
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 3

Execution of a European investigation order relating to witness evidence and hearings

Nominating a court to receive evidence from a person

35.—(1) This regulation applies where a European investigation order contains a request for a person in the United Kingdom to be heard as a witness, expert, victim, suspect, accused person or third party for the purpose of receiving evidence from them.

(2) The central authority may by notice nominate a court to receive any evidence to which the European investigation order relates for the purpose of giving effect to the order.

(3) But where it appears to the central authority that the conditions in paragraph (4) are satisfied, it must nominate a court under paragraph (2).

(4) The conditions are—

(a) that recognition or execution of the European investigation order cannot be refused under regulation 28, and

(b) that—

(i) the person from whom the evidence is to be received is unwilling to provide it in an alternative form, or

(ii) the person from whom the evidence is to be received is willing to provide it in an alternative form, but the issuing authority does not agree to receive it in that form.

(5) A court nominated under this regulation must give effect to the European investigation order in accordance with Schedule 5, before the end of the required period.

(6) The required period is—

(a) 90 days beginning with the day after the day on which the court is nominated, or

(b) any other period as may be agreed between the nominated court, the central authority and the issuing authority.

(7) In this regulation, “evidence in an alternative form” means—

(a) evidence in the form of a witness statement or other document;

(b) evidence in the form of a record of an interview with the person concerned;

- (c) evidence in any other form mutually agreed upon between the central authority, the issuing authority and the person from whom the evidence is to be received.

Hearing a person through videoconference or other audio visual transmission

36.—(1) This regulation applies where a European investigation order contains a request for a person in the United Kingdom to be heard as a witness, expert, suspect or accused person by videoconference or other audiovisual transmission (“video-link”) in proceedings before a court in the issuing State (“the overseas proceedings”).

(2) Where it appears to the central authority that one of the conditions in paragraph (4) is satisfied, it may by notice nominate a court in the United Kingdom where the person may be heard in the overseas proceedings through a video-link.

(3) But where it appears to the central authority that, in addition, the conditions in paragraph (5) are satisfied, it must nominate a court under paragraph (2).

(4) The conditions are that—

- (a) the person is neither a suspect nor a person accused in the overseas proceedings, or
- (b) the person is either a suspect or is accused in the overseas proceedings but has consented to being heard by video-link.

(5) The conditions are—

- (a) that recognition or execution of the European investigation order cannot be refused under regulation 28, and
- (b) in any case where a person is requested to give evidence through a video-link, that either—
 - (i) the person is unwilling to provide that evidence in an alternative form, or
 - (ii) the person is willing to provide that evidence in an alternative form, but the issuing authority does not agree to receive the evidence in that form.

(6) Anything done by a person in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.

(7) Any statement made on oath by a witness giving evidence in pursuance of this regulation is to be treated as made in proceedings before the nominated court for the purposes of—

- (a) section 1 of the Perjury Act 1911⁽¹⁾;
- (b) Article 3 of the Perjury (Northern Ireland) Order 1979⁽²⁾, and
- (c) section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995⁽³⁾.

(8) A person convicted of an offence as a result of the application of paragraph (7) is liable to imprisonment for a term not exceeding two years, or to a fine, or to both (but is not liable for any other penalty provided for in the provisions mentioned in paragraph (7)).

(9) A court nominated under this regulation must give effect to the European investigation order in accordance with Part 1 of Schedule 6 before the end of the required period.

(10) Subject to paragraphs (6) and (7) and the provisions of Part 1 of Schedule 6, evidence given pursuant to this regulation is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.

(11) The required period is—

(1) 1911 c. 6; section 1 was amended by section 1 of the Criminal Justice Act 1948 (c. 58) and by sections 32 and 171 of, and paragraph 16 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33). There are other amendments, extensions and applications not relevant for the purposes of these Regulations.

(2) S.I. 1979/1714 (N.I. 19).

(3) 1995 c. 39; section 45 was amended by paragraph 18 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c. 48).

- (a) 90 days beginning with the day after the day on which the court is nominated, or
 - (b) any other period as may be agreed between the nominated court, the central authority and the issuing authority.
- (12) In this regulation, “evidence in an alternative form” means—
- (a) evidence in the form of a witness statement or other document;
 - (b) evidence in the form of a record of an interview with the person concerned;
 - (c) evidence in any other form mutually agreed upon between the central authority, the issuing authority and the person from whom the evidence is to be received.

Hearing a person by telephone conference

37.—(1) This regulation applies where a European investigation order contains a request for a person in the United Kingdom to be heard as a witness or expert by telephone conference in proceedings before a court in the issuing State.

(2) The central authority may by notice nominate a court in the United Kingdom where the person may be heard in the proceedings by telephone conference.

(3) But where it appears to the central authority that the conditions in paragraph (4) are satisfied, it must nominate a court under paragraph (2).

(4) The conditions are that—

- (a) recognition or execution of the European investigation order cannot be refused under regulation 28, and
- (b) in any case where a person is requested to give evidence by telephone conference, that either—
 - (i) the person is unwilling to provide that evidence in an alternative form, or
 - (ii) the person is willing to provide that evidence in an alternative form, but the issuing authority does not agree to receive the evidence in that form.

(5) Anything done by a person in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.

(6) Any statement made on oath by a witness giving evidence in pursuance of this regulation is to be treated as made in proceedings before the nominated court for the purposes of—

- (a) section 1 of the Perjury Act 1911;
- (b) article 3 of the Perjury (Northern Ireland) Order 1979, and
- (c) section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995.

(7) A person convicted of an offence as a result of the application of paragraph (6) is liable to imprisonment for a term not exceeding two years, or to a fine, or to both (but is not liable for any other penalty provided for in the provisions mentioned in paragraph (6)).

(8) A court nominated under this regulation must give effect to the European investigation order in accordance with Part 2 of Schedule 6 before the end of the required period.

(9) Subject to paragraphs (5) and (6) and the provisions of Part 2 of Schedule 6, evidence given pursuant to this regulation is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.

(10) The required period is—

- (a) 90 days beginning with the day after the day on which the court is nominated, or

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- (b) any other period as may be agreed between the nominated court, the central authority and the issuing authority.
- (11) In this regulation, “evidence in an alternative form” means—
- (a) evidence in the form of a witness statement or other document;
 - (b) evidence in the form of a record of an interview with the person concerned;
 - (c) evidence in any other form mutually agreed upon between the central authority, the issuing authority and the person from whom the evidence is to be received.