that the liable person did not attend but does not contain the statement described in—

(a) Article 7(2)(i)(i) (liable person summoned in person or by other means actually notified of scheduled date and place of hearing and informed that decision may be made in his or her absence),

(b) Article 7(2)(i)(ii) (liable person's defence conducted at hearing by authorised legal representative),

(c) Article 7(2)(i)(iii) (liable person indicated intention not to contest decision or did not exercise right to further hearing or appeal within time limit), or

(d) Article 7(2)(j) (liable person expressly waived right to attend and indicated intention not to contest proceedings).

(3) In this paragraph references to Articles are to Articles of the Framework Decision on financial penalties.”.

(9) In paragraph 47, in sub-paragraph (1), after paragraph (b) insert—

“(c) “relevant part of the United Kingdom” means—

(i) England and Wales, in the application of this Schedule to England and Wales, and

(ii) Northern Ireland, in the application of this Schedule to Northern Ireland.”

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

Marginal Citations

M70 Schedule 19 was amended by S.I. 2010/976.

SCHEDULE 4

Regulation 27

UK competent authorities

PART 1

The Association of Chief Police Officers

The Chief Officer of a Police force for a Police Area in England and Wales

The Chief Constable of the Police Service of Northern Ireland

The Chief Constable of the Police Service of Scotland

F19 ...

F19 Words in Sch. 4 omitted (3.12.2014) by virtue of The Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014 (S.I. 2014/3191), regs. 1(b), **2(12)(a)**

F19 Words in Sch. 4 omitted (3.12.2014) by virtue of The Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014 (S.I. 2014/3191), regs. 1(b), **2(12)(a)**

The Crown Agent

The Director-General of the Northern Ireland Prison Service

The Director of Public Prosecutions

[^{F20}The Director of Public Prosecutions for Northern Ireland]

F20 Words in Sch. 4 substituted (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014 (S.I. 2014/3191), regs. 1(b), **2(12)(b)**

F20 Words in Sch. 4 substituted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(b)**

The Financial Conduct Authority

F21 ...

F21 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(c)**

F21 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(c)**

The Health and Safety Executive

Her Majesty's Revenue and Customs

F21 ...

F21 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(c)**

The Information Commissioner

The Lord Advocate

F21 ...

F21 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(c)**

The Ministry of Defence Police Service

F21 ...

F21 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(c)**

Status: Point in time view as at 03/12/2014.

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The National Crime Agency

The Northern Ireland Department of Justice

The Port of Dover Police

A Procurator Fiscal

The Scottish Court Service

The Scottish Information Commissioner

The Scottish Ministers

The Scottish Police Authority

The Secretary of State for ^{F22}... Communities and Local Government

F22 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(d)**

F22 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(d)**

[^{F23}The Secretary of State for Defence]

F23 Words in Sch. 4 inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(e)(i)**

The Secretary of State for ^{F22}... Energy and Climate Change

F22 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(d)**

The Secretary of State for ^{F22}... Environment, Food and Rural Affairs

F22 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(d)**

[^{F24}The Secretary of State for Foreign and Commonwealth Affairs]

F24 Words in Sch. 4 inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(e)(ii)**

The Secretary of State for ^{F22}... Health

F22 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(d)**

[^{F25}The Secretary of State for the Home Department]

F25 Words in Sch. 4 inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(e)(iii)**

[^{F25}The Secretary of State for Justice]

F25 Words in Sch. 4 inserted (3.12.2014) by [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(e)(iii)**

The Secretary of State for ^{F22}... Transport

F22 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(d)**

The Secretary of State for ^{F22}... Work and Pensions

F22 Words in Sch. 4 omitted (3.12.2014) by virtue of [The Criminal Justice and Data Protection \(Protocol No. 36\) \(Amendment\) Regulations 2014 \(S.I. 2014/3191\)](#), regs. 1(b), **2(12)(d)**

The Serious Fraud Office

PART 2

An agency or other body established by a legal instrument adopted under Title VI of the Treaty on European Union (as it had effect before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union that is in the UK.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

SCHEDULE 5

Regulation 51

Functions of the Commissioner under the Act: modifications

<i>Column 1</i>	<i>Column 2</i>
this Act (the Data Protection Act 1998)	Part 4 of these Regulations
the data protection principles, or any of them	the requirements of Part 4 of these Regulations
data controller	UK competent authority
section 7 of the Act (right of access to personal data)	regulation 44 of these Regulations (right of access)
section 4(4) of the Act (duty to comply with the data protection principles)	the provision made by Part 4 of these Regulations
section 54A of and paragraph 12 of Schedule 9 to the Act	section 54A of the Act

SCHEDULE 6

Regulations 85 and 104

Grounds for refusal to monitor supervision measures

PART 1

Grounds for refusal

1. The certificate requesting monitoring under the Framework Decision—
 - (a) is incomplete or obviously does not correspond to the decision on supervision measures, and
 - (b) is not completed or corrected within the period specified under regulation 86(3)(c) or 105(3)(c).
- 2.—(1) Where the person subject to the decision on supervision measures is lawfully and ordinarily resident in the relevant part of the United Kingdom, the person has not consented to return there with a view to the supervision measures being monitored there under the Framework Decision.
 - (2) Where the person subject to the decision on supervision measures is not lawfully and ordinarily resident in the relevant part of the United Kingdom, the person—
 - (a) has not asked for a request to be made for monitoring of the supervision measures under the Framework Decision by a competent authority in that part of the United Kingdom, or
 - (b) has asked for such a request to be made but has not given adequate reasons as to why it should be made.
3. The certificate includes measures other than those referred to in Article 8(1) of the Framework Decision (types of supervision measures).
4. Recognition of the decision on supervision measures would contravene the principle of *ne bis in idem*.

5.—(1) The decision on supervision measures was based on conduct that would not constitute an offence under the law of the relevant part of the United Kingdom if it occurred there.

(2) But sub-paragraph (1) does not apply if—

- (a) the conduct is specified in Part 2 of this Schedule, and
- (b) the conduct is punishable under the law of the issuing State with imprisonment or another form of detention for a term of 3 years or a greater punishment.

(3) For the purposes of sub-paragraph (1) —

- (a) if the conduct relates to a tax or duty, it does not matter whether the law of the relevant part of the United Kingdom contains the same kind of tax or duty or contains rules of the same kind as those of the law of the issuing State;
- (b) if the conduct relates to customs or exchange, it does not matter whether the law of the relevant part of the United Kingdom contains rules of the same kind as those of the law of the issuing State.

6. The decision was based on conduct where, under the law of the relevant part of the United Kingdom—

- (a) the criminal prosecution of the conduct would be statute-barred, and
- (b) the conduct falls within the jurisdiction of that part of the United Kingdom.

7. The decision on supervision measures was based on conduct by a person who was under the age of 10 when the conduct took place.

8. The conduct on which the decision on supervision measures was based is such that—

- (a) if there was a breach of the supervision measures, and
- (b) a warrant was issued by the issuing State for the arrest of the person subject to the decision,

the person would have to be discharged at an extradition hearing under the Extradition Act 2003 ^{M71}.

Marginal Citations

M71 2003 c.41.

9. It appears that the decision on supervision measures was in fact made for the purpose of punishing the person subject to the decision on account of the person's race, ethnic origin, religion, nationality, language, gender, sexual orientation or political opinions.

PART 2

European Framework List (supervision measures)

- 10. Participation in a criminal organisation.
- 11. Terrorism.
- 12. Trafficking in human beings.
- 13. Sexual exploitation of children and child pornography.
- 14. Illicit trafficking in narcotic drugs and psychotropic substances.
- 15. Illicit trafficking in weapons, munitions and explosives.
- 16. Corruption.

Status: Point in time view as at 03/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. (See end of Document for details)

17. Fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26th July 1995^{M72} on the protection of the European Union's financial interests.

Marginal Citations

M72 OJ No. C 316, 27.11.1995, p. 49.

18. Laundering of the proceeds of crime.
19. Counterfeiting currency, including of the euro.
20. Computer-related crime.
21. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
22. Facilitation of unauthorised entry and residence.
23. Murder, grievous bodily injury.
24. Illicit trade in human organs and tissue.
25. Kidnapping, illegal restraint and hostage-taking.
26. Racism and xenophobia.
27. Organised or armed robbery.
28. Illicit trafficking in cultural goods, including antiques and works of art.
29. Swindling.
30. Racketeering and extortion.
31. Counterfeiting and piracy of products.
32. Forgery of administrative documents and trafficking therein.
33. Forgery of means of payment.
34. Illicit trafficking in hormonal substances and other growth promoters.
35. Illicit trafficking in nuclear or radioactive materials.
36. Trafficking in stolen vehicles.
37. Rape.
38. Arson.
39. Crimes within the jurisdiction of the International Criminal Court.
40. Unlawful seizure of aircraft or ships.
41. Sabotage.

PART 3

Interpretation

42. In this Schedule—
“conduct” includes any act or omission;

“relevant part of the United Kingdom” means—

- (a) England and Wales, in the application of this Schedule to England and Wales, or
- (b) Northern Ireland, in the application of this Schedule to Northern Ireland.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Commission Decision 2014/858/EU (OJ No. L 345, 1.12.2014, p. 6) and Council Decision 2014/857/EU (OJ No. L 345, 1.12.2014, p. 1) (together “the Protocol 36 Decisions”), made under Article 10(5) of Protocol (No. 36) on transitional provisions (“Protocol 36”) to the Treaty on European Union, the Treaty on the Functioning of the European Union (“TEU” and “TFEU” respectively) and the Treaty establishing the European Atomic Energy Community.

Article 10(4), first sub-paragraph, of Protocol 36 gave the United Kingdom the power to notify the Council that it did not accept, with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which had been adopted before the entry into force of the Treaty of Lisbon (“the relevant acts”), the powers of the Commission and of the Court of Justice as referred to in Article 10(1) of Protocol 36. By letter to the President of the Council of 24th July 2013, the United Kingdom made use of this power, with the consequence that the relevant acts ceased to apply to the United Kingdom on 1st December 2014.

Article 10(5) of Protocol 36 allows the United Kingdom to notify the Council of its wish to re-participate in the relevant acts. By letter to the President of the Council, the United Kingdom made use of this power under Article 10(5) of Protocol 36 in relation to some of the relevant acts. For those relevant acts which are part of the Schengen *acquis*, the process for re-participation is set out in Protocol (No. 19) on the Schengen *acquis* integrated into the framework of the European Union. For all other relevant acts, the process for re-participation is set out in Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice and in Article 331(1) TFEU.

Under these processes, the Protocol 36 Decisions were adopted and the United Kingdom's re-participation in some of the relevant acts has been confirmed.

Pursuant to the Protocol 36 Decisions, the United Kingdom must transpose a number of provisions in the relevant acts which it is re-participating in. These Regulations make such transposing provision in relation to Council Framework Decision 2002/465/JHA of 13th June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p.1) (“JITs”), Council Framework Decision 2005/214/JHA of 24th February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p.16) (“MRFP”), Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p.59) (“confiscation orders Framework Decision”), Council Framework Decision 2006/960/JHA of 18th December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p.89) (“the Swedish Initiative”), Council Framework Decision 2008/909/JHA of 27th November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p.27) (“Prisoner Transfer Framework Decision”), Council Framework Decision 2008/977/JHA of 27th November 2008 on the protection of personal data processed in the framework of police

Status: Point in time view as at 03/12/2014.

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and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p.60) (“DPFD”), Council Framework Decision 2009/315/JHA of 26th February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p.23), Council Decision 2009/316/JHA of 6th April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p.33) (together “ECRIS”), and Council Framework Decision 2009/829/JHA of 23rd October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, p.20) (“ESO”).

Pursuant to the operation of Article 10(2) and (4) of Protocol 36, these Regulations also make transposing provision in relation to Council Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p.45) (“freezing orders Framework Decision”).

Part 2 of, and Schedules 1 and 2 to, these Regulations make provision in relation to the freezing and confiscation of criminal assets, including the instrumentalities of crime (instrumentalities are assets used for criminal conduct). Part 2 (and Schedules 1 and 2) transposes the freezing orders Framework Decision (to the extent that the Framework Decision has not already been transposed by the Crime (International Co-operation) Act 2003) and the confiscation orders Framework Decision, including that measure as amended by Council Framework Decision 2009/299/JHA of 26th February 2009 amending, inter alia, the confiscation orders Framework Decision, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (“Trials *in absentia*”).

The Proceeds of Crime Act 2002 makes provision for the freezing and confiscation of criminal property (Part 2 in relation to England and Wales, Part 3 as respects Scotland and Part 4 in relation to Northern Ireland) by means of restraint orders and confiscation orders. Chapters 2 to 4 of Part 2 (and Schedules 1 and 2) make for England and Wales, Scotland and Northern Ireland, respectively, provision to enable the restraint and confiscation orders made by UK court's against property in other member States, to be enforced by the authorities in those states. These Regulations also make provision to allow our domestic courts to recognise and enforce restraint and confiscation orders made against property in the UK, or persons normally resident in the UK, made by the authorities in other member States. Chapter 5 makes provision in relation to various communication requirements set out in the Framework Decisions, and for saved orders made under predecessor legislation to the Proceeds of Crime Act 2002 to be enforced by the authorities in other member States.

Part 3 of, and Schedule 3 to, these Regulations completes the transposition of the MRFP, including the provisions of MRFP as amended by Trials *in absentia*. MRFP was largely transposed in the Criminal Justice and Immigration Act 2008. Paragraphs 2 and 3 of Schedule 3 make amendments as regards the issuing of a certificate in England and Wales and Northern Ireland requesting enforcement of a financial penalty in another member State. Paragraphs 5 to 8 make amendments as regards the enforcement of a financial penalty in England and Wales and Northern Ireland which has been transferred under MRFP, including provision that any alternative sanction may only be applied in so far as it is authorised by the transferring Member State. Paragraph 9 makes amendments as regards the enforcement of a financial penalty in England and Wales which has been transferred under MRFP and transferred from Northern Ireland to England and Wales. Paragraph 16 makes amendments as regards the grounds on which a court in England and Wales and Northern Ireland must refuse to enforce a financial penalty transferred under MRFP. Paragraphs 4, 5(2), 7, 8(2) and 11 to 15 make amendments consequential on the amendments in Schedule 3.

Part 4 of these Regulations transposes the DPFD. In relation to the DPFD, these Regulations establish a legal framework which applies to competent authorities in EEA States when transmitting or making available personal data to competent authorities in other EEA States for the prevention, investigation, detection or prosecution of criminal penalties. In implementing the

DPFD this Part applies instead of the Data Protection Act 1998, except as provided for by this Part.

In implementing the DPFD Part 4 provides, amongst other things, for principles that govern the processing of personal data (with extra safeguards where the data is especially sensitive); a power for competent authorities to undertake automated processing; rules that permit the sharing of data with non-EEA States; procedures for monitoring the length of time for which personal data is held; a right for an individual to ask for inaccurate data to be rectified, erased or blocked; and a right for an individual to seek limited information about processing done in relation to them.

Part 5 of these Regulations transposes the Swedish Initiative, and one provision for JITs on information exchange and use of data. This Part imposes obligations on competent authorities in the United Kingdom to supply information or intelligence when requested by competent authorities of other States in accordance with the Framework Decision. In addition, this Part enables competent authorities in the United Kingdom to request information and intelligence from competent authorities in other States in accordance with the Framework Decision.

Part 6 of these Regulations transposes ECRIS which sets out a framework for the computerised exchange of information on convictions in the European Union. Part 6 implements the obligations in ECRIS firstly by designating the Chief Constable of Hampshire Constabulary as a “central authority”, which is the body responsible for the tasks relating to the exchange of information on convictions for the whole of the UK. Part 6 also sets out obligations to store information on convictions and procedures to be followed when replying to requests for information from other member States.

Part 7 of these Regulations (Chapter 2 for England and Wales, Chapter 3 for Northern Ireland) transposes the ESO which sets out a framework for the mutual recognition of decisions on supervision measures (bail conditions) in the European Union. Chapter 2 makes provision enabling: (a) certain domestic courts to make a request to a competent authority in another member State to monitor the supervision measures in relation to a person granted bail under the Bail Act 1976 (the Bail Act is modified so that conditions of bail can include those that can only be complied with in the relevant member State); and (b) a magistrates' court to recognise a decision on supervision measures imposed on a person by a competent authority in another member State, and to take steps to secure the monitoring of those measures.

Chapter 2 (and Schedule 6) also makes provision for the applicable supervision measures, the procedural requirements, the grounds for refusal, the effect of recognition of a decision on supervision measures, the duties and powers of the courts in relation to the supervision measures, arrest and detention for breach (suspected or anticipated) of a supervision measure in certain circumstances, and the exchange of information. Chapter 3 largely mirrors the provisions in Chapter 2, but with reference to the relevant legislative provisions in Northern Ireland.

Part 8 provides for the extension to Northern Ireland of speciality and transit provisions in the Repatriation of the Prisoners Act 1984 in respect of prisoner transfer arrangements and ensures that the term “international arrangements” in that Act is capable of applying to the Prisoner Transfer Framework Decision.

An impact assessment in respect of the Government's anticipated exercise of its power under Article 10(5) of Protocol 36, of the anticipated Protocol 36 Decisions, and the relevant acts covered by these Regulations was laid before Parliament in July 2014 (Cm 8897), and can be found at <https://www.gov.uk/government/publications/decision-pursuant-to-article-105-of-protocol-36-to-the-treaty-on-the-functioning-of-the-european-union>.

Status:

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Changes to legislation:

There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.