



# Crime (Overseas Production Orders) Act 2019

## 2019 CHAPTER 5

An Act to make provision about overseas production orders and about the designation of international agreements for the purposes of section 52 of the Investigatory Powers Act 2016. [12th February 2019]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Overseas production orders*

#### **1 Making of overseas production order on application**

- (1) A judge may, on an application by an appropriate officer, make an overseas production order against a person in respect of electronic data if each of the requirements for the making of the order is fulfilled (see section 4).
- (2) An application for an overseas production order must—
  - (a) specify the designated international co-operation arrangement by reference to which the application is made, and
  - (b) specify or describe the electronic data in respect of which the order is sought.
- (3) An appropriate officer applying for an overseas production order must not specify or describe in the application for the order electronic data that the appropriate officer has reasonable grounds for believing consists of or includes excepted electronic data.
- (4) An overseas production order is an order made under this Act that either—
  - (a) requires the person against whom the order is made to produce the electronic data specified or described in the order, or

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*Status: This is the original version (as it was originally enacted).*

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- (b) requires the person against whom the order is made to give access to the electronic data specified or described in the order.
- (5) In this Act “designated international co-operation arrangement” means a relevant treaty which—
  - (a) relates (in whole or in part) to the provision of mutual assistance in connection with the investigation or prosecution of offences, and
  - (b) is designated by the Secretary of State by regulations.
- (6) For the purposes of subsection (5) a treaty is a relevant treaty if a Minister of the Crown has laid before Parliament a copy of the treaty under section 20(1)(a) of the Constitutional Reform and Governance Act 2010.
 

(“Treaty” and “Minister of the Crown” have the same meaning for the purposes of this section as they have for the purposes of Part 2 of that Act.)
- (7) In this Act—
  - “appropriate officer” has the meaning given by section 2;
  - “electronic data” and “excepted electronic data” have the meanings given by section 3;
  - “judge” means—
    - (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;
    - (b) in relation to Scotland, a judge of the High Court of Justiciary or the sheriff;
    - (c) in relation to Northern Ireland, a Crown Court judge.

## 2 Appropriate officers

- (1) In this Act “appropriate officer” means—
  - (a) in relation to England and Wales and Northern Ireland—
    - (i) a constable,
    - (ii) an officer of Revenue and Customs,
    - (iii) a member of the Serious Fraud Office,
    - (iv) an accredited financial investigator,
    - (v) a counter-terrorism financial investigator,
    - (vi) a person appointed by the Financial Conduct Authority under section 168(3) or (5) of the Financial Services and Markets Act 2000 to conduct an investigation, or
    - (vii) a person of a description specified in regulations made by the Secretary of State;
  - (b) in relation to Scotland—
    - (i) a procurator fiscal,
    - (ii) a constable,
    - (iii) an officer of Revenue and Customs,
    - (iv) a person appointed by the Financial Conduct Authority under section 168(3) or (5) of the Financial Services and Markets Act 2000 to conduct an investigation, or
    - (v) a person of a description specified in regulations made by the Secretary of State.

- (2) An accredited financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a confiscation investigation or a money laundering investigation within the meaning of Part 8 of the Proceeds of Crime Act 2002 (see section 341 of that Act).
- (3) A counter-terrorism financial investigator other than a Schedule 5A counter-terrorism financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a terrorist investigation so far as relating to terrorist property.
- (4) A Schedule 5A counter-terrorism financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a terrorist financing investigation.
- (5) A person mentioned in any of sub-paragraphs (ii) to (v) of subsection (1)(b) may exercise a function conferred by a provision of this Act only if authorised to do so by a procurator fiscal.
- (6) A certificate of a procurator fiscal that a person mentioned in any of sub-paragraphs (ii) to (v) of subsection (1)(b) had authority to exercise a function conferred by a provision of this Act is conclusive evidence of that fact.
- (7) If regulations under subsection (1)(a)(vii) describe a person by reference to the person being authorised by another person, the regulations may include provision which has a similar effect to the provision made by subsection (6).
- (8) In this section—
  - “accredited financial investigator” has the same meaning as in the Proceeds of Crime Act 2002 (see section 3 of that Act);
  - “counter-terrorism financial investigator” means a person who is accredited—
    - (a) by virtue of section 63F(4)(a) of the Terrorism Act 2000 in relation to that Act, or
    - (b) by virtue of section 63F(4)(c) of the Terrorism Act 2000 in relation to Schedule 5 or 5A to that Act;
  - “Schedule 5A counter-terrorism financial investigator” means a person who is accredited by virtue of section 63F(4)(c) of the Terrorism Act 2000 in relation to Schedule 5A to that Act and not in relation to Schedule 5 to that Act;
  - “terrorist financing investigation” has the same meaning as in Part 1 of Schedule 5A to the Terrorism Act 2000 (see paragraph 4 of that Schedule);
  - “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act);
  - “terrorist property” has the same meaning as in the Terrorism Act 2000 (see section 14 of that Act).

### **3 Meaning of “electronic data” and “excepted electronic data”**

- (1) This section applies for the purposes of this Act.
- (2) “Electronic data” means data stored electronically.
- (3) “Excepted electronic data” means electronic data that is—
  - (a) an item subject to legal privilege, or

- (b) a personal record which is a confidential personal record.
- (4) Where the person against whom an overseas production order is sought is a telecommunications operator, this Act applies as if references to excepted electronic data included electronic data that is communications data.
- (5) Where an application for an overseas production order is made for the purposes of a terrorist investigation other than a terrorist financing investigation, this Act applies as if references to excepted electronic data did not include electronic data that is a personal record which is a confidential personal record.
- (6) “Item subject to legal privilege”—
- (a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
  - (b) in relation to Scotland, has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act);
  - (c) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 12 of that Order).
- (7) “Personal record” means a record concerning an individual (“P”) (whether living or dead) who can be identified from the record and relating to—
- (a) P’s physical or mental health,
  - (b) spiritual counselling or assistance given, or to be given, to P, or
  - (c) counselling or assistance given, or to be given, to P for the purposes of P’s personal welfare by—
    - (i) any voluntary organisation,
    - (ii) any individual who by reason of an office or occupation has responsibilities for P’s personal welfare, or
    - (iii) any individual who by reason of an order of a court has responsibilities for P’s supervision.
- (8) A personal record is a “confidential personal record” if—
- (a) it was created in circumstances giving rise to an obligation of confidence owed to P and the obligation continues to be owed, or
  - (b) it is held subject to a restriction on disclosure, or an obligation of secrecy, contained in an enactment (whenever passed or made).
- (9) In this section—
- “communications data” and “telecommunications operator” have the same meaning as in the Investigatory Powers Act 2016 (see section 261 of that Act);
- “terrorist financing investigation” has the same meaning as in Part 1 of Schedule 5A to the Terrorism Act 2000 (see paragraph 4 of that Schedule);
- “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act).

#### **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).

## 5 Contents of order

- (1) The electronic data specified or described in an overseas production order may be all or part of the electronic data specified or described in the application for the order (subject to subsections (2) and (3)).
- (2) The judge must not specify or describe in the order electronic data that the judge has reasonable grounds for believing consists of or includes excepted electronic data.
- (3) If the requirement in section 4(5) or (7) is fulfilled by reference to part only of the electronic data specified or described in the application for the order, the judge must not specify or describe in the order electronic data by reference to which the requirement is not fulfilled.
- (4) An overseas production order must specify—
  - (a) the person, or the description of person, to whom the electronic data specified or described in the order must be produced or, as the case may be, to whom access to the electronic data specified or described in the order must be given, and
  - (b) the period by the end of which the electronic data specified or described in the order must be produced or, as the case may be, access to the electronic data specified or described in the order must be given.
- (5) The period specified by virtue of subsection (4)(b) must be a period of seven days beginning with the day on which the order is served, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances.

## 6 Effect of order

- (1) A requirement in an overseas production order to produce the electronic data specified or described in the order is a requirement to produce the electronic data in a form—
  - (a) in which it can be taken away, and
  - (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (2) A requirement in an overseas production order to give access to the electronic data specified or described in the order is a requirement—
  - (a) to give access to the electronic data in a form in which it is visible and legible, and
  - (b) if so required by the specified person or, as the case may be, by a person of the specified description, to produce the electronic data in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) In subsection (2)(b), “specified” means specified in the overseas production order by virtue of section 5(4)(a).
- (4) The requirement to produce or, as the case may be, give access to electronic data imposed by an overseas production order on the person against whom it is made—
  - (a) applies regardless of where the electronic data is stored,
  - (b) does not require the person to produce or, as the case may be, give access to any electronic data that is excepted electronic data,
  - (c) does not require the person to do anything that (taking into account the existence of the overseas production order) would result in the person contravening the data protection legislation, and
  - (d) has effect, subject to paragraph (c), in spite of any restriction on the disclosure of information (however imposed).

## 7 Variation or revocation of order

- (1) A judge may, on an application by a person mentioned in subsection (2)—
  - (a) vary an overseas production order;
  - (b) revoke an overseas production order.
- (2) The persons who may apply are—
  - (a) the appropriate officer who applied for the order or an equivalent appropriate officer,
  - (b) any person affected by the order,
  - (c) in relation to England and Wales and Northern Ireland, the Secretary of State, and
  - (d) in relation to Scotland, the Lord Advocate or (if not otherwise able to apply by virtue of paragraph (a)) a procurator fiscal.
- (3) An application for the variation of an overseas production order must—
  - (a) specify the designated international co-operation arrangement by reference to which the application is made, and

- (b) specify or describe the electronic data in respect of which the varied order is sought (which may include electronic data not specified or described in the original order).
- (4) A person applying for the variation of an overseas production order must not specify or describe in the application for the variation of the order electronic data that the person has reasonable grounds for believing consists of or includes excepted electronic data.
- (5) A judge may vary an overseas production order only if—
- (a) the requirements in section 4(2) and (3) continue to be fulfilled,
  - (b) the requirements in section 4(4) to (7) are fulfilled in relation to the electronic data specified or described in the application for the variation of the order, and
  - (c) such additional requirements specified in regulations under section 4(1)(b) as are applicable—
    - (i) continue to be fulfilled, or
    - (ii) where they relate to electronic data specified or described in an application for an order, are fulfilled in relation to the electronic data specified or described in the application for the variation of the order.
- (6) Unless the context otherwise requires, references in this Act to an overseas production order include one that is varied under this section and accordingly, in the application of this Act in relation to the variation of an overseas production order—
- (a) references (however expressed) to an application for an overseas production order are to be read as references to the application for the variation of the order;
  - (b) references (however expressed) to the person against whom an overseas production order is sought are to be read as references to the person against whom the order was made;
  - (c) references (however expressed) to the making of an overseas production order are to be read as references to the variation of the order.
- (7) For the purpose of subsection (2)(a), an appropriate officer is an equivalent appropriate officer in relation to an application for the variation or revocation of an overseas production order if—
- (a) the appropriate officer falls within the same sub-paragraph of section 2(1)(a) or (b) as the appropriate officer who applied for the order, and
  - (b) where that sub-paragraph is sub-paragraph (vii) of section 2(1)(a) or sub-paragraph (v) of section 2(1)(b), the appropriate officer is of the same description as the appropriate officer who applied for the order.

## **8 Inclusion of non-disclosure requirement in order**

- (1) A judge making an overseas production order may include a non-disclosure requirement in the order.
- (2) A non-disclosure requirement is a requirement imposed on the person against whom the order is made not to disclose the making of the order or its contents to any person except—
- (a) with the leave of a judge, or
  - (b) with the written permission of the appropriate officer who applied for the order or an equivalent appropriate officer.



- (3) An overseas production order that includes a non-disclosure requirement must specify or describe when the requirement is to expire.
- (4) A judge revoking an overseas production order that includes an unexpired non-disclosure requirement may order that the person against whom the overseas production order was made is to remain subject to the non-disclosure requirement.
- (5) An order under subsection (4) may specify or describe a different time when the non-disclosure requirement is to expire than that specified or described in the overseas production order that is being revoked.
- (6) For the purpose of subsection (2)(b), an appropriate officer is an equivalent appropriate officer in relation to an overseas production order if—
  - (a) the appropriate officer falls within the same sub-paragraph of section 2(1)(a) or (b) as the appropriate officer who applied for the order, and
  - (b) where that sub-paragraph is sub-paragraph (vii) of section 2(1)(a) or sub-paragraph (v) of section 2(1)(b), the appropriate officer is of the same description as the appropriate officer who applied for the order.

### *Supplementary*

## **9 Restrictions on service of order**

- (1) An overseas production order that is not served within the period of 3 months beginning with the day on which the order is made is to be treated as if it had been quashed immediately after the end of that period.
- (2) An overseas production order made in England and Wales or Northern Ireland may be served only by the Secretary of State.
- (3) An overseas production order made in Scotland may be served only by the Lord Advocate.
- (4) The Secretary of State or, as the case may be, the Lord Advocate may serve an overseas production order only if the Secretary of State or the Lord Advocate considers that to do so would be in accordance with a designated international co-operation arrangement.

## **10 Retention of electronic data and use as evidence**

- (1) Electronic data produced in compliance with an overseas production order may be retained for so long as is necessary in all the circumstances.

This includes retaining it so that it may be used as evidence in proceedings in respect of an offence.
- (2) Subsection (1) does not authorise the doing of anything that contravenes the data protection legislation.
- (3) In section 117 of the Criminal Justice Act 2003 (evidence: business and other documents), in subsection (4)(b)—
  - (a) omit the “or” at the end of sub-paragraph (ii);
  - (b) at the end of sub-paragraph (iii) insert “or

- (iv) an overseas production order under the Crime (Overseas Production Orders) Act 2019.”.
- (4) In Article 21 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)) (principal categories of admissibility: business and other documents), in paragraph (4)(b)—
  - (a) omit the “or” at the end of paragraph (ii);
  - (b) at the end of paragraph (iii) insert “or
    - (iv) an overseas production order under the Crime (Overseas Production Orders) Act 2019.”.
- (5) In Scotland, electronic data produced in compliance with an overseas production order may be received in evidence without being sworn to by witnesses, so far as that may be done without unfairness to either party.

## 11 Procedural matters

- (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to an overseas production order.
- (2) The power to make rules of court under subsection (1) does not prejudice any existing power to make rules.
- (3) Subsection (1) does not authorise the making of provision that is inconsistent with the provision made by section 12.
- (4) An order made under this Act by a judge in England and Wales entitled to exercise the jurisdiction of the Crown Court, or by a Crown Court judge in Northern Ireland, has effect as if it were an order of the Crown Court.

## 12 Notice of application for order: journalistic data

- (1) This section applies to an application for an overseas production order if there are reasonable grounds for believing that the electronic data specified or described in the application consists of or includes journalistic data.
- (2) “Journalistic data” means electronic data that—
  - (a) was created or acquired for the purposes of journalism, and
  - (b) is stored by or on behalf of a person who created or acquired it for the purposes of journalism.
- (3) Where this section applies, notice of the application must be served on—
  - (a) the person against whom the overseas production order is sought, and
  - (b) if different, the person by whom, or on whose behalf, the journalistic data is stored.
- (4) But a judge may direct that notice of an application need not be served on a person falling within subsection (3)(b) if the judge is satisfied that—
  - (a) serving notice on the person would prejudice the investigation of an indictable offence or a terrorist investigation, or
  - (b) it is not reasonably practicable to establish the person’s identity or to make contact with the person so as to enable service to be effected.

- (5) Where a person (“R”) receives electronic data from another person (“S”) and S intends R to use the data for the purposes of journalism, R is to be taken to have acquired the data for those purposes.
- (6) For the purposes of this section—
  - (a) electronic data is not to be regarded as having been created or acquired for the purposes of journalism if it was created or acquired with the intention of furthering a criminal purpose, and
  - (b) electronic data which a person intends to be used to further such a purpose is not to be regarded as intended to be used for the purposes of journalism.
- (7) In determining for the purposes of subsection (6) whether or not a purpose is a criminal purpose, crime is to be taken to mean conduct which—
  - (a) constitutes one or more criminal offences under the law of a part of the United Kingdom, or
  - (b) is, or corresponds to, conduct which, if it all took place in a particular part of the United Kingdom, would constitute one or more criminal offences under the law of that part of the United Kingdom.
- (8) Subsections (9) and (10) of section 4 apply for the purposes of subsection (4) of this section as they apply for the purposes of subsection (3)(a) of that section.
- (9) In this section, “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act).

### **13 Effect of notice of application**

- (1) Where notice of an application for an overseas production order is served on a person (whether under section 12 or otherwise), the person must not—
  - (a) conceal, destroy, alter or dispose of any of the electronic data specified or described in the application for the order, or
  - (b) disclose the making of the application or its contents to any person.
- (2) But a person on whom notice of an application for an overseas production order is served may do something mentioned in paragraph (a) or (b) of subsection (1)—
  - (a) with the leave of a judge, or
  - (b) with the written permission of the appropriate officer who made the application or an equivalent appropriate officer.
- (3) Where no overseas production order is made on the application, the duty imposed on a person under subsection (1)(a) and (b) ceases to apply when the application is dismissed or abandoned, unless on a dismissal of the application the judge orders that the duty is to continue to apply.
- (4) Where an overseas production order is made on the application, the duty imposed on a person under subsection (1)(a) ceases to apply when one of the following occurs—
  - (a) the order is served;
  - (b) the order is revoked before it is served, unless on its revocation the judge orders that the duty is to continue to apply;
  - (c) the order is treated as if it had been quashed by virtue of section 9(1) or is otherwise quashed before it is served.

- (5) Where an overseas production order is made on the application, the duty imposed on a person under subsection (1)(b) ceases to apply—
  - (a) where the overseas production order does not include a non-disclosure requirement, when the order is made;
  - (b) where the overseas production order includes a non-disclosure requirement, when the non-disclosure requirement expires (see section 8).
- (6) An order under subsection (3) or (4)(b) must specify or describe when the duty is to cease to apply.
- (7) For the purpose of subsection (2)(b), an appropriate officer is an equivalent appropriate officer in relation to an application for an overseas production order if—
  - (a) the appropriate officer falls within the same sub-paragraph of section 2(1)(a) or (b) as the appropriate officer who made the application, and
  - (b) where that sub-paragraph is sub-paragraph (vii) of section 2(1)(a) or sub-paragraph (v) of section 2(1)(b), the appropriate officer is of the same description as the appropriate officer who made the application.
- (8) In subsection (5), “non-disclosure requirement” has the meaning given by section 8(2).

#### 14 Means of service

- (1) This section applies in relation to—
  - (a) the service of an overseas production order,
  - (b) the service of notice of an application for an overseas production order, and
  - (c) the service of any other order or document issued or made in, or for the purposes of, proceedings relating to an overseas production order by a court (including a single judge) in England and Wales, Scotland or Northern Ireland.
- (2) The order, notice or other document may be served on a person (whether the person is in the United Kingdom or outside it) by such means, including electronic means, as rules of court permit.
- (3) In addition, the order, notice or other document may be served on a person outside the United Kingdom in any of the following ways—
  - (a) by delivering it to the person’s principal office within the United Kingdom or, if the person has no such office in the United Kingdom, to any place in the United Kingdom where the person carries on business or conducts activities;
  - (b) if the person has specified an address in the United Kingdom as one at which the person, or someone on the person’s behalf, will accept service of documents of the same description as the order, notice or other document, by delivering it to that address;
  - (c) by making it available for inspection (whether to the person or to someone acting on the person’s behalf) at a place in the United Kingdom (but this is subject to subsection (4));
  - (d) in accordance with arrangements made—
    - (i) where the order, notice or other document is made or issued in England and Wales or Northern Ireland, by the Secretary of State;
    - (ii) where the order, notice or other document is made or issued in Scotland, by the Lord Advocate.

- (4) The order, notice or other document may be served on a person outside the United Kingdom in the way mentioned in subsection (3)(c) only if—
  - (a) it is not reasonably practicable for it to be served by any other means (whether as mentioned in subsection (3)(a), (b) or (d) or as permitted by rules of court), and
  - (b) the person serving the order, notice or other document takes such steps as that person considers appropriate for the purpose of bringing its contents, and the availability of it for inspection, to the attention of the person on whom it is being served.
- (5) The steps mentioned in subsection (4)(b) must be taken as soon as reasonably practicable after the order, notice or other document is made available for inspection.

## **15 Application of Act to service police**

- (1) A judge advocate may, on an application by a member of a service police force, make an overseas production order against a person in respect of electronic data if each of the requirements for the making of the order is fulfilled (see section 4).
- (2) This Act applies in relation to an application under subsection (1) and an overseas production order made under that subsection as it applies in relation to an application made to a judge by an appropriate officer under section 1(1) and an overseas production order made under that section.
- (3) For the purposes of subsection (2) (and unless the context otherwise requires)—
  - (a) references to a judge are to be read as references to a judge advocate;
  - (b) references to an appropriate officer are to be read as references to a member of a service police force;
  - (c) references to an equivalent appropriate officer are to be read as references to a member of the same service police force as the person who applied for the order or, as the case may be, made the application;
  - (d) in section 3, “item subject to legal privilege” is to have the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
  - (e) the reference in sections 4(3)(a) and 12(4)(a) to an indictable offence is to be read as a reference to an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales is an indictable offence;
  - (f) section 7(2) is to be read as if paragraphs (c) and (d) were replaced with a new paragraph (c) referring to the Secretary of State;
  - (g) section 9 is to be read as if—
    - (i) the reference in subsection (2) to an overseas production order made in England and Wales or Northern Ireland were a reference to an overseas production order made by a judge advocate, and
    - (ii) subsection (3) were omitted;
  - (h) the reference in section 14(1)(c) to a court in England and Wales, Scotland or Northern Ireland is to be read as if it included the Court Martial.
- (4) If a person (whether the person is in the United Kingdom or outside it) fails to comply with an order made under this Act by a judge advocate, the Court Martial may certify the failure to the High Court in England and Wales.
- (5) The High Court—

- (a) may inquire into the matter, and
- (b) must hear—
  - (i) any witness who may be produced against or on behalf of the person alleged to have failed to comply with the order, and
  - (ii) any statement that may be offered in defence.
- (6) Having acted in accordance with subsection (5), the High Court may deal with the person in any way in which it could deal with the person if the failure had been a failure to comply with an order of that court.
- (7) In this section—
  - “judge advocate” has the same meaning as in the Armed Forces Act 2006 (see section 362 of that Act);
  - “service police force” means—
    - (a) the Royal Navy Police,
    - (b) the Royal Military Police, or
    - (c) the Royal Air Force Police.

*Miscellaneous and general***16 Designation of international agreements for purposes of section 52 of Investigatory Powers Act 2016**

- (1) Section 52 of the Investigatory Powers Act 2016 (interception of communications in accordance with overseas requests) is amended as follows.
- (2) In subsection (3), at the end insert “(see further subsections (6) and (7))”.
- (3) After subsection (5) insert—
  - “(6) Subsection (7) applies where an international agreement provides for requests for the interception of a communication to be made by the competent authorities of a country or territory, or of more than one country or territory, in which a person found guilty of a criminal offence may be sentenced to death for the offence under the general criminal law of the country or territory concerned.
  - Such an offence is referred to in subsection (7) as a “death penalty offence”.
  - (7) Where this subsection applies, the Secretary of State may not designate the agreement as a relevant international agreement unless the Secretary of State has sought, in respect of each country or territory referred to in subsection (6), a written assurance, or written assurances, relating to the non-use of information obtained by virtue of the agreement in connection with proceedings for a death penalty offence in the country or territory.”

**17 Regulations**

- (1) Any power of the Secretary of State to make regulations under this Act is exercisable by statutory instrument.
- (2) Regulations under section 1(5)(b), 2(1) or 4(1)(b) may make—
  - (a) different provision for different purposes,

- (b) different provision for different areas, and
  - (c) transitional, transitory or saving provision.
- (3) The Secretary of State must consult the Scottish Ministers before making regulations under section 2(1)(b)(v).
- (4) A statutory instrument containing regulations under section 4(1)(b) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Any other statutory instrument containing regulations under this Act, other than a statutory instrument containing regulations under section 20, is subject to annulment in pursuance of a resolution of either House of Parliament.

## 18 Interpretation

- (1) In this Act—
- “appropriate officer” has the meaning given by section 2;
  - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
  - “designated international co-operation arrangement” has the meaning given by section 1(5);
  - “electronic data” has the meaning given by section 3(2);
  - “excepted electronic data” has the meaning given by section 3(3) to (5);
  - “judge” has the meaning given by section 1(7);
  - “overseas production order” has the meaning given by section 1(4) (see also section 7(6)).
- (2) References in this Act to proceedings relating to an overseas production order include proceedings for the making, variation or revocation of an order under section 8(4) or 13(3) or (4)(b).

## 19 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows.
- (2) Section 10(3) extends to England and Wales only.
- (3) Section 10(4) extends to Northern Ireland only.

## 20 Commencement

- (1) Except as provided by subsection (3), this Act comes into force on such day as the Secretary of State may by regulations appoint.
- (2) Regulations under subsection (1) may appoint different days for different purposes or different areas.
- (3) The following provisions come into force on the day on which this Act is passed—
- (a) sections 17 to 19;
  - (b) this section;
  - (c) section 21.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.

**21 Short title**

This Act may be cited as the Crime (Overseas Production Orders) Act 2019.