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STATUTORY INSTRUMENTS

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**2014 No. 3141**

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

PART 7

European Supervision Order

CHAPTER 2

European supervision orders: England and Wales

*Recognition of supervision measures: requests to other member States*

**Requests to other member States for monitoring supervision measures**

77.—(1) A court which makes a decision on supervision measures may request a competent authority of a member State other than the United Kingdom (“the executing State”) to monitor the supervision measures under the Framework Decision where—

- (a) the measures are suitable for monitoring in the executing State, and
  - (b) the executing State is one to which the request may be made.
- (2) To make the request, the court must—
- (a) issue a certificate requesting monitoring under the Framework Decision in respect of the decision on supervision measures, and
  - (b) give the following documents to the competent authority or to the central authority of the executing State.
- (3) The documents are—
- (a) the decision on supervision measures or a certified copy of it,
  - (b) the certificate, and
  - (c) a copy of the certificate translated into the official language, or one of the official languages, of the executing State.
- (4) But paragraph (3)(c) does not apply if—
- (a) English is an official language of the executing State, or
  - (b) the executing State has declared under Article 24 of the Framework Decision that it will accept a certificate translated into English.
- (5) A court makes a “decision on supervision measures” if—
- (a) it grants bail in accordance with the Bail Act 1976(1), as modified by regulation 78, to a person who is charged with an offence, and

- (b) requirements are imposed on the person in accordance with section 3(6) of that Act(2) (general provisions), as so modified, as a condition of bail.
- (6) “Supervision measures” means the requirements imposed on the person as a condition of bail.
- (7) A supervision measure is “suitable for monitoring in the executing State” if it constitutes—
  - (a) a supervision measure of a kind mentioned in Article 8(1) of the Framework Decision (types of supervision measures), or
  - (b) a supervision measure of a kind which the executing State has given notice, under Article 8(2) of that Decision, that it is prepared to monitor.
- (8) The executing State is “one to which the request may be made” if—
  - (a) the person is lawfully and ordinarily resident in the executing State and consents to return to that State with a view to the supervision measures being monitored there under the Framework Decision, or
  - (b) the person is not lawfully and ordinarily resident in the executing State but—
    - (i) the person asks for the request to be made to a competent authority of the executing State, and
    - (ii) the competent authority consents to the making of the request.
- (9) In regulations 78 to 84—
  - “the competent authority of the executing State”, in relation to a request under this regulation, means the competent authority to which the request is made;
  - “decision on supervision measures” and “supervision measures” are to be read in accordance with this regulation;
  - “the executing State”, in relation to a request under this regulation, means the member State of the competent authority to which the request is made.

### **Requirements that may be imposed in connection with a request**

**78.**—(1) This regulation applies where a court is considering making a request under regulation 77 for a competent authority of a member State other than the United Kingdom to monitor supervision measures under the Framework Decision in relation to the grant of bail to a person who is charged with an offence.

(2) The requirements that may be imposed on the person under section 3(6) of the Bail Act 1976 (general provisions) include requirements which can only be complied with in the other State.

(3) Where the court is considering imposing requirements on the person which would involve electronic monitoring of the person in a particular area in the other State—

- (a) sections 3AA(4)(3) and 3AB(3)(4) of the Bail Act 1976 (conditions for the imposition of electronic monitoring requirements) have effect as if for references to each local justice area which is a relevant area there were substituted references to that area in the other State, and
- (b) section 3AC of that Act(5) (electronic monitoring: general provisions) has effect as if subsection (2) were omitted.

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(2) Section 3(6) was amended by the Criminal Justice and Public Order Act 1994 (c.33), sections 27(2) and 168(3) and Schedule 11; the Crime and Disorder Act 1998 (c.37), section 54(2); the Criminal Justice Act 2003 (c.44), section 13(1) and Part 2 of Schedule 37; and the Legal Services Act 2007 (c.29), section 208(1) and Schedule 21, paragraph 34.

(3) Section 3AA(4) was inserted by the Criminal Justice and Immigration Act 2008 (c.4), section 51 and Schedule 11 paragraph 3(4).

(4) Section 3AB(3) was inserted by the Criminal Justice and Immigration Act 2008, section 51 and Schedule 11 paragraph (4).

(5) Section 3AC was inserted by the Criminal Justice and Immigration Act 2008, section 51 and Schedule 11 paragraph (4) and amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) Schedule 11 paragraph 7.

### **Recognition of request**

**79.**—(1) A court which has made a decision on supervision measures ceases to be responsible for monitoring the supervision measures if—

- (a) the court makes a request under regulation 77 for the competent authority of the executing State to monitor those measures under the Framework Decision, and
- (b) the competent authority notifies the court that it has decided to recognise the decision on supervision measures under the Framework Decision.

(2) The fact that the court has ceased to be responsible for monitoring the supervision measures does not affect the court’s jurisdiction to take subsequent decisions in relation to the decision on supervision measures, including decisions about—

- (a) renewal, review or withdrawal of the decision on supervision measures,
- (b) modification of the supervision measures, and
- (c) the issue of a warrant for the arrest of the person subject to the decision.

(3) Where the person subject to the decision on supervision measures is in the executing State, the court may permit the person to attend through a live link any hearing as to whether or not to take a subsequent decision in relation to the decision.

(4) The person is to be treated as present in court when attending a hearing through a live link by virtue of paragraph (3).

(5) “Live link” means an arrangement by which a person (when not in the place where a hearing is being held) is able—

- (a) to see and hear the court during the hearing, and
- (b) to be seen and heard by the court during the hearing;

(and for this purpose any impairment of eyesight or hearing is to be disregarded).

(6) Where a subsequent decision relating to a person is a decision to withhold bail, the court making the decision must require the person to surrender to custody in England and Wales at a time appointed by the court.

(7) The fact that the court has ceased to be responsible for monitoring the supervision measures does not affect any power conferred on a constable by the Bail Act 1976 to arrest without warrant the person subject to the decision on supervision measures.

### **Power to withdraw certificate**

**80.**—(1) A court which has made a request under regulation 77 for the competent authority of the executing State to monitor supervision measures under the Framework Decision must consider whether to withdraw the certificate requesting monitoring under that Decision if the competent authority informs the court that—

- (a) the competent authority could refuse to monitor the supervision measures on the ground mentioned in Article 15(1)(h) of that Decision (grounds for non-recognition) but is nevertheless willing to monitor them,
- (b) the competent authority has taken a decision, in accordance with Article 13 (adaptation of supervision measures) of that Decision, adapting the supervision measures, or
- (c) there is a maximum period during which, under the law of the executing State, the supervision measures may be monitored.

(2) But a decision to withdraw the certificate under paragraph (1)(b) or (c) may be made only if monitoring of the supervision measures in the executing State has not yet started.

(3) If the court withdraws the certificate under this regulation, it must inform the competent authority.

(4) A decision to withdraw the certificate under this regulation must be taken, and the competent authority must be informed under paragraph (3), no later than 10 days after the day on which the competent authority informs the court as mentioned in paragraph (1).

(5) This regulation applies where a court informs the competent authority of the executing State under regulation 81(2)(b) that it has renewed a decision on supervision measures, or modified supervision measures, as it applies where the court makes a request under regulation 77 in relation to the original decision on supervision measures.

### **Duties where measures being monitored by executing State**

**81.**—(1) This regulation applies in relation to any time when a court which has made a decision on supervision measures—

- (a) has ceased under regulation 79 to be responsible for monitoring the supervision measures, and
- (b) has not yet become responsible under regulation 83 for monitoring them again.

(2) The court must immediately inform the competent authority of the executing State if—

- (a) legal proceedings are brought in relation to the decision on supervision measures, or
- (b) the court takes a subsequent decision in relation to the decision on supervision measures, as mentioned in regulation 79(2) (a “supervening decision”).

(3) The court must consider whether to take a supervening decision if the competent authority of the executing State notifies the court, using the form set out in Annex II to the Framework Decision, of—

- (a) a breach of the supervision measures, or
- (b) any other finding which could result in the court taking a supervening decision.

(4) Where the decision on supervision measures provides for the measures to have effect for a specified period, the court must, before the expiry of that period, inform the competent authority of the executing State—

- (a) as to whether the court expects the monitoring of the supervision measures to be necessary for a further period, and
- (b) if so, of the expected length of that period.

(5) The court must inform the competent authority under paragraph (4)—

- (a) following a request from that authority, or
- (b) if no such request is made, on the initiative of the court.

(6) If the competent authority of the executing State requests information from the court as to whether monitoring of the supervision measures is still necessary in the circumstances of the case, the court must respond without delay.

(7) If—

- (a) the law of the executing State requires periodic confirmation of the need to prolong the monitoring of the supervision measures, and
- (b) the competent authority of the executing State requests that confirmation from the court and sets a reasonable time limit for the request to be complied with,

the court must respond within that time limit.

### **Request to extend maximum period for which measures may be monitored**

**82.**—(1) This regulation applies in relation to any time when a court which has made a decision on supervision measures—

- (a) has ceased under regulation 79 to be responsible for monitoring the supervision measures, and
- (b) has not yet become responsible under regulation 83 for monitoring them again.

(2) The court may make a request under this regulation if—

- (a) under the law of the executing State, there is a maximum period during which the supervision measures may be monitored,
- (b) the period is due to expire, and
- (c) the court considers that the supervision measures are still needed.

(3) A request under this regulation is a request to the competent authority of the executing State for the period to be extended.

(4) The request must specify the period for which an extension is likely to be needed.

### **Court becoming responsible again for monitoring measures**

**83.**—(1) A court which—

- (a) has made a decision on supervision measures, and
- (b) has ceased under regulation 79 to be responsible for monitoring the supervision measures,

becomes responsible for monitoring them again in any of the following cases.

(2) The first case is where the person subject to the decision on supervision measures becomes lawfully and ordinarily resident in a State other than the executing State.

(3) The second case is where the competent authority of the executing State notifies the court, in accordance with Article 20(2)(c) of the Framework Decision (information from the executing State), that it is not possible, in practice, to monitor the supervision measures.

(4) The third case is where the competent authority of the executing State informs the court that it has decided, in accordance with Article 23 of the Framework Decision (unanswered notices), to stop monitoring the supervision measures.

(5) The fourth case is where—

- (a) the court takes a decision modifying the supervision measures, and
- (b) the competent authority of the executing State informs the court that it has decided, in accordance with Article 18(4)(b) of the Framework Decision (competence to take all subsequent decisions and governing law), to refuse to monitor the modified supervision measures.

(6) The fifth case is where the court—

- (a) withdraws the certificate requesting monitoring under the Framework Decision (whether in accordance with regulation 80 or otherwise), and
- (b) informs the competent authority of the executing State of its withdrawal.

(7) The sixth case is where the court—

- (a) withdraws the decision on supervision measures, and
- (b) informs the competent authority of the executing State of its withdrawal.

(8) The seventh case is where—

- (a) under the law of the executing State, there is a maximum period during which the supervision measures may be monitored, and
- (b) that period expires.

(9) The court must consult the competent authority of the executing State with a view to avoiding as far as possible any interruption in the monitoring of the supervision measures as a result of this regulation.

### **Consultation and exchange of information**

**84.**—(1) A court which is considering making a request under regulation 77 for a competent authority of a member State other than the United Kingdom to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—

- (a) while preparing the documents mentioned in paragraph (3) of that regulation, or
- (b) at the latest, before giving those documents to the competent authority or to the central authority of that State.

(2) A court which has made a request under regulation 77 for the competent authority of the executing State to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—

- (a) at such times as it considers necessary, with a view to facilitating the smooth and efficient monitoring of the supervision measures;
- (b) if the competent authority notifies it, in accordance with Article 19(3) of the Framework Decision (obligations of the authorities involved), of a serious breach of those measures.

(3) In consulting under this regulation, the court must co-operate with the competent authority with a view to the exchange of any useful information, including—

- (a) information for verifying the identity and place of residence of the person concerned, and
- (b) relevant information taken from the person's criminal records in accordance with applicable legislation including Part 6 of these Regulations.

(4) The court must take due account of any indications communicated by the competent authority as to the risk the person may pose to victims and the general public.