
STATUTORY INSTRUMENTS

2014 No. 3141

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

PART 6

Exchange of Information Relating to Criminal Convictions

Interpretation

62. In this Part—

“the Framework Decision” means Council Framework Decision 2009/315/JHA of 26th February 2009 on the organisation and content of the exchange of information extracted from the criminal record between member States⁽¹⁾;

“central authority” means an authority designated under Article 3 of the Framework Decision;

“conviction”, except where otherwise provided, has the meaning given in Article 2(a) of the Framework Decision (definitions);

“criminal proceedings” has the meaning given in Article 2(b) of the Framework Decision;

“criminal record” has the meaning given in Article 2(c) of the Framework Decision;

“third country” means a state other than a member State;

“UK Central Authority” means the body designated under regulation 63;

“UK criminal record” means—

- (a) in relation to England and Wales, information in any form relating to convictions on a names database held by the Secretary of State for the use of police forces generally;
- (b) in relation to Scotland, the criminal history database of the Police Service of Scotland for the use of the police forces generally;
- (c) in relation to Northern Ireland, the Northern Ireland Criminal History Database of the Causeway System.

Designation as a “central authority”

63. The Chief Constable of Hampshire Constabulary is designated as the “central authority” for the United Kingdom.

Obligations upon conviction of a national of a member State

64.—(1) Where a conviction is entered on the UK criminal record, it must be accompanied where available by information on the nationality or nationalities of the convicted person if he or she is a national of another member State.

(1) OJ No. L 93, 7.4.2009, p. 23.

(2) The UK Central Authority must, as soon as possible, inform the central authorities of the other member States, in accordance with regulation 73, of any convictions against the nationals of those member States within the United Kingdom, as entered in the UK criminal record.

(3) In relation to information contained in the UK criminal record by virtue of paragraph (1), any subsequent alteration or deletion of such information must be immediately transmitted by the UK Central Authority, in accordance with regulation 73, to the central authority of the member State of the person's nationality.

(4) Where the UK Central Authority has provided information to another member State under paragraphs (2) or (3), it must communicate to the central authority of the member State of the person's nationality, on that member State's request, a copy of the conviction and subsequent measures as well as any other relevant information in order to enable it to consider whether it necessitates any measure at national level.

Obligations upon receipt of information under Article 4(2) and (3) of the Framework Decision

65.—(1) Where the UK Central Authority receives, under Article 4(2) or (3) of the Framework Decision (obligations of the convicting member State), information from another member State, the UK Central Authority—

- (a) must store the information listed in regulation 73(1)(a) and (b) for the purpose of retransmission in accordance with regulations 67, 68 or 69; and
- (b) may store the information listed in regulation 73(1)(c) and (d) for the purpose of retransmission in accordance with regulations 67, 68 or 69.

(2) Where the UK Central Authority receives information in accordance with Article 4(3) of the Framework Decision, it must make identical alteration or deletion of the relevant information stored in accordance with paragraph (1).

(3) For the purpose of retransmission in accordance with regulations 67, 68 or 69, the UK Central Authority may, where relevant, only use information which has been updated in accordance with paragraph (2).

Requests for information under Article 6 of the Framework Decision for the purposes of criminal proceedings, other purposes and by a person

66.—(1) When information from the UK criminal record is requested for the purposes of criminal proceedings against a person or for any purposes other than criminal proceedings, the UK Central Authority may submit a request to the central authority of another member State for information and related data to be extracted from the criminal record, under Article 6(1) of the Framework Decision (request for information on convictions).

(2) When a person asks for information on their own UK criminal record under Article 6(2) of the Framework Decision, the UK Central Authority may submit a request to the central authority of another member State for information and related data to be extracted from the criminal record of that member State, provided that the person concerned is or was a resident, or a national, of the United Kingdom or that other member State.

(3) The UK Central Authority must submit the request using the form set out in the Annex to the Framework Decision.

Replies to a request for information under Article 6 of the Framework Decision in relation to criminal proceedings and proceedings other than criminal proceedings

67.—(1) When information is requested under Article 6 of the Framework Decision (request for information on convictions) from the UK Central Authority in relation to a national of the United

Kingdom for the purposes of criminal proceedings, the UK Central Authority must transmit to the central authority of the requesting member State information on the following—

- (a) convictions handed down in the United Kingdom and entered in the UK criminal record;
- (b) any convictions handed down in other member States which were transmitted to the UK Central Authority after 27th April 2012, in application of Article 4 of the Framework Decision (obligations of the convicting member State), and stored in accordance with regulation 65;
- (c) any convictions handed down in other member States which were transmitted to the UK Central Authority on or before 27th April 2012 and entered in the UK criminal record;
- (d) any convictions handed down in a country which is not a member State and subsequently transmitted to the UK Central Authority and entered in the UK criminal record.

(2) When information is requested under Article 6 of the Framework Decision from the UK Central Authority in relation to a national of the United Kingdom for any purposes other than that of criminal proceedings, the UK Central Authority must transmit to the central authority of the requesting member State information on the following—

- (a) convictions handed down in the United Kingdom and entered in the UK criminal record;
- (b) any convictions handed down in other member States—
 - (i) which were transmitted to the UK Central Authority after 27th April 2012, in application of Article 4 of the Framework Decision, and stored in accordance with regulation 65; and
 - (ii) in respect of which, the central authority of the member State which transmitted the information has not stated that such information may not be retransmitted for any purposes other than that of criminal proceedings;
- (c) any convictions handed down in other member States which were transmitted to the UK Central Authority by 27th April 2012 and entered in the UK criminal record;
- (d) any conviction handed down in a country which is not a member State and subsequently transmitted to the UK Central Authority and entered in the UK criminal record.

(3) For the purposes of paragraph (2), “conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974(2) which is not spent within the meaning of that Act.

(4) Where information under paragraph (2)(b) has not been transmitted because the central authority of the member State which transmitted the information has stated that such information may not be retransmitted for any purposes other than that of criminal proceedings, the UK Central Authority must, in respect of such convictions, inform the requesting member State which other member State had transmitted such information so as to enable the requesting member State to submit a request directly to the convicting member State in order to receive information on these convictions.

Replies to a request for information under Article 6 of the Framework Decision by a third country

68. When information extracted from the UK criminal record is requested from the UK Central Authority in relation to a national of the United Kingdom by a third country, the UK Central Authority may reply in respect of convictions transmitted by another member State as if the request were made by a member State.

(2) 1974 c. 53. Relevant amendments have been made by paragraph 1 of Schedule 15 to the Children Act 1989 (c. 41), paragraph 1 of Schedule 13 to, and paragraph 20(c) of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraph 47 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 63 of Schedule 16 to the Armed Forces Act 2006 (c. 52), section 24(1) of, and paragraph 8 of Schedule 7 to, the Criminal Justice and Licensing (Scotland) Act 2010 asp 13 and paragraph 134(3) of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9).

Replies to a request for information under Article 6 of the Framework Decision to a central authority of a member State other than the member State of the person's nationality

69. When information from the UK criminal record is requested under Article 6 of the Framework Decision (request for information on convictions) from the UK Central Authority in relation to a person who is not a national of the United Kingdom, the UK Central Authority must transmit information on convictions handed down in the United Kingdom and on convictions handed down against third country nationals and against stateless persons contained in its UK criminal record to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20th April 1959 (judicial records).

Form of reply to a request for information under Article 6 of the Framework Decision

70. The reply to a request for information under regulations 67, 68 or 69 must be made using the form set out in the Annex to the Framework Decision.

Deadlines for replies to a request for information under Article 6 of the Framework Decision

71.—(1) Subject to paragraph (2), replies to the requests referred to in regulation 66(1) must be transmitted by the UK Central Authority to the central authority of the requesting member State immediately and in any event within a period not exceeding ten working days from the date the request was received.

(2) If the UK Central Authority requires further information to identify the person involved in the request, it must immediately consult the requesting member State with a view to providing a reply within ten working days from the date the additional information is received.

(3) Replies to the request referred to in regulation 66(2) must be transmitted to the central authority of the requesting member State within twenty working days from the date the request was received.

(4) For the purposes of this Part, “working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971.

Conditions for the use of personal data

72.—(1) Subject to paragraph (3), personal data provided to the UK Central Authority under Article 7(1) and (4) of the Framework Decision (reply to a request for information on convictions) for the purposes of criminal proceedings may be used only for the purposes of the criminal proceedings for which it was requested (as specified in the form set out in the Annex to the Framework Decision).

(2) Subject to paragraph (3), personal data provided to the UK Central Authority under Article 7(2) and (4) of the Framework Decision for any purposes other than that of criminal proceedings may be used only for the purposes for which it was requested and within the limits specified by the requested member State in the form set out in the Annex to the Framework Decision.

(3) Personal data provided to the UK Central Authority under Article 7(1), (2) and (4) may be used for preventing an immediate and serious threat to public security.

(4) Where personal data received from another member State under Article 4 of the Framework Decision (obligations of the convicting member State) is transmitted to a third country in accordance with regulation 68, the UK Central Authority must—

- (a) take the necessary measures to ensure that such personal data is subject to the same usage limitations as those applicable in a requesting member State in accordance with paragraph (2) of this regulation;

- (b) specify that personal data, if transmitted to a third country in accordance with regulation 68 for the purposes of criminal proceedings, may be further used by that third country only for the purposes of criminal proceedings.

(5) This regulation does not apply to personal data obtained by the UK Central Authority under the Framework Decision that originated from the United Kingdom.

Format and other ways of organising and facilitating exchanges of information on convictions

73.—(1) When transmitting information in accordance with regulation 64(2) and (3), the UK Central Authority must transmit—

- (a) the following information—
 - (i) the convicted person's—
 - (aa) full name;
 - (bb) date of birth;
 - (cc) town and country of birth;
 - (dd) gender;
 - (ee) nationality;
 - (ff) if applicable, previous names;
 - (ii) the date of conviction;
 - (iii) the name of the convicting court;
 - (iv) the date on which the decision of the convicting court became final;
 - (v) the date of the offence underlying the conviction;
 - (vi) the name or legal classification of the offence;
 - (vii) reference to the applicable legal provisions relating to the offence;
 - (viii) the sentence imposed in respect of the conviction, as well as any supplementary penalties, security measures and all subsequent decisions modifying the enforcement of the sentence.
- (b) if entered on the UK criminal record, the following information—
 - (i) the convicted person's parents' names;
 - (ii) the reference number of the conviction;
 - (iii) the place of the offence;
 - (iv) any disqualifications arising from the conviction;
- (c) if available to the UK Central Authority, the following information—
 - (i) the convicted person's identity number, or the type and number of the person's identification document;
 - (ii) fingerprints which have been taken from that person;
 - (iii) if applicable, pseudonym and any alias names;
- (d) at the discretion of the UK Central Authority, any other information concerning the conviction or convictions entered in the UK criminal record.

(2) The UK Central Authority must store all information listed in sub-paragraphs (a) and (b) of paragraph (1), which it has received in accordance with Article 5(1) of the Framework Decision (obligations of the member State of the person's nationality), for the purpose of retransmission in

accordance with regulations 67, 68 or 69; for the same purpose it may store information of the types listed in sub-paragraph (c) of paragraph (1).

Further rules relating to the format of transmission of information: legal classification, etc

74. For the purposes of Article 4 of Council Decision 2009/316/JHA of 6th April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of the Framework Decision 2009/315/JHA⁽³⁾, the Chief Constable of Hampshire Constabulary is responsible for the functions of the member State.

(3) OJ No. L 93 7.4.2009, p. 33.