
STATUTORY INSTRUMENTS

2017 No. 730

The Criminal Justice (European Investigation Order) Regulations 2017

PART 3

Recognition and execution in the United Kingdom of a European investigation order made in a participating State

CHAPTER 7

Recognition and execution of a European investigation order for the temporary transfer of a prisoner

Temporary transfer of prisoners

53. Where a European investigation order includes a request for the temporary transfer of a prisoner or EU prisoner in accordance with Article 22 or 23 of the Directive, the central authority must give a copy of the European investigation order—

- (a) to the Scottish Ministers, where the request relates to a prisoner in Scotland or the transfer of an EU prisoner to Scotland;
- (b) to the Secretary of State, in any other case.

Temporary transfer of UK prisoner to issuing State for the purpose of issuing State's investigation or proceedings

54.—(1) This regulation applies where the Secretary of State receives from the central authority a European investigation order for the temporary transfer of a prisoner to the issuing State for the purpose of—

- (a) giving evidence in criminal proceedings in the issuing State, or
- (b) assisting in the issuing State in the investigation of an offence.

(2) If satisfied that the requirement in paragraph (3) is met, the Secretary of State may give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the prisoner.

(3) The requirement is that—

- (a) the prisoner, or
- (b) in the circumstances mentioned in paragraph (4), a person appearing to the Secretary of State to be an appropriate person to act on the prisoner's behalf,

has made a written statement consenting to be transferred for the purpose mentioned in paragraph (1) (a), or as the case may be, paragraph (1)(b).

(4) The circumstances are that it appears to the Secretary of State to be inappropriate for the prisoner to act on his or her own behalf, by reason of his or her physical or mental condition or age.

(5) If satisfied that—

- (a) the requirement in paragraph (3) is met;
- (b) recognition or execution of the European investigation order cannot be refused under regulation 28; and
- (c) in any case where the purpose of the transfer is for the prisoner to give evidence in criminal proceedings in the issuing State, it is not possible for the prisoner to give that evidence by virtue of regulation 35 (nominating a court to receive evidence from a person), regulation 36 (hearing a person through videoconference or other audio visual transmission) or regulation 37 (hearing a person by telephone conference),

the Secretary of State must give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the prisoner.

(6) A warrant under this regulation authorises—

- (a) the taking of the prisoner to a place in the United Kingdom and delivery of that prisoner at a place of departure from the United Kingdom into the custody of a person representing the appropriate authority of the issuing State, and
- (b) the bringing of the prisoner back to the United Kingdom and that prisoner's transfer in custody to the place where the prisoner is liable to be detained pursuant to the sentence or order to which the prisoner is subject.

(7) Subsections (4) to (8) of section 5 of the 1990 Act (transfer of UK prisoner to give evidence or assist investigation overseas) have effect in relation to a warrant issued under this regulation as they have effect in relation to a warrant issued under that section.

(8) In relation to a transfer from Scotland, references in this regulation to the Secretary of State are to be read as reference to the Scottish Ministers.

Temporary transfer of EU prisoner to UK for the purpose of issuing State's investigation

55.—(1) This regulation applies where the Secretary of State receives from the central authority a European investigation order for the temporary transfer of an EU prisoner to the United Kingdom for the purpose of gathering evidence in connection with a criminal investigation or criminal proceedings in the issuing State.

(2) If satisfied that the requirement in paragraph (3) is met, the Secretary of State may give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the EU prisoner.

(3) The requirement is that the issuing authority has indicated in the European investigation order that the EU prisoner has consented to being transferred for the purpose mentioned in paragraph (1).

(4) If satisfied that—

- (a) the requirement in paragraph (3) is met, and
- (b) recognition or execution of the European investigation order cannot be refused under regulation 28,

the Secretary of State must give effect to the European investigation order by issuing a warrant under this regulation for the transfer of the EU prisoner.

(5) A warrant under this regulation authorises—

- (a) the bringing of the EU prisoner to the United Kingdom,
- (b) the taking of the EU prisoner to, and detention in custody at, any place or places in the United Kingdom specified in the warrant,
- (c) the returning of the EU prisoner to the issuing State.

(6) Subsections (4) to (8) of section 5 of the 1990 Act have effect in relation to a warrant issued under this regulation as they have effect in relation to a warrant issued under that section.

(7) A person is not subject to the Immigration Act 1971 in respect of that person's entry into or presence in the United Kingdom pursuant to a warrant under this regulation; but if the warrant ceases to have effect while that person is still in the United Kingdom—

- (a) that person is to be treated for the purposes of that Act as having then illegally entered the United Kingdom, and
- (b) the provisions of Schedule 2 to that Act have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) does not have effect in relation to directions for the person's removal given by virtue of this sub-paragraph.

(8) In relation to a transfer from Scotland, references in this regulation to the Secretary of State are to be read as references to the Scottish Ministers.

Restrictions on prosecution and detention for other matters

56.—(1) This regulation applies where an EU prisoner (“the transferred person”) is transferred to the United Kingdom pursuant to a warrant issued under regulation 55.

(2) Whilst in the United Kingdom, the transferred person must not be prosecuted or detained or subjected to any other restriction of personal liberty in relation to conduct which—

- (a) occurred before the person's departure from the issuing State, and
- (b) was not specified in the European investigation order.

(3) Paragraph (2) ceases to apply if the transferred person is released from custody whilst in the United Kingdom, and—

- (i) having been informed that his or her presence in the United Kingdom is no longer required, remains here after the expiry of the relevant period, or
- (ii) having left, returns.

(4) The relevant period is 15 days beginning with the day after the transferred person is informed that his or her presence in the United Kingdom is no longer required or, if later, the day after the transferred person is released from custody.

Time spent by UK prisoner in custody overseas

57.—(1) This regulation applies where a prisoner (“P”) is transferred to the issuing State pursuant to a warrant issued under regulation 54.

(2) Any period of time spent in custody outside the United Kingdom pursuant to the European investigation order must be treated for all purposes as if P had spent that period in custody in the place in the United Kingdom where P is liable to be detained pursuant to the sentence or order to which P is subject.

(3) Where P is serving a sentence and, prior to being returned to the United Kingdom, ceases to be in custody at a time when P is liable to be detained pursuant to the sentence or order to which P is subject, P must be deemed for all purposes to be unlawfully at large.