
STATUTORY INSTRUMENTS

2020 No. 1408

**The Law Enforcement and Security (Separation
Issues etc.) (EU Exit) Regulations 2020**

PART 2

**Amendments of the Law Enforcement and Security
(Amendment) (EU Exit) Regulations 2019**

Amendments to law enforcement and security provisions

3. This Part makes amendments to the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019.

CHAPTER 1

Freezing Orders and Confiscation Orders

Transitional provisions relating to freezing orders concerning terrorist property

4. In regulation 6 (transitional provision in relation to amendment of Schedule 4 to the Terrorism Act 2000), after “has occurred” insert “(and see Articles 6 and 62(1)(c) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act and, in relation to the continued application of Framework Decision 2003/577/JHA in respect of certificates received by the United Kingdom before 19 December 2020, see Article 40(2) of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders(1))”.

Transitional provisions relating to freezing orders and confiscation orders concerning the proceeds of crime

5. In regulation 111 (transitional provisions in relation to amendment of the Criminal Justice and Data Protection Regulations 2014), after “has occurred” insert “(and see Articles 6 and 62(1)(c) and (e) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act and, in relation to the continued application of Framework Decisions 2003/577/JHA and 2006/783/JHA in respect of certificates received by the United Kingdom before 19 December 2020, see Article 40(2) of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders(2))”.

(1) Article 62(1)(c) refers to Council Framework Decision 2003/577/JHA. Article 39 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders states that references to that Framework Decision shall be construed as references to that Regulation. By virtue of Article 6 of the withdrawal agreement, the reference to the Council Framework Decision in Article 62(1)(c) is to be construed accordingly.

(2) Article 62(1)(c) and (e) refer to Council Framework Decisions 2003/577/JHA and 2006/783/JHA. Article 39 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders states that references to these Framework Decisions shall be construed as references to that

Revocation of Regulation (EU) 2018/1805

6. After regulation 113, insert—

“Revocation of Regulation (EU) 2018/1805

113A. Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders is revoked (but see Article 62(1)(c) and (e) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act).”.

CHAPTER 2

Cross-border Surveillance

Amendment of revocation provision

7. In regulation 8 (revocation of Council Decisions relating to cross-border surveillance), after paragraph (2) insert—

“(3) See Article 63(1)(a) and Title VII of Part 3 of the withdrawal agreement, Article 52(a) and Title IV of Part 3 the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act.”.

Amendment of transitional provision

8. In regulation 10 (transitional provision – surveillance which is not completed before commencement day), for paragraph (1) substitute—

“(1) Regulation 9 (consequential amendment of the Regulation of Investigatory Powers Act 2000) does not apply to relevant surveillance by a relevant foreign police or customs officer which began but which was not completed before commencement day (and see Article 63(1)(a) of the withdrawal agreement, Article 52(a) of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act).”.

CHAPTER 3

Eurojust

Interpretation

9. Omit regulation 20 (interpretation).

Revocation of the Eurojust Regulation

10. In regulation 21 (revocation of Eurojust Council Decision)—

- (a) in the heading before the regulation, for “Council Decision” substitute “Regulation”;
- (b) for regulation 21, substitute—

“**21.** Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA is revoked (but

see Article 62(3) of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act(3).”.

Revocation of saving provisions for data

11. Omit regulation 22 (saving provisions – information received before commencement day).

CHAPTER 4

European Criminal Record Information System (ECRIS)

Amendment of saving provision

12. In regulation 27 (saving provisions – information transmitted to the UK Central Authority before commencement day)—

- (a) in the heading before the regulation and also in paragraph (1), after “commencement day” insert “or under Article 62(1)(h) of the withdrawal agreement”;
- (b) after paragraph (2)(b), insert—
 - “(ba) regulation 65 (obligations upon receipt of information under Article 4(2) and (3) of the Framework Decision).”

Amendment of transitional provisions

13. In regulation 28 (transitional provisions – requests made before commencement day for information from the UK Central Authority)—

- (a) after paragraph (2)(b) insert—
 - “(ba) regulation 65 (obligations upon receipt of information under Article 4(2) and (3) of the Framework Decision);”;
- (b) after paragraph (2)(d) insert—
 - “(e) regulation 70 (form of reply to a request for information under Article 6 of the Framework Decision);
 - (f) regulation 71(1), (2) and (4) (deadlines for replies to a request for information under Article 6 of the Framework Decision).”;
- (c) after paragraph (4) insert—
 - “(5) See Article 62(1)(h) and (j) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act.”.

CHAPTER 5

Europol

Amendment relating to saving provisions for data

14. In regulation 40 (saving provisions – information provided before commencement day), after “specified below” insert “(and see Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act)”.

(3) Article 62(3) refers to Council Decision 2002/187/JHA. Article 81(2) of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA states that references to that Council Decision shall be construed as references to that Regulation. By virtue of Article 6 of the withdrawal agreement, the references to the Council Decision in Article 62(3) are to be construed accordingly.

CHAPTER 6

Exchange of information and intelligence between law enforcement authorities

Amendment of transitional provision

15. In regulation 44(2) (transitional provision – requests for information or intelligence received before commencement day)—

- (a) after “paragraph (3)” insert “(and see Article 63(1)(d) and Title VII of Part 3 of the withdrawal agreement, Article 52(b) and Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”;
- (b) after sub-paragraph (a) insert—
 - “(aa) regulation 55 (time limits);”.

Amendment of saving provision – information and intelligence

16. In regulation 45 (saving provision – information and intelligence supplied before commencement day)—

- (a) in the heading before the regulation, after “commencement day” insert “or under Article 63(1)(d) of the withdrawal agreement or Article 52(b) of the EEA EFTA separation agreement”;
- (b) in paragraph (1), after “Framework Decision” insert “, or supplied on or after commencement day in accordance with Article 63(1)(d) of the withdrawal agreement or Article 52(b) of the EEA EFTA separation agreement”;
- (c) in paragraph (2), after “paragraph (3)” insert “(and see Article 63(1)(d) and Title VII of Part 3 of the withdrawal agreement, Article 52(b) and Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”.

Amendment of saving provision – representations

17. In regulation 46(2) (saving provision – representations concerning use of information or intelligence), omit “with the omission of sub-paragraph (b)”.

CHAPTER 7

Joint Investigation Teams

Amendments relating to information obtained by a UK member of a joint investigation team

18. In regulation 47 (saving provision – information obtained by a UK member of an international joint investigation team)—

- (a) in paragraph (1), after “commencement day” insert “or on or after commencement day in accordance with Article 62(2) of the withdrawal agreement or Article 50(2) of the EEA EFTA separation agreement”;
- (b) in paragraph (2), after “the information” insert “(and see Article 62(2) and Title VII of Part 3 of the withdrawal agreement, Article 50(2) and Title IV of Part 3 of the EEA EFTA separation agreement, and sections 7A to 7C of the Withdrawal Act)”.

Amendments relating to investigation teams operating in the UK

19. For regulation 72 (saving provision – investigation teams operating in the UK on or after commencement day), substitute—

“72. Regulations 67 to 69 and 71 do not apply in a case to which any of the following provisions apply (and see Articles 62(2) and 63(1)(a) of the withdrawal agreement, Articles 50(2) and 52(a) of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)—

- (a) regulation 10 (transitional provision – surveillance which is not completed before commencement day);
- (b) article 62(2) or 63(1)(a) of the withdrawal agreement; or
- (c) article 50(2) or 52(a) of the EEA EFTA separation agreement.”.

CHAPTER 8

Mutual Legal Assistance

Amendments relating to the Crime (International Co-operation) Act 2003 and related legislation

- 20.—(1) In the heading for Chapter 7 of Part 18, for “subordinate” substitute “related”.
- (2) In regulation 96 (freezing orders) after paragraph (4) insert—
- “(5) Regulation 79(2) (amendment of the Criminal Justice and Police Act 2001) does not apply in respect of an overseas freezing order received before commencement day by the Secretary of State under section 1 of the 2003 Act.
- (6) See Article 62(1)(c) and Title VII of Part 3 of the withdrawal agreement, and sections 7A and 7C of the Withdrawal Act.”.

Amendments relating to requests for information about financial accounts and transactions

21. In regulation 97 (requests for information about financial accounts and transactions), after paragraph (5) insert—
- “(6) See Article 62(1)(a) and Title VII of Part 3 of the withdrawal agreement, Article 50(1) and Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act.”.

Amendments relating to certain mutual legal assistance requests from Iceland

22. In regulation 98 (certain mutual legal assistance request from Iceland), after paragraph (4) insert—
- “(5) See Article 50(1) of the EEA EFTA separation agreement and sections 7B and 7C of the Withdrawal Act.”.

Amendments relating to mutual legal assistance requests

23. After regulation 98 insert—

“Transitional provision - requests received before commencement day

98A.—(1) Regulation 87(2) (amendment of the 2003 Act) does not apply in respect of any request received by the Secretary of State or by the Lord Advocate before commencement day for a process or other document to which section 1 of the 2003 Act (service of overseas process) applied to be served on a person in the United Kingdom.

(2) Paragraphs (6), (7) and (13) of regulation 87 do not apply in respect of any request for assistance in obtaining evidence in a part of the United Kingdom that is received before commencement day by the territorial authority for that part of the United Kingdom.

(3) See Article 62(1)(a) and Title VII of Part 3 of the withdrawal agreement, Article 50(1) and (3) and Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act.”.

Amendment relating to designation of participating countries

24. In the text to be substituted by regulation 88(2) (amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009) and in the text to be substituted by regulation 90(2) (amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009), after “Ireland,” in each place where it occurs insert “Italy,”.

CHAPTER 9

Extradition

Amendment relating to the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003

25. In regulation 56 (amendment of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003), in paragraph (4)—

- (a) after “Hungary;” insert “Iceland;”;
- (b) after “The Netherlands;” insert “Norway;”.

Amendment to transitional provision

26. In regulation 57 (transitional provision)—

- (a) the existing provisions become paragraph (1);
- (b) after paragraph (1) insert—

“(2) See Article 62(1)(b) of the withdrawal agreement, Article 51 and Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act.”.

CHAPTER 10

European Investigation Orders

Amendment relating to a European investigation order (other than relating to a request for the temporary transfer of a prisoner)

27. In regulation 84 (incoming European investigation order (other than relating to a request for the temporary transfer of a prisoner)), after paragraph (4) insert—

“(5) See Article 62(1)(l) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act.”.

Amendment relating to a European investigation order relating to the temporary transfer of a prisoner

28. In regulation 86 (European investigation order made in a participating State relating to the temporary transfer of a prisoner or EU prisoner)—

- (a) in paragraph (1) for the words from “prisoner temporarily transferred” to “before commencement day” (including those words in each case) substitute “relevant temporary transfer or a relevant request”;
- (b) after paragraph (1) insert—
 - “(1A) in paragraph (1)—
 - “relevant temporary transfer” means a prisoner temporarily transferred to an issuing State pursuant to a warrant issued by the Secretary of State or the Scottish Ministers under regulation 54 of the 2017 Regulations (temporary transfer of UK prisoner to issuing State for the purpose of issuing State’s investigation or proceedings) before commencement day;
 - “relevant request” means a European investigation order which includes a request for the transfer of a prisoner received by a central authority before commencement, regardless of whether that European investigation order was forwarded to the relevant UK central authority before commencement day.”;
- (c) after paragraph (2) insert—
 - “(3) See Article 62(1)(l) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act.”.

CHAPTER 11

Other retained EU law relating to mutual legal assistance in criminal matters and police cooperation

Amendment relating to revocation of provisions of the 1990 Schengen Convention relating to police cooperation and mutual legal assistance in criminal matters

29. In regulation 99 (provisions of the 1990 Schengen Convention relating to police cooperation and mutual legal assistance in criminal matters), after “Schengen Convention” insert “(and see Article 63(1)(a) and Title VII of Part 3 of the withdrawal agreement, Articles 50(3), 52(a) and Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act.)”.

Amendment relating to Third Pillar Conventions

30. In regulation 100 (Third Pillar Conventions), after paragraph (2) insert—

“(3) See Articles 62(1)(a) and 62(2) and Title VII of Part 3 of the withdrawal agreement, Article 50(1) and (2) and Title IV of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act.”.

CHAPTER 12

Passenger Name Record Data

Saving provision

31. After regulation 106 (revocation of Commission Implementing Decision 2017/759), insert—

“Savings provision - requests received before commencement day

106A.—(1) This regulation applies to requests received by the PIU in accordance with Article 9 or 10 of the [Directive 2016/681/EU](#) of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime on or before commencement day (and see Article 63(1)(g) of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act).

(2) The following provisions of the Passenger Name Record Data and Miscellaneous Amendments Regulations 2018(4) (“the 2018 Regulations”) continue to have effect in relation to those requests as if the amendments made to the provisions by regulation 104 did not apply—

- (a) regulation 6(3) (processing of PNR data by the PIU);
 - (b) regulation 9 (requests for PNR data made to the PIU by a non-UK PIU);
 - (c) regulations 2 (interpretation) and 3(2)(d) (responsibilities of the PIU), but only for the purposes of the other provisions which continue to have effect by virtue of this paragraph.
- (3) In this regulation, “the PIU” has the same meaning as in the 2018 Regulations.

Savings provision – information received by virtue of the PNR Directive

106B.—(1) This regulation applies to PNR data which was received by the PIU by virtue of [Directive 2016/681/EU](#) of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection investigation and prosecution of terrorist offences and serious crime (including that Directive as it applies by virtue of Article 63(1)(g) of the withdrawal agreement).

(2) The PIU may only transfer PNR data to which this regulation applies, or the result of processing of such data, under regulation 12(2A) of the 2018 Regulations on the basis that the second condition is met if the transfer is being made to a non-UK PIU which is an authority of a member State.

- (3) In this regulation—
- “the 2018 Regulations” means the Passenger Name Record Data and Miscellaneous Amendments Regulations 2018;
 - “non-UK PIU”, “the PIU” and “PNR data” have the same meaning as in the 2018 Regulations.

(4) In respect of regulation 106A (savings provision – requests received before commencement day) and this regulation, see Article 63(1)(g) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act.”

CHAPTER 13

Financial Intelligence Units and Asset Recovery Offices

Amendment of revocation and saving provision

32.—(1) In regulation 112 (revocation of Council Decision 2000/642/JHA and Council Decision 2007/845/JHA)—

- (a) for “Subject to regulation 113 (saving provision), the” substitute “The”;
 - (b) after “the following are revoked” insert “(but see Article 63(1)(c) and (f) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act)”.
- (2) Omit regulation 113 (saving provision).

(4) [S.I. 2018/598](#). Regulation 12(2A) was inserted by [S.I. 2019/742](#).

CHAPTER 14

Prüm - Exchange of Data Relating to DNA

Revocation of the Prüm Decision and related Council Decisions- information received before commencement day

33. In regulation 115 (revocation of the Prüm Decision and related Council Decisions), after “revoked” insert “(but see Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act)”.

Transitional provision

34. After regulation 117 (revocation of Council Implementing Decisions) insert—

“Transitional provision – DNA profiles supplied before commencement day

117A. Despite the revocations made in regulations 115 to 117 the following provisions of the Prüm Decision continue to have effect—

- (a) Article 5 (supply of further personal data and other information) in relation to the supply by the United Kingdom of further personal data and other information in relation to matches shown under Article 3 or 4 of the Prüm Decision before commencement day;
- (b) Article 7 (collection of cellular material and supply of DNA profiles) in relation to DNA profiles obtained by the United Kingdom before commencement day which were not supplied to the requesting Member State prior to commencement day;
- (c) paragraph 1 of Article 6 (national contact point and implementing measures) so far as it is relevant to paragraphs (a) or (b).

Saving provision – information received before commencement day

117B.—(1) This regulation applies in relation to DNA profiles and personal data received by the United Kingdom before commencement day (and see Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act).

(2) Subject to the modifications in paragraph (3), with the exception of Article 25, Chapter 6 of the Prüm Decision continues to have effect in relation to the data referred to in paragraph (1).

(3) The Prüm Decision applies with the following modifications—

- (a) Article 26 is to be read as if—
 - (i) in paragraph 1—
 - (aa) “by the receiving Member State” were omitted;
 - (ab) the words from “and subject only to” to the end were omitted;
 - (ii) in paragraph 2, “by the searching or comparing Member State” were omitted;
 - (iii) in the text after paragraph 2(c), for “The Member State administering the file may process the data supplied to it”, substitute “The data supplied may be processed”;
- (b) Article 27 is to be read as if “and in compliance with the law of the receiving Member State” were omitted;

- (c) paragraph 1 of Article 28 is to be read as if—
 - (i) the first sentence were omitted;
 - (ii) after “have been supplied”, there were inserted “by the authorities in the United Kingdom”;
 - (iii) for “The Member State or Member States concerned shall be obliged to correct or delete the data”, substitute “The authorities in the United Kingdom shall be obliged to correct or delete any data in respect of which the supplying Member State has made such a notification”;
- (d) paragraph 2 of Article 28 is to be read as if—
 - (i) “, in accordance with the national law of the Member States,” were omitted;
 - (ii) “subject to the national law of the Member States and” were omitted;
- (e) paragraph 1 of Article 30 is to be read as if the first sentence were “In order to verify the admissibility of the supply, the authorities in the United Kingdom shall log every non-automated supply of personal data by the body administering the file and every non-automated receipt of personal data by the searching body.”;
- (f) paragraph 2 of Article 30 is to be read as if—
 - (i) “other” were omitted from paragraph (a);
 - (ii) in paragraph (b), for “each Member State” substitute “the United Kingdom”;
- (g) Article 32 is to be read as if, for “The receiving Member State” substitute “The authorities in the United Kingdom”.

CHAPTER 15

Schengen Information System (SIS II)

Amendment relating to revocation of retained EU law

35. In regulation 119 (revocation of retained EU law relating to the Schengen information system (SIS II)), in paragraph (2)—

- (a) for the text before sub-paragraph (a) substitute “The following are revoked (but see Article 63(1)(e) of the withdrawal agreement, Article 52(c) of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”;
- (b) after paragraph (g), insert—
 - “(h) Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU(5).”

Amendment relating to saving provisions - SIS II data and national files

36. In regulation 120(2) (saving provisions – SIS II data and national files), after “paragraph (1)” insert “(and see Title VII of Part 3 of the withdrawal agreement, Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”.

(5) Regulation (EU) 2018/1862 has not come into force in full (see Article 79 of that Regulation).

Amendment relating to saving provisions – supplementary information and national files

- 37.** In regulation 121 (saving provisions – supplementary information and national files)—
- (a) at the end of paragraph (1)(a), omit “, or”;
 - (b) after paragraph (1)(b) insert—
“, or
 - (c) supplementary information received by the United Kingdom in accordance with Article 63(1)(e) of the withdrawal agreement.”;
 - (c) in paragraph (2) after “paragraph (1)” insert “(and see Title VII of Part 3 of the withdrawal agreement, Title IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”.

CHAPTER 16

International Agreements

Amendment of revocation and saving provision

- 38.**—(1) In regulation 134 (revocation of rights etc.)—
- (a) in paragraph (1), after “cease to be recognised and available in domestic law” insert “(but in relation to the agreements specified in paragraph (2)(a) to (e), (g) and (h) see Title VII of Part 3 of the withdrawal agreement, Titles III and IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”;
 - (b) in paragraph (2), after sub-paragraph (g) insert—
“(h) the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway⁽⁶⁾.”.
- (2) In regulation 135(1)(a) (saving provision) for “a transitional or saving provision of these Regulations” substitute “a transitional or saving provision of these Regulations (or Title VII of Part 3 of the withdrawal agreement, Titles III and IV of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”.

(6) OJ L 343, 28.11.2014, p. 1.