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STATUTORY INSTRUMENTS

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**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 2**

General provisions relating to the recognition and execution of a European investigation order

**Recognition of a European investigation order**

**26.**—(1) This Part applies where the relevant UK central authority receives from the issuing State—

- (a) a European investigation order, or a copy of it, in the form set out in Annex A to the Directive, and
- (b) if the form is not in English, a copy of the form translated into English.

(2) If the central authority in relation to one part of the United Kingdom receives a European investigation order which includes a request for evidence appearing to the central authority to be situated in another part of the United Kingdom, that central authority must—

- (a) forward the European investigation order to the relevant UK central authority, and
- (b) notify the issuing authority or, where appropriate, the central authority of the issuing State that the European investigation order has been forwarded.

(3) The central authority must notify the issuing authority or, where appropriate, the central authority of the issuing State to confirm receipt of the European investigation order.

(4) Notification under paragraph (3) must be given—

- (a) without delay, and in any event within one week beginning with the day on which the European investigation order is received, and
- (b) in the form set out in Annex B to the Directive.

(5) The central authority must take a decision on the recognition and execution of the European investigation order in accordance with the remainder of this Part.

**Sufficiency of information**

**27.**—(1) This regulation applies if it is impossible for the central authority to take a decision on the recognition or execution of a European investigation order because the information provided by the issuing authority is incomplete or manifestly incorrect.

(2) The central authority must, without delay—

- (a) notify the issuing authority,

- (b) request that the issuing authority provide such further information as the central authority deems necessary for it to make a decision, specifying a reasonable period for the issuing authority to do so.
- (3) The central authority must not take its decision on the recognition and execution of the European investigation order until the period specified under paragraph (2)(b) has expired.

### **Grounds for refusal of recognition or execution**

**28.**—(1) Subject to paragraphs (2) and (3), recognition or execution of a European investigation order may be refused by the central authority only if it appears that—

- (a) one or more of the grounds for refusal in Schedule 4 apply;
- (b) the investigative measure indicated in the European investigation order does not exist under the law of the relevant part of the United Kingdom, and it appears to the central authority that there is no other investigative measure which would achieve the same result;
- (c) the investigative measure indicated in the European investigation order would not be available in a similar domestic case, and it appears to the central authority that there is no other investigative measure which would achieve the same result;
- (d) the conduct in relation to which the European investigation order has been issued—
  - (i) does not constitute an offence under the law of the relevant part of the United Kingdom, and
  - (ii) is not indicated in the order as constituting an offence within the categories of offences set out in Annex D to the Directive and punishable in the issuing state with imprisonment or another form of detention for a maximum term of at least 3 years;
- (e) the use of the investigative measure indicated in the European investigation order is restricted under the law of the relevant part of the United Kingdom to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the order;
- (f) the European investigation order has been issued for the purpose of requesting assistance in the conduct of investigations into crime by officers acting covertly, including under false identity (“covert investigations”), and—
  - (i) the execution of the covert investigation would not be authorised in a similar domestic case, or
  - (ii) it has not been possible to reach agreement with the issuing authority on arrangements for the covert investigation in accordance with Article 29(4) of the Directive;
- (g) the investigative measure indicated in the European investigation order requires the gathering of evidence in real time, continuously and over a certain period of time, and execution of the measure concerned would not be authorised in a similar domestic case;
- (h) the European investigation order has been issued for the interception of telecommunications in the United Kingdom, and interception would not be authorised in a similar domestic case;
- (i) regulation 36 applies (hearing persons in the UK through videoconference or other audio visual transmission), and the person to be heard is a suspect or accused person and has not consented to being heard;
- (j) regulation 54 or 55 applies (temporary transfer of prisoners), and the person has not consented to being transferred, or
- (k) regulation 54 applies (temporary transfer of UK prisoner to issuing State), and the transfer is liable to prolong the detention of the person in custody.

(2) But the central authority may not refuse to recognise or execute a European investigation order by virtue of the application of sub-paragraphs (b) to (e) of paragraph (1) if the order relates to—

- (a) the obtaining of evidence which is already in the possession of the central authority, or appears to the central authority to already be in the possession of an executing authority, where it appears to the central authority that the evidence could lawfully have been obtained in the framework of a criminal investigation or criminal proceedings or for the purposes of the European investigation order in the relevant part of the United Kingdom;
- (b) the obtaining of evidence contained in databases held by police or judicial authorities, where it appears to the central authority that the evidence is directly accessible by the central authority or by an executing authority in the framework of a criminal investigation or criminal proceedings;
- (c) the hearing of a witness, expert, victim, suspect, accused person or third party in the relevant part of the United Kingdom;
- (d) any non-coercive investigative measure, or
- (e) the identification of a person holding a subscription of a telephone number or IP address specified in the order.

(3) Where the European investigation order concerns an offence in connection with taxes or duties, customs and exchange, the central authority must not refuse to recognise or execute the order on the ground that the law of the relevant part of the United Kingdom does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

(4) Where it appears to the central authority that—

- (a) paragraph 1 of Schedule 4 applies (execution impossible due to immunity or privilege under the law of the relevant part of the UK), and
- (b) it is within the power of an authority in the United Kingdom to waive the immunity or privilege in question,

the central authority must, before refusing to recognise or execute the European investigation order by virtue of the application of that provision, ask that authority to waive the immunity or privilege.

(5) Before refusing to recognise or execute a European investigation order under paragraph (1) (a) on the basis that one or more of paragraphs 1, 2, 4, 5, 6 or 7 of Schedule 4 apply, the central authority must, without delay—

- (a) consult the issuing authority; and
- (b) where appropriate, request that it provide any necessary information, specifying a reasonable period for doing so.

(6) Where paragraph (5)(b) applies, the central authority must not refuse to recognise or execute the European investigation order until the specified period has expired.

(7) Where the central authority refuses to recognise or execute a European investigation order under this regulation, it must notify the issuing authority without delay.

### **Postponement of recognition or execution**

**29.**—(1) An authority to which this regulation applies may postpone recognition or execution of a European investigation order for as long as grounds for postponement apply.

(2) The grounds are—

- (a) that executing the European investigation order might prejudice a criminal investigation or criminal proceedings taking place in the United Kingdom;

- (b) that objects, documents or data to which the European investigation order relates are already being used in a criminal investigation or criminal proceedings taking place in the United Kingdom.
- (3) Where an authority decides to postpone recognition or execution of the European investigation order under this regulation it must, without delay, notify the issuing authority and provide—
  - (a) the reasons for the postponement, and
  - (b) where possible, the expected duration of the postponement.
- (4) As soon as possible after the grounds for postponement cease to apply, the authority which decided to postpone recognition or execution must—
  - (a) notify the issuing authority, and
  - (b) proceed to take a decision on the recognition and execution of the order or, as the case may be, proceed to execute the order.
- (5) The authorities to which this regulation apply are—
  - (a) a central authority,
  - (b) an executing authority to whom a referral has been made under regulation 51 (referral to executing authority for assistance in execution of a European investigation order).

#### **Time limits for recognition and execution**

**30.**—(1) Subject to paragraphs (2), (6) and (7), the central authority must take its decision on the recognition and execution of a European investigation order as soon as possible, and in any event before the expiry of the period of 30 days beginning with the day after the day on which the order was received.

(2) Where it is not practicable for the central authority to take its decision on the recognition and execution of a European investigation order within the period specified in paragraph (1), it must, without delay, notify the issuing authority—

- (a) giving reasons for the delay, and
- (b) specifying a date, within the period of 60 days beginning with the day after the day on which the European investigation order was received, by which the central authority expects to have taken its decision.

(3) Where the central authority decides to recognise or execute a European investigation order it must ensure any investigative measure specified in the order is carried out without delay and with the same celerity and priority as for a similar domestic case, and in any event before the expiry of the period of 90 days beginning with the day after the day on which the central authority takes its decision on recognition or execution.

(4) Paragraph (3) does not apply to the extent that an investigative measure relates to evidence already in the possession of the central authority, or appearing to the central authority to be in the possession of an executing authority.

(5) Where it appears to the central authority that it is not practicable for an investigative measure to be carried out within the period specified in paragraph (3), it must, without delay—

- (a) notify the issuing authority, giving reasons for the delay, and
- (b) consult with the issuing authority on the appropriate timing to carry out the investigative measure.

(6) The time limits specified in paragraphs (1) and (3) are extended by any period during which recognition or execution of the European investigation order is postponed under regulation 29.

(7) Where the issuing authority has indicated in a European investigation order that—

(a) due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, shorter time limits than those provided for in this regulation are necessary, or

(b) an investigative measure specified in the order must be carried out on a specific date,

the central authority must, in the application of this regulation, take as full account as possible of such an indication.

(8) In the case of a referral made under regulation 51, paragraphs (3) to (7) apply to the executing authority to whom the referral was made in relation to investigative measures specified in the referral as if it were the central authority.

### **Transfer of evidence to the issuing State**

**31.**—(1) Subject to paragraphs (2), (3) and (5), a central authority or executing authority (“the transferring authority”) must, without undue delay, transfer to the issuing authority—

(a) any evidence in the transferring authority’s possession obtained as a result of the execution of the European investigation order, and

(b) any evidence already in the possession of the transferring authority and to which the European investigation order relates, once a decision has been taken by the central authority to recognise and execute the order.

(2) Transfer of evidence under this regulation may be suspended pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the European investigation order that an immediate transfer is necessary for the proper conduct of the investigation or proceedings to which the order relates, or for the preservation of individual rights.

(3) Transfer of evidence under this regulation must be suspended if it appears to the transferring authority that the transfer would cause serious and irreversible damage to any person affected by the transfer.

(4) When transferring evidence, the transferring authority must indicate whether it requires the issuing authority to return the evidence as soon as it is no longer required in the issuing State.

(5) Where the evidence to be transferred consists of objects, documents or data which are relevant to an investigation or proceedings in the United Kingdom, the transferring authority may, at the explicit request of and after consultation with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the transferring authority as soon as it is no longer required in the issuing State, or at any other time or occasion agreed between the two authorities.

### **European investigation orders relating to HMRC matters**

**32.**—(1) This regulation applies in the case of a European investigation order issued in connection with an investigation or proceedings in the issuing State that relate wholly or mainly to relevant conduct.

(2) Subject to paragraph (3), the Revenue Commissioners may exercise the functions of the Secretary of State (including as the central authority in relation to England and Wales and Northern Ireland) for the purpose of recognising and executing a European investigation order under this Part.

(3) Paragraph (2) does not apply to any function of the Secretary of State (including as the central authority in relation to England and Wales and Northern Ireland) conferred by the following—

(a) regulation 36 (hearing a person through videoconference);

(b) regulation 37 (hearing a person by telephone);

(c) regulation 43 (nominating a court to make a customer information or account monitoring order);

- (d) regulation 51 (referral to executing authorities);
  - (e) regulation 54 (transfer of UK prisoner to issuing State);
  - (f) regulation 55 (transfer of EU prisoner to the UK).
- (4) Where, by virtue of this regulation, the Revenue Commissioners nominate a court under regulation 38—
- (a) sub-paragraphs (b) and (c) of paragraph (5) of regulation 38 do not apply;
  - (b) paragraph (4) of regulation 39 applies as if for the words from “chief officer” to “procurator fiscal”, there were substituted “Revenue Commissioners (within the meaning of regulation 32)”;
  - (c) paragraph (3) of regulation 41 applies as if for sub-paragraph (a), there were substituted—
    - “(a) the Revenue Commissioners (within the meaning of regulation 32);”;
  - (d) an Officer of Revenue and Customs may exercise any function conferred on a constable under—
    - (i) regulation 39 (search warrants and production orders: giving effect to the European investigation order);
    - (ii) regulation 41 (power to revoke or vary a search warrant or production order or to authorise the release of evidence seized or produced),
 and references to a constable in those regulations are to be read as including references to an Officer of Revenue and Customs;
  - (e) any function conferred on a constable under regulation 40 must be exercised by an Officer of Revenue and Customs in respect of any evidence—
    - (i) seized by or produced to an Officer of Revenue and Customs under regulation 39;
    - (ii) seized by such an officer by virtue of section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure)<sup>(1)</sup>, in the course of a search authorised by a warrant issued under regulation 39.
- (5) In this regulation—
- “HMRC matter” means any matter in relation to which the Revenue Commissioners have functions;
- “Officer of Revenue and Customs” includes a person acting under the direction of such an officer;
- “relevant conduct” means conduct which, if it occurred in England and Wales or Northern Ireland, would be conduct constituting an offence in relation to an HMRC matter;
- “the Revenue Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

### **European investigation orders relating to customs matters**

**33.**—(1) This regulation applies in the case of a European investigation order issued in relation to conduct which, if it occurred in the United Kingdom, would constitute an offence relating either to a general customs matter or to a customs revenue matter.

(2) In relation to a European investigation order to which this regulation applies, any function conferred on a constable under regulation 39, 40, or 41 may be exercised by—

- (a) a general customs official in relation to conduct which, if it occurred in the United Kingdom, would constitute an offence relating to a general customs matter, or

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(1) 2001 c. 16.

- (b) a customs revenue official in relation to conduct which, if it occurred in the United Kingdom, would constitute an offence relating to a customs revenue matter.
- (3) In this regulation—
  - “customs revenue matter” has the meaning given by section 7(2) of the Borders, Citizenship and Immigration Act 2009 Act(2) (customs revenue functions of the Director);
  - “customs revenue official” means a person designated as a customs revenue official in accordance with section 11(1) of that Act (designation of customs revenue officials);
  - “general customs matter” has the meaning given by section 1(2) of that Act (general customs functions of the Secretary of State);
  - “general customs official” means a person designated as a general customs official in accordance with section 3(1) of that Act (designation of general customs officials).

### **Request by an authority of the issuing State to assist in the execution of a European investigation order**

- 34.**—(1) This regulation applies where—
- (a) a European investigation order contains a request for an authority of the issuing State to assist in the execution of the order, pursuant to Article 9(4) of the Directive, and
  - (b) the central authority decides to recognise and execute the order, or the part of the order to which the request relates.
- (2) The central authority or executing authority must authorise the request unless it considers that permitting the authority of the issuing State to assist would be—
- (a) contrary to a fundamental principle of law, or
  - (b) harmful to essential national security interests.
- (3) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by a chief officer of police for a police area in England and Wales—
- (a) section 88 of the Police Act 1996 (liability for wrongful acts of constables)(3) has effect as if—
    - (i) any unlawful conduct in the execution or purported execution of a European investigation order by P were unlawful conduct of a constable under the direction and control of the chief officer, and
    - (ii) subsection (4) of that section applied, in the case of the local policing body maintaining the force for which the chief officer is responsible, to P;
  - (b) section 89 of that Act (assaults on constables)(4) has effect as if references to a person assisting a constable in the execution of his duty in that section included references to P when assisting in the execution of the European investigation order.
- (4) A person convicted of an offence under subsection (1) of section 89 of the Police Act 1996 as a result of the application of paragraph (3)(b) is liable to imprisonment for a term not exceeding three months, or to a fine, or to both (but is not liable for any other penalty provided for in that subsection).
- (5) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by the Chief Constable of the Police Service of Northern Ireland—

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(2) 2009 c. 11; section 7 was amended by paragraph 49 in Part 1, and paragraph 58 in Part 2, of Schedule 24 to the Finance Act 2012 (c. 14).

(3) 1996 c. 16; section 88 was amended by sections 102 and 103 of the Police Reform Act 2002 (c. 30) and by paragraph 42 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13). There are other amendments which are not relevant for the purposes of these Regulations.

(4) Section 89 was amended by section 104 of the Police Reform Act 2002. There are other amendments which are not relevant for the purposes of these Regulations.

- (a) section 29 of the Police (Northern Ireland) Act 1998 (liability for wrongful acts of constables)(5) has effect as if any unlawful conduct in the execution or purported execution of a European investigation order by P were unlawful conduct of a constable under the direction and control of the Chief Constable of the Police Service of Northern Ireland;
  - (b) section 66 of that Act (assaults on, and obstruction of, constables, etc.) has effect as if references to a person assisting a constable in the execution of his duty in that section included references to P when assisting in the execution of the European investigation order.
- (6) On summary conviction of an offence under section 66 of the Police (Northern Ireland) Act 1998 as a result of the application of paragraph (5)(b), a person is liable to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or to both (but is not liable on summary conviction for any other penalty provided for in that section).
- (7) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by the Chief Constable of the Police Service of Scotland—
- (a) section 24 of the Police and Fire Reform (Scotland) Act 2012 (liability for unlawful conduct)(6) has effect as if P were a person falling within subsection (2) of that section;
  - (b) section 90 of that Act (assaulting or impeding police) has effect as if the capacities mentioned in subsection (3) of that section included that of P, acting in accordance with authority provided under this regulation.
- (8) A person convicted of an offence under section 90 of the Police and Fire Reform (Scotland) Act 2012 as a result of the application of paragraph (7)(b) is liable to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or to both (but is not liable for any other penalty provided for in that section).
- (9) In the case of a person (“P”) authorised under this regulation to assist in the execution of a European investigation order by the Director of the National Crime Agency—
- (a) paragraph 2 of Schedule 4 to the Crime and Courts Act 2013 (liability of NCA for unlawful acts)(7) has effect as if after sub-paragraph (4) of that paragraph, there were inserted—
    - “(4A) The fourth case is where the unlawful conduct is conduct of a person authorised under regulation 34 of the Criminal Justice (European Investigation Order) Regulations 2017 to assist an NCA officer in the execution of a European investigation order (within the meaning of Part 2 of those Regulations) which occurs when that person is providing, or purporting to provide, such assistance.”;
  - (b) where P is assisting in the execution of the European investigation order, paragraph 3 of that Schedule (assaults or obstruction in connection with joint investigation teams) has effect as if P were a member of an NCA-led international joint investigation team (within the meaning of that Act) carrying out functions as a member of that team.
- (10) A person convicted of an offence under paragraph 3 of Schedule 4 to the Crime and Courts Act 2013 as a result of the application of paragraph (9)(b) is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding three months or to a fine, or to both;
  - (b) in Northern Ireland or Scotland, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or to both;
- but is not liable for any other penalty provided for in paragraph 3 of that Schedule.

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(5) 1998 c. 32; section 29 was amended by section 102 of the Police Reform Act 2002 and by paragraph 32 of Schedule 6 to the Police (Northern Ireland) Act 2000 (c. 32). There are other amendments which are not relevant for the purposes of these Regulations.

(6) 2012 asp 8.

(7) 2013 c. 22.



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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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