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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 1

General

**Interpretation**

**25.** In this Part—

“European investigation order”—

- (a) has the meaning given by Article 1 of the Directive, and
- (b) references to a European investigation order include part of an order;

“excluded material” and “special procedure material” have the same meaning as in the Police and Criminal Evidence Act 1984<sup>(1)</sup> or, as the case may be, the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(2)</sup>;

“executing authority” means—

- (a) in relation to England, Wales and Northern Ireland, an authority listed in Part 4 of Schedule 1;
- (b) in relation to Scotland, the Lord Advocate;

“issuing authority” means an authority of the issuing State competent for the purposes of Article 2(c) of the Directive;

“issuing State”, in relation to a European investigation order, means the participating State in which that order is issued;

“items subject to legal privilege”—

- (a) in relation to England and Wales and Northern Ireland, has the same meaning as in the Police and Criminal Evidence Act 1984 or, as the case may be, the Police and Criminal Evidence (Northern Ireland) Order 1989;
- (b) in relation to Scotland, has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002;

“relevant part of the United Kingdom”, in relation to a European investigation order, means the part of the United Kingdom in which evidence to which that order relates is situated;

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(1) 1984 c. 60.

(2) S.I. 1989/1341 (N.I. 12).

“relevant UK central authority” means the central authority in relation to the relevant the part of the United Kingdom.

## 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)**(3)**, 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  
(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**(4)** (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);

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**(3)** 2001 c. 16.

**(4)** 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).

“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)(**5**) 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)(**6**) 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—

- (a) section 29 of the Police (Northern Ireland) Act 1998 (liability for wrongful acts of constables)(**7**) 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

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(5) 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.

(6) 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.

(7) 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.



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)(8) 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)(9) 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.

## 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.

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(8) 2012 asp 8.

(9) 2013 c. 22.

(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<sup>(10)</sup>;
- (b) Article 3 of the Perjury (Northern Ireland) Order 1979<sup>(11)</sup>, and
- (c) section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(12)</sup>.

(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—

- (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

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<sup>(10)</sup> 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.

<sup>(11)</sup> S.I. 1979/1714 (N.I. 19).

<sup>(12)</sup> 1995 c. 39; section 45 was amended by paragraph 18 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c. 48).

- (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
  - (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.

#### CHAPTER 4

Execution of a European investigation order by means of a search warrant etc.

#### **Search warrants and production orders: nominating a court**

**38.—**(1) This regulation applies if it appears to the central authority that in order to give effect to the European investigation order it will be necessary for a court to issue a warrant or, as the case may be, make a production order under regulation 39.

(2) Where it appears to the central authority that the condition in paragraph (3) is met, it may by notice nominate a court to issue a warrant or make a production order.

(3) The condition is that the conduct in relation to which the European investigation order was issued would, if it had occurred in the relevant part of the United Kingdom, constitute an indictable offence under the law of that part of the United Kingdom.

(4) But the central authority must nominate a court under paragraph (2) where it appears that, in addition, recognition or execution of the European investigation order cannot be refused under regulation 28.

(5) If the Secretary of State nominates a court under this regulation, he or she must—

- (a) send a copy of the European investigation order to that court;
- (b) send a copy of the order to the chief officer of police for the police area in which the evidence is situated, and
- (c) tell the chief officer which court has been nominated.

(6) In relation to Scotland, in this regulation “court” means “sheriff court”.

(7) References to “the nominated court” in regulations 39 to 41 are references to a court nominated under this regulation, or in relation to Scotland, any sheriff at a court nominated under this regulation.

### **Search warrants and production orders: giving effect to the European investigation order**

**39.**—(1) Within a period prescribed by rules of court, the nominated court must give effect to the European investigation order by issuing a warrant authorising a constable—

- (a) to enter the premises to which the European investigation order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates, and
- (b) to seize and retain any evidence for which that constable is authorised to search.

(2) But in relation to England and Wales and Northern Ireland, so far as the European investigation order relates to excluded material or special procedure material, the court must give effect to the order by making a production order (subject to paragraph (8)).

(3) A production order is an order for the person who appears to the court to be in possession of material to which the order relates to produce it to a constable before the end of the period of seven days beginning with the date on which the order is made, or such longer period as the order may specify.

(4) Before giving effect to the European investigation order, the nominated court must give the chief officer of police or, as the case may be, the procurator fiscal an opportunity to be heard.

(5) The nominated court may refuse to give effect to the European investigation order only if it is of the opinion that one or more of grounds in paragraph (6) apply.

(6) The grounds are that—

- (a) the execution of the European investigation order would be contrary to the principle of *ne bis in idem*;
- (b) there are substantial grounds for believing that executing the European investigation order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998<sup>(13)</sup>);
- (c) there are substantial grounds for believing that the European investigation order has been issued for the purpose of prosecuting or punishing a person on account of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions;
- (d) there are substantial grounds for believing that a person’s position in relation to the investigation or proceedings to which the European investigation order relates might be prejudiced by reason of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions.

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(13) 1998 c. 42.

- (7) The nominated court may postpone giving effect to the European investigation order if—
- (a) to do so might prejudice a criminal investigation or criminal proceedings taking place in the United Kingdom, or
  - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the information must not be removed from the United Kingdom.
- (8) The nominated court may issue a warrant under paragraph (1) in respect of excluded material or special procedure material only where—
- (a) a person has failed to comply with a production order made in respect of the same material (whether or not the court also deals with the matter as a contempt of court), or
  - (b) it appears that one or more of the conditions in paragraph (9) is satisfied.
- (9) The conditions are that—
- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
  - (c) the material consists of information which—
    - (i) is subject to a restriction on disclosure or obligation of secrecy under the law of the issuing State, and
    - (ii) is likely to be disclosed in breach of it if a warrant is not issued;
  - (d) the making of a production order may seriously prejudice the investigation or proceedings to which the European investigation order relates.
- (10) Section 409 of the Proceeds of Crime Act 2002 (jurisdiction of sheriff) has effect for the purposes of paragraph (1) as if that paragraph were included in Chapter 3 of Part 8 of that Act.
- (11) A constable may take away any material produced to him or her under a production order; and the material is to be treated for the purposes of section 21 of the Police and Criminal Evidence Act 1984<sup>(14)</sup> or, as the case may be, Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (access and copying) as if it has been seized by the constable.
- (12) A court in England and Wales or Northern Ireland must not issue a warrant under paragraph (1) in respect of any evidence unless the court has reasonable grounds for believing that it does not consist of or include items subject to legal privilege, excluded material or special procedural material.
- (13) A sheriff must not issue a warrant under paragraph (1) in respect of any evidence unless the sheriff has reasonable grounds for believing that it does not consist of items subject to legal privilege.
- (14) Paragraph (12) does not prevent a warrant being issued by virtue of paragraph (8) in respect of excluded material or special procedure material.

### **Evidence seized under a search warrant or production order**

- 40.**—(1) A constable must retain any evidence—
- (a) seized by or produced to him or her under regulation 39;
  - (b) seized by him or her by virtue of section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure)<sup>(15)</sup>, in the course of a search authorised by a warrant issued under that regulation,

until it is transferred to the issuing State in accordance with regulation 31 (transfer of evidence to the issuing State).

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<sup>(14)</sup> Section 21 was amended by paragraph 3 of Schedule 1 to the Criminal Justice Act 2003 (c. 44).

<sup>(15)</sup> 2001 c. 16.

(2) But in relation to evidence of the type mentioned in paragraph (1)(b), nothing in this regulation or in regulation 30 requires the transfer of that evidence to the issuing State—

- (a) before it has been found, on the completion of any examination required to be made by arrangements under section 53(2) of the Criminal Justice and Police Act 2001, to be property within subsection (3) of that section (property which may be retained after examination), or
- (b) at a time when it constitutes property in respect of which a person is required to ensure that arrangements such as are mentioned in section 61(1) of that Act (duty to secure) are in force.

**Power to revoke or vary a search warrant or production order or to authorise the release of evidence seized or produced**

41.—(1) On an application by a person mentioned in paragraph (3) or (4), the nominated court may—

- (a) vary or revoke a warrant issued or production order made by it under regulation 39, or
- (b) authorise the release of any evidence retained by a constable under regulation 40(1).

(2) But the nominated court may only exercise its power under paragraph (1) to the extent that—

- (a) it is of the opinion mentioned in regulation 39(5), or
- (b) it appears to the nominated court that the European investigation order has been withdrawn or no longer has effect in the issuing State.

(3) In relation to England and Wales and Northern Ireland, the persons are—

- (a) the chief officer of police to whom a copy of the European investigation order was sent;
- (b) the constable retaining the evidence under regulation 40(1);
- (c) any other person affected by the order.

(4) In relation to Scotland, the persons are—

- (a) a procurator fiscal;
- (b) any other person affected by the order.

(5) When considering an application under this regulation, the nominated court must not entertain any challenge to the substantive reasons in relation to which the European investigation order was issued.

CHAPTER 5

Execution of a European investigation order by means of a customer information order or an account monitoring order

**Interpretation**

42. In this Chapter—

- “account monitoring order” has the meaning given by regulation 45(3);
- “court”, in relation to Scotland, means a sheriff court;
- “customer information order” has the meaning given by regulation 44(3);
- “financial institution” includes a person who was at any time a financial institution, but who has ceased to be a financial institution.

### **Nominating a court to make a customer information order or an account monitoring order**

**43.**—(1) This regulation applies if it appears to the central authority that in order to give effect to the European investigation order it will be necessary for a court to make—

- (a) a customer information order, or
- (b) an account monitoring order.

(2) Where it appears to the central authority that the condition in paragraph (3) is met, it may by notice nominate a court to give effect to the European investigation order by making one of the orders mentioned in paragraph (1).

(3) The condition is that the conduct in relation to which the European investigation order was issued would, if it had occurred in the relevant part of the United Kingdom, constitute an indictable offence under the law of that part of the United Kingdom.

(4) But the central authority must nominate a court under paragraph (2) where it appears that, in addition, recognition or execution of the European investigation order cannot be refused under regulation 28.

(5) If the Secretary of State nominates a court under this regulation, he or she must—

- (a) send a copy of the European investigation order to that court;
- (b) specify which of the orders mentioned in paragraph (1) the court is to make;
- (c) send a copy of the order to the chief officer of police for a police area appearing to the Secretary of State to be the appropriate chief officer to receive it, and
- (d) tell the chief officer which court has been nominated.

(6) If the Lord Advocate nominates a court under this regulation, he or she must specify which of the orders mentioned in paragraph (1) the nominated court is to make.

(7) References to “the nominated court” in regulations 44 to 48 are references to a court nominated under this regulation, or in relation to Scotland, any sheriff at a court nominated under this regulation.

### **Court’s power to make a customer information order**

**44.**—(1) This regulation applies where a court is nominated under regulation 43 to give effect to a European investigation order by making a customer information order.

(2) Subject to regulations 46 and 47 and within a period prescribed by rules of court, the nominated court must give effect to the European investigation order by making a customer information order.

(3) A customer information order is an order that a financial institution must, on being required to do so by notice in writing given by a constable (or, in Scotland, a constable under the instruction of a procurator fiscal), provide any customer information it has which relates to the person specified in the order.

(4) A financial institution which is required to provide information under a customer information order must provide the information to the constable or procurator fiscal in such a manner, and at or by such a time or times, as the order requires.

(5) Before giving effect to the European investigation order the nominated court must give the chief officer of police or procurator fiscal an opportunity to be heard.

(6) A customer information order has effect in spite of any restriction on the disclosure of the information (however imposed).

(7) Information obtained by a constable or procurator fiscal in pursuance of a customer information order must be transferred to the issuing State in accordance with regulation 31 (transfer of evidence to the issuing State).



(8) In relation to England and Wales and Northern Ireland, section 364 of the Proceeds of Crime Act 2002 (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this regulation as if this regulation were included in Chapter 2 of Part 8 of that Act.

(9) In relation to Scotland—

- (a) section 398 (meaning of customer information) except subsections (2)(f) and 3(i), and
- (b) section 409 (jurisdiction of sheriff),

of the Proceeds of Crime Act 2002 have effect for the purposes of this regulation as if this regulation were included in Chapter 3 of Part 8 of that Act.

### **Court's power to make an account monitoring order**

**45.**—(1) This regulation applies where a court is nominated under regulation 43 to give effect to a European investigation order by making an account monitoring order.

(2) Subject to regulations 46 and 47 and within a period prescribed by rules of court, the nominated court must give effect to the European investigation order by making an account monitoring order.

(3) An account monitoring order is an order that a financial institution must, for the period stated in the order, provide account information of the description specified in the order to a constable (or, in Scotland, a constable under the instruction of a procurator fiscal) in the manner, and at or by the time or times, stated in the order.

(4) Account information is information relating to an account or accounts held at the financial institution specified in the order by the person so specified (whether solely or jointly with another).

(5) Before giving effect to the European investigation order the nominated court must give the chief officer of police or procurator fiscal an opportunity to be heard.

(6) Account monitoring orders have effect as if they were orders of the court, and in spite of any restriction on the disclosure of the information (however imposed).

(7) Information obtained by a constable or procurator fiscal in pursuance of an account monitoring order must be transferred to the issuing State in accordance with regulation 34 (transfer of evidence to the issuing State).

(8) In relation to Scotland, section 409 of the Proceeds of Crime Act 2002 (jurisdiction of sheriff) has effect for the purposes of this regulation as if this regulation were included in Chapter 3 of Part 8 of that Act.

### **Grounds for refusing to make a customer information order or an account monitoring order**

**46.**—(1) The nominated court may refuse to make an order under regulations 44 or 45 only if it is of the opinion that one or more of the grounds in paragraph (2) apply.

(2) The grounds are that—

- (a) the execution of the European investigation order would be contrary to the principle of *ne bis in idem*;
- (b) there are substantial grounds for believing that executing the European investigation order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998);
- (c) there are substantial grounds for believing that the European investigation order has been issued for the purpose of prosecuting or punishing a person on account of that person's sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions;

- (d) there are substantial grounds for believing that a person's position in relation to the investigation or proceedings to which the European investigation order relates might be prejudiced by reason of that person's sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions.

### **Postponement**

47. The nominated court may postpone making an order under regulations 44 or 45 if—
- (a) to make the order might prejudice a criminal investigation or criminal proceedings taking place in the United Kingdom, or
  - (b) under an order made by a court in criminal proceedings in the United Kingdom, the information must not be removed from the United Kingdom.

### **Power to vary or revoke customer information and account monitoring orders**

48.—(1) On an application made by a person mentioned in paragraph (3), the nominated court may vary or revoke a customer information order or an account monitoring order.

- (2) But the nominated court may only exercise its power under paragraph (1) to the extent that—
- (a) it is of the opinion mentioned in regulation 46(1), or
  - (b) it appears to the nominated court that the European investigation order has been withdrawn or no longer has effect in the issuing State.
- (3) The persons are—
- (a) in relation to England and Wales and Northern Ireland, a chief officer of police to whom a copy of the order was sent;
  - (b) in relation to Scotland, a procurator fiscal;
  - (c) any other person affected by the order.

(4) When considering an application under this regulation, the nominated court must not entertain any challenge to the substantive reasons in relation to which the European investigation order was issued.

### **Offences in relation to customer information orders**

49.—(1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under paragraph (1) is liable on summary conviction—

- (a) in England and Wales, to a fine;
- (b) in Northern Ireland, to a fine not exceeding the statutory maximum;
- (c) in Scotland to a fine not exceeding level 5 on the standard scale.

(3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—

- (a) makes a statement which it knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;

- (c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
- (d) on conviction on indictment, to a fine.

### **Offence of disclosure**

- 50.**—(1) This regulation applies where—
- (a) a financial institution is specified in a customer information order or account monitoring order made in the United Kingdom under this Part, or
  - (b) the central authority receives a European investigation order under this Part for evidence to be obtained from a financial institution in connection with the investigation of an offence in reliance on Article 27 of the Directive (information on banking and other financial operations).
- (2) If the financial institution, or an employee of the financial institution, discloses any of the following information, that person is guilty of an offence.
- (3) That information is—
- (a) that the request to obtain customer information or account information, or the European investigation order mentioned in paragraph (1)(b), has been received;
  - (b) that the investigation to which the request or order relates is being carried out;
  - (c) that, in pursuance of the request or order, information has been given to the authority which made the request or order.
- (4) A financial institution guilty of an offence under this regulation is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
  - (d) on conviction on indictment, to a fine.
- (5) Any other person found guilty of an offence under this regulation is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding three months or to a fine, or to both;
  - (b) on summary conviction in Northern Ireland or in Scotland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or to both;
  - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

## **CHAPTER 6**

Referral to an executing authority for assistance in execution of a European investigation order

### **Referral to executing authorities**

- 51.**—(1) A central authority may refer a European investigation order to an executing authority where the central authority considers that—
- (a) the executing authority is likely to be able to give effect to the order, and
  - (b) it is expedient for the executing authority to give effect to the order.
- (2) But the central authority must make a referral under this regulation where it considers that—
- (a) the executing authority is likely to be able to give effect to the order;

- (b) recognition or execution of the European investigation order cannot be refused under regulation 28, and
  - (c) it will not be possible to give effect to the order unless a referral is made.
- (3) A referral made under this regulation must be accompanied by a notice specifying—
- (a) the action the executing authority is expected to take in order to give effect to the European investigation order;
  - (b) the time period within which the action should be carried out in order to comply with any requirement imposed by regulation 30, and
  - (c) details of any time period within which the executing authority should raise any objection to the central authority’s decision to recognise the European investigation order, or to the central authority’s decision to make a referral under this regulation.
- (4) The central authority may withdraw a referral made under this regulation.
- (5) The central authority in relation to England and Wales and Northern Ireland may not refer a European investigation order to the Director of the Serious Fraud Office under this regulation unless the authority considers that the order relates to an offence involving serious or complex fraud.

#### **Lord Advocate’s direction in relation to serious or complex fraud**

**52.**—(1) This regulation applies if it appears to the Lord Advocate that a European investigation order relates to an offence involving serious or complex fraud.

(2) The Lord Advocate may give a direction under section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (Lord Advocate’s direction)<sup>(16)</sup> for the purposes of giving effect to the order.

### 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.

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<sup>(16)</sup> 1995 c. 39; section 27 was amended by paragraph 62 of Schedule 5 to the Crime (International Co-operation) Act 2003.

(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.