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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 386**

**CRIMINAL LAW**

**The Criminal Justice and Data Protection (Protocol  
No. 36) Amendment (Scotland) Regulations 2020**

*Made - - - - 18th November 2020*  
*Laid before the Scottish*  
*Parliament - - - - 20th November 2020*  
*Coming into force - - 19th December 2020*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(1) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Criminal Justice and Data Protection (Protocol No. 36) Amendment (Scotland) Regulations 2020 and come into force on 19 December 2020.

**Amendment of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014**

2.—(1) Schedule 1 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(2) is amended as follows.

(2) In paragraph 1 (Interpretation):

(a) after the definition of “domestic restraint order” insert:

““listed 2018 Regulation offence” means an offence described in Article 3(1) of the 2018 Regulation;”,

(b) for the definition of “specified information” substitute:

““specified information” means—

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- (1) [1972 c.68](#). The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 ([c.16](#)) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 ([c.1](#))). Section 2(2) was amended by the Scotland Act 1998 ([c.46](#)) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 ([c.51](#)) (“the 2006 Act”)). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 ([c.7](#)), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (2) [S.I. 2014/3141](#); as amended by [S.I. 2014/3191](#) and [SI 2019/742](#).

- (a) in relation to a certificate under paragraph 2, any information required to be given by the form of certificate attached as Annex I to the 2018 Regulation;
- (b) in relation to a certificate under paragraph 7, any information required to be given by the form of certificate attached as Annex II to the 2018 Regulation;”,
- (c) after the substituted definition of “specified information” insert:
  - ““the 2018 Regulation” means Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders;”.
- (3) In paragraph 2(3) (Domestic restraint orders: certification) for “the 2003 Framework decision” substitute “Chapter II of the 2018 Regulation”.
- (4) In paragraph 4(9) (Sending overseas restraint orders to the court), for “a listed 2003 Framework Decision offence” substitute “a listed 2018 Regulation offence”.
- (5) In paragraph 7(3) (Domestic confiscation orders: certification) for “the 2006 Framework Decision” substitute “Chapter III of the 2018 Regulation”.
- (6) In paragraph 9(9) (Sending overseas confiscation orders to the court), for “a listed 2006 Framework Decision offence” substitute “a listed 2018 Regulation offence”.

St Andrew’s House,  
Edinburgh  
18th November 2020

*HUMZA YOUSAF*  
A member of the Scottish Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (“the 2014 Regulations”) and provide for the implementation of Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (“Regulation (EU) 2018/1805”).

From 19 December 2020 the legal framework for the mutual recognition of freezing orders and confiscation orders between member states will be governed by Regulation (EU) 2018/1805. The 2014 Regulations set out the current legislative framework in Scotland for the mutual recognition of overseas freezing orders and confiscation orders and these Regulations make amendments for the necessary changes to the framework for the implementation of Regulation (EU) 2018/1805.