
STATUTORY INSTRUMENTS

2017 No. 730

The Criminal Justice (European Investigation Order) Regulations 2017

PART 3

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

CHAPTER 5

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

Interpretation

42. In this Chapter—

“account monitoring order” has the meaning given by regulation 45(3);

“court”, in relation to Scotland, means a sheriff court;

“customer information order” has the meaning given by regulation 44(3);

“financial institution” includes a person who was at any time a financial institution, but who has ceased to be a financial institution.

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

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

(a) a customer information order, or

(b) an account monitoring order.

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

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

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

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

(a) send a copy of the European investigation order to that court;

(b) specify which of the orders mentioned in paragraph (1) the court is to make;

(c) send a copy of the order to the chief officer of police for a police area appearing to the Secretary of State to be the appropriate chief officer to receive it, and

(d) tell the chief officer which court has been nominated.

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

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

Court’s power to make a customer information order

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

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

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

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

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

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

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

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

(9) In relation to Scotland—

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

(b) section 409 (jurisdiction of sheriff),

of the Proceeds of Crime Act 2002 have effect for the purposes of this regulation as if this regulation were included in Chapter 3 of Part 8 of that Act.

Court’s power to make an account monitoring order

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

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

(3) An account monitoring order is an order that a financial institution must, for the period stated in the order, provide account information of the description specified in the order to a constable (or,

in Scotland, a constable under the instruction of a procurator fiscal) in the manner, and at or by the time or times, stated in the order.

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

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

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

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

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

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

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

(2) The grounds are that—

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

Postponement

47. The nominated court may postpone making an order under regulations 44 or 45 if—

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

Power to vary or revoke customer information and account monitoring orders

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

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

- (a) it is of the opinion mentioned in regulation 46(1), or

- (b) it appears to the nominated court that the European investigation order has been withdrawn or no longer has effect in the issuing State.
- (3) The persons are—
 - (a) in relation to England and Wales and Northern Ireland, a chief officer of police to whom a copy of the order was sent;
 - (b) in relation to Scotland, a procurator fiscal;
 - (c) any other person affected by the order.
- (4) When considering an application under this regulation, the nominated court must not entertain any challenge to the substantive reasons in relation to which the European investigation order was issued.

Offences in relation to customer information orders

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

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

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

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

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

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

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

Offence of disclosure

50.—(1) This regulation applies where—

- (a) a financial institution is specified in a customer information order or account monitoring order made in the United Kingdom under this Part, or
- (b) the central authority receives a European investigation order under this Part for evidence to be obtained from a financial institution in connection with the investigation of an offence in reliance on Article 27 of the Directive (information on banking and other financial operations).

(2) If the financial institution, or an employee of the financial institution, discloses any of the following information, that person is guilty of an offence.

(3) That information is—

- (a) that the request to obtain customer information or account information, or the European investigation order mentioned in paragraph (1)(b), has been received;

- (b) that the investigation to which the request or order relates is being carried out;
 - (c) that, in pursuance of the request or order, information has been given to the authority which made the request or order.
- (4) A financial institution guilty of an offence under this regulation is liable—
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
 - (d) on conviction on indictment, to a fine.
- (5) Any other person found guilty of an offence under this regulation is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding three months or to a fine, or to both;
 - (b) on summary conviction in Northern Ireland or in Scotland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or to both;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.