
STATUTORY INSTRUMENTS

2017 No. 730

The Criminal Justice (European Investigation Order) Regulations 2017

PART 2

Making or validating a European investigation order in the United Kingdom

CHAPTER 3

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

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

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

(2) A warrant may be issued in respect of a prisoner under paragraph (1) only if—

- (a) the requirement in paragraph (3) is met, and
- (b) it appears to the Secretary of State that it is necessary and proportionate for the prisoner to be transferred to the executing State for the purpose mentioned in paragraph (1).

(3) The requirement is that—

- (a) the prisoner, or
- (b) in the circumstances mentioned in paragraph (4), a person appearing to the Secretary of State to be an appropriate person to act on the prisoner’s behalf,

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

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

(5) A warrant under this section authorises—

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

(6) Subsections (4) to (8) of section 5 of the 1990 Act (transfer of UK prisoner to give evidence or assist investigation overseas)⁽¹⁾ have effect in relation to a warrant issued under this regulation as they have effect in relation to a warrant issued under that section.

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

(8) In relation to a transfer from Scotland—

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

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

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

- (a) giving evidence in criminal proceedings, or
- (b) assisting in the investigation of an offence.

(2) A warrant may be issued in respect of an EU prisoner under paragraph (1) only if the conditions in each of paragraphs (3) to (5) are satisfied.

(3) The condition is that, where the EU prisoner is to be transferred for the purpose mentioned in paragraph (1)(a), a witness order has been made, or a witness summons or citation issued, in criminal proceedings in the United Kingdom in respect of the EU prisoner.

(4) The condition is that it appears to the Secretary of State that the EU prisoner consents, or is likely to consent, to being transferred for the purpose mentioned in paragraph (1)(a), or as the case may be, paragraph (1)(b).

(5) The condition is that it appears to the Secretary of State to be necessary and proportionate for the EU prisoner to be transferred to the United Kingdom for the purpose mentioned in paragraph (1) (a) or, as the case may be, paragraph (1)(b).

(6) A warrant under this regulation authorises—

- (a) the bringing of the EU prisoner to the United Kingdom,
- (b) the taking of the EU prisoner to, and detention in custody at, any place or places in the United Kingdom specified in the warrant,
- (c) the returning of the EU prisoner to the executing State.

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

(8) A person is not subject to the Immigration Act 1971⁽²⁾ in respect of that person’s entry into or presence in the United Kingdom pursuant to a warrant under this regulation; but if the warrant ceases to have effect while that person is still in the United Kingdom—

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

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

(2) 1971 c. 77.

- (b) the provisions of Schedule 2 to that Act have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) does not have effect in relation to directions for the person's removal given by virtue of this sub-paragraph.
- (9) A warrant issued under this regulation must be forwarded to a judicial authority or designated public prosecutor for consideration under regulation 22.
- (10) In relation to a transfer from Scotland—
 - (a) references in this regulation to the Secretary of State are to be read as references to the Scottish Ministers;
 - (b) the reference in paragraph (9) to “a judicial authority or designated public prosecutor” is to be read as a reference to the Lord Advocate.

European investigation order for the temporary transfer of a prisoner

- 22.**—(1) This regulation applies—
- (a) in relation to England and Wales and Northern Ireland, where a judicial authority or designated public prosecutor receives from the Secretary of State a warrant issued under regulation 20 or 21;
 - (b) in relation to Scotland, where the Lord Advocate receives from the Scottish Ministers a warrant issued under regulation 20 or 21.
- (2) If satisfied that—
- (a) in relation to a warrant issued under regulation 20, it is necessary and proportionate for the prisoner to be present in the territory of the participating State for the purpose mentioned in paragraph (1) of that regulation;
 - (b) in relation to a warrant issued under regulation 21, it is necessary and proportionate for the EU prisoner to be present in the United Kingdom for the purpose mentioned in paragraph (1)(a) or, as the case may be, paragraph (1)(b) of that regulation,
- the judicial authority or designated public prosecutor (or, in Scotland, the Lord Advocate) must make an order for the transfer of the prisoner or the EU prisoner.
- (3) An order under this regulation must—
- (a) be in the form set out in Annex A to the Directive;
 - (b) contain the specified information;
 - (c) be signed by or on behalf of the person who made it (the signature may be an electronic one), and
 - (d) include a statement certifying that the information given in it is accurate and correct.
- (4) An order made under this regulation—
- (a) in England and Wales or Northern Ireland must be given to the Secretary of State for transmission to the central authority or appropriate executing authority of the executing State;
 - (b) in Scotland must be transmitted by the Lord Advocate to the central authority or appropriate executing authority of the executing State.
- (5) A European investigation order transmitted under this regulation must be accompanied by a translation of the order into an appropriate language of the executing State (if that language is not English), in accordance with any notification made by that State under Article 33(1)(b) of the Directive.

Restrictions on prosecution and detention for other matters

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

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

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

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

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

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

Time spent by UK prisoner in custody overseas

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

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

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