
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 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(1) 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
- (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.