



# Crime (Overseas Production Orders) Act 2019

## 2019 CHAPTER 5

### *Overseas production orders*

#### **4 Requirements for making of order**

- (1) The requirements for the making of an overseas production order are—
  - (a) the requirements set out in subsections (2) to (7), and
  - (b) such additional requirements as are specified in regulations made by the Secretary of State (so far as applicable).
- (2) The judge must be satisfied that there are reasonable grounds for believing that the person against whom the order is sought—
  - (a) operates in a country or territory outside the United Kingdom which is a party to, or participates in, the designated international co-operation arrangement specified in the application for the order, or
  - (b) is based in a country or territory outside the United Kingdom which is a party to, or participates in, the designated international co-operation arrangement specified in the application for the order.
- (3) The judge must be satisfied that—
  - (a) there are reasonable grounds for believing that an indictable offence has been committed and proceedings in respect of the offence have been instituted or the offence is being investigated, or
  - (b) the order is sought for the purposes of a terrorist investigation.
- (4) The judge must be satisfied that there are reasonable grounds for believing that the person against whom the order is sought has possession or control of all or part of the electronic data specified or described in the application for the order.
- (5) The judge must be satisfied that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely

to be of substantial value (whether or not by itself) to the proceedings or investigation mentioned in subsection (3)(a) or, as the case may be, to a terrorist investigation.

- (6) The judge must be satisfied that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be relevant evidence in respect of the offence mentioned in subsection (3)(a).

This requirement does not apply where the order is sought for the purposes of a terrorist investigation.

- (7) The judge must be satisfied that there are reasonable grounds for believing that it is in the public interest for all or part of the electronic data specified or described in the application for the order to be produced or, as the case may be, accessed having regard to—

- (a) the benefit likely to accrue, if the data is obtained, to the proceedings or investigation mentioned in subsection (3)(a) or, as the case may be, to a terrorist investigation, and
- (b) the circumstances under which the person against whom the order is sought has possession or control of any of the data.

- (8) For the purpose of subsection (2)—

- (a) a person operates in a country or territory outside the United Kingdom if the person creates, processes, communicates or stores data by electronic means in that country or territory (whether or not the person also creates, processes, communicates or stores data by electronic means in the United Kingdom);
- (b) a person is based in a country or territory outside the United Kingdom—
  - (i) in the case of an individual, if the individual’s habitual place of residence is in that country or territory;
  - (ii) in the case of a body corporate, if the body is incorporated in, or has its principal place of business in, that country or territory;
  - (iii) in any other case, if the person’s principal place of business is in, or the person’s activities are principally conducted in, that country or territory.

- (9) For the purpose of subsection (3)(a)—

- (a) an offence under the law of Scotland is an indictable offence if it may be tried on indictment in Scotland;
- (b) an offence under the law of Northern Ireland is an indictable offence if it is an offence which, if committed by an adult, is triable on indictment in Northern Ireland (whether or not it is also triable by a court of summary jurisdiction).

(As regards an offence under the law of England and Wales, see Schedule 1 to the Interpretation Act 1978.)

- (10) An offence under the law of Northern Ireland which would be triable only by a court of summary jurisdiction but for Article 29 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)), or any other statutory provision which requires the offence to be tried on indictment at the instance of the accused or the prosecution, is not an indictable offence for the purpose of subsection (3)(a).

- (11) For the purpose of subsection (6), “relevant evidence”, in relation to an offence, means anything that would be admissible in evidence in proceedings in respect of the offence.

- (12) In this section, “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act).