
STATUTORY INSTRUMENTS

2014 No. 3141

**The Criminal Justice and Data Protection
(Protocol No. 36) Regulations 2014**

PART 5

Exchange of Information and Intelligence between Law Enforcement Authorities

Interpretation

53. In this Part—

“the Framework Decision” means Council Framework Decision 2006/960/JHA of 18th December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the member States of the European Union⁽¹⁾;

“Annex A” means Annex A in the Framework Decision;

“Annex B” means Annex B in the Framework Decision;

“competent authority” means an authority declared under Article 2(a) of the Framework Decision (definitions) as a “competent law enforcement authority” in an EEA State;

“EEA State” means—

- (a) a member State, other than the United Kingdom;
- (b) Norway, Iceland or Liechtenstein; or
- (c) Switzerland;

“information” and “intelligence” have the meanings set out in Article 2(d) of the Framework Decision;

“serious offence” means any offence in the European Framework List referred to in section 215(1) of the Extradition Act 2003⁽²⁾ (European framework list);

“UK competent authority” means any of the Secretary of State, the chief officer of police for a police area in England and Wales, the Chief Constable of the Police Service of Scotland, the Chief Constable of the Police Service of Northern Ireland, the National Crime Agency, Her Majesty’s Revenue and Customs and the Serious Fraud Office.

Duty to provide information or intelligence

54.—(1) Subject to regulation 55, a UK competent authority which receives a request within its competence in accordance with the Framework Decision must ensure that information or intelligence is provided to the requesting competent authority in accordance with this Part.

(1) OJ No. L 386, 29.12.2006, p. 89.

(2) 2003 c. 41.

(2) A UK competent authority must not apply conditions stricter than those applicable at national level for providing and requesting information or intelligence to a competent authority in accordance with this Part.

Time limits

55. Subject to regulation 59—

- (a) in an urgent case regarding a serious offence—
 - (i) a UK competent authority must respond within eight hours of a request when the information or intelligence requested in accordance with the Framework Decision is held in a database directly accessible by the UK competent authority; but
 - (ii) where the provision of the information or intelligence requested in accordance with the Framework Decision within the period of eight hours would put a disproportionate burden on the UK competent authority, the UK competent authority—
 - (aa) may postpone the provision of the information or intelligence for up to three days;
 - (bb) must immediately inform the requesting competent authority of this postponement; and
 - (cc) must provide reasons on the form set out in Annex A;
- (b) in a non-urgent case regarding a serious offence—
 - (i) a UK competent authority must ensure that a request for information or intelligence in accordance with the Framework Decision is responded to within one week if the requested information or intelligence is held in a database directly accessible by the UK competent authority; but
 - (ii) if the UK competent authority is unable to respond within seven days, it must provide reasons for that on the form set out in Annex A; and
- (c) in all other cases—
 - (i) a UK competent authority must ensure that the information requested in accordance with the Framework Decision is communicated to the requesting competent authority within 14 days; but
 - (ii) if the UK competent authority is unable to respond within 14 days, it must provide reasons on the form set out in Annex A.

Requests for information or intelligence

56. For the purpose of detection, prevention or investigation of an offence, a UK competent authority—

- (a) must use Annex B for the purpose of requesting information and intelligence from a competent authority and such a request must contain at least the information set out in Annex B; and
- (b) must not request more information and intelligence or set narrower timeframes than necessary for the purpose of the request.

Spontaneous exchange of information or intelligence

57. Subject to regulation 59, a UK competent authority must, without the need for any prior request, provide such relevant information or intelligence to a competent authority where the UK

competent authority has reasonable grounds to believe that such information or intelligence could assist in the detection, prevention or investigation of a serious offence.

Requirements for the sharing of information or intelligence

58.—(1) A UK competent authority must use information or intelligence provided in accordance with the Framework Decision only for the purposes for which, and subject to the conditions on which, it has been supplied unless—

- (a) such use may assist in preventing an immediate and serious threat to public security; or
- (b) processing for other purposes is authorised by the EEA State which has provided the information or intelligence.

(2) When providing information or intelligence to a competent authority in accordance with the Framework Decision, a UK competent authority may impose conditions—

- (a) on the use of the information or intelligence; and
- (b) on reporting the result of the criminal investigation or criminal intelligence operation for which the provision of information and intelligence has taken place.

(3) Where—

- (a) a receiving competent authority is not bound by the conditions imposed by the UK competent authority under paragraph (2); and
- (b) the national law of the competent authority lays down that the restrictions on use are waived for judicial authorities, legislative bodies or any other independent body established by law and made responsible for supervising the competent authority,

the UK competent authority may make representations to the competent authority concerning the use of the information or intelligence.

(4) Where, on receiving information or intelligence, a UK competent authority is not bound by the conditions imposed by a competent authority because the law in the relevant part of the United Kingdom provides that the restrictions on use are waived for judicial authorities, legislative bodies or any other independent body established by law and made responsible for supervising the UK competent authority, the UK competent authority must consult the EEA State from whom it has received the information or intelligence and take into account, so far as possible, its representations before so using the information or intelligence.

(5) A UK competent authority which receives information or intelligence from a competent authority must give the competent authority which provided the information or intelligence information about the use and further processing of the transmitted information or intelligence if requested to do so by the competent authority.

(6) A UK competent authority which provides information or intelligence to a competent authority may request information about the use and further processing of the transmitted information or intelligence.

Reasons to withhold information or intelligence

59.—(1) A UK competent authority may refuse to provide information or intelligence only where it has reasonable grounds to believe that the provision of information or intelligence would—

- (a) harm essential national security interests of the United Kingdom;
- (b) jeopardise the success of a current investigation or a criminal intelligence operation or the safety of individuals; or
- (c) clearly be disproportionate or irrelevant with regard to the purposes for which it has been requested.

(2) Where a request pertains to an offence punishable by a term of imprisonment of one year or less under the law of any part of the United Kingdom, the UK competent authority may refuse to provide the requested information or intelligence.

(3) A UK competent authority may refuse to transmit under the Framework Decision information or intelligence received from an EEA State or third country where it does not have the consent of that EEA State or third country to do so.

(4) A UK competent authority may refuse to transmit under the Framework Decision information or intelligence where otherwise prohibited by law.

Circulars

60.—(1) The appropriate authority may issue circulars in relation to the implementation of the Framework Decision to which relevant UK competent authorities must have regard insofar as relevant to their functions.

(2) In paragraph (1), the “appropriate authority” means—

- (a) in relation to England and Wales, the Secretary of State;
- (b) as respects Scotland—
 - (i) in relation to reserved matters within the meaning of the Scotland Act 1998⁽³⁾ the Secretary of State;
 - (ii) for any other matters, the Scottish Ministers;
- (c) in relation to Northern Ireland—
 - (i) for excepted matters within the meaning of the Northern Ireland Act 1998⁽⁴⁾, the Secretary of State;
 - (ii) for reserved matters within the meaning of the Northern Ireland Act 1998—
 - (aa) the Secretary of State; or
 - (bb) the Department of Justice with the consent of the Secretary of State;
 - (iii) for any other matters, the Department of Justice.

(3) In paragraph (1), the “relevant UK competent authorities” means—

- (a) in relation to England and Wales, the Secretary of State, the chief officer of police for a police area in England and Wales, the National Crime Agency, Her Majesty’s Revenue and Customs and the Serious Fraud Office;
- (b) as respects Scotland, the Secretary of State, the Chief Constable of the Police Service of Scotland, the National Crime Agency and Her Majesty’s Revenue and Customs;
- (c) in relation to Northern Ireland, the Secretary of State, the Chief Constable of the Police Service of Northern Ireland, the National Crime Agency, Her Majesty’s Revenue and Customs and the Serious Fraud Office.

(4) Relevant competent authorities must have regard to any circular previously issued in relation to the implementation of the Framework Decision.

Joint investigation teams

61.—(1) For the purposes of this regulation—

(3) 1998 c. 46.

(4) 1998 c. 47.

“international joint investigation team” has the same meaning as in section 88(7) of the Police Act 1996⁽⁵⁾;

“UK competent authority” means any of the Secretary of State, the chief officer of police for a police area in England and Wales, the Chief Constable of the Police Service of Scotland, the Chief Constable of the Police Service of Northern Ireland, the National Crime Agency, Her Majesty’s Revenue and Customs and the Serious Fraud Office;

“UK member” means a member of an international joint investigation team from a UK competent authority or a member of a UK competent authority who has been seconded to an international joint investigation team.

(2) Information lawfully obtained by a UK member which is not otherwise available to the UK competent authority participating in an international joint investigation team may be used for any of the following purposes—

- (a) for the purposes for which the team has been set up;
- (b) subject to the lawful prior consent of the member State where the information became available, for detecting, investigating and prosecuting other criminal offences;
- (c) for preventing an immediate and serious threat to public security and, subject to the consent condition in sub-paragraph (b), for any criminal investigation arising if subsequently opened;
- (d) for other purposes to the extent that this is agreed between the member States setting up the team.

(5) 1996 c. 16; section 88(7) was amended by S.I. 2012/1809.