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STATUTORY INSTRUMENTS

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**2014 No. 3141**

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

PART 7

European Supervision Order

CHAPTER 3

European supervision orders: Northern Ireland

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- (b) the competent authority does not inform the magistrates' court that it has withdrawn the certificate requesting monitoring under the Framework Decision in accordance with Article 15(3) of that Decision,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

- (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
- (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(1) 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 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(2).

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

#### **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.

(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.