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STATUTORY INSTRUMENTS

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**2020 No. 1408**

**EXITING THE EUROPEAN UNION  
CRIMINAL LAW  
INVESTIGATORY POWERS  
POLICE  
PROCEEDS OF CRIME**

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

*Made - - - - 2nd December 2020*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 69(1), 71(4), 73(5), 84(7), 86(7) and 223(8) of the Extradition Act 2003<sup>(1)</sup>, sections 8(1), 8B(1) and (2) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(2)</sup>, and by section 41(1) and (5) of the European Union (Withdrawal Agreement) Act 2020<sup>(3)</sup>.

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament, in accordance with section 223(5) and (6) of the Extradition Act 2003 and paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018<sup>(4)</sup>.

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(1) 2003 c. 41.

(2) 2018 c. 16. Section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1), section 8B was inserted by section 18 of that Act, and paragraph 21 of Schedule 7 was amended by paragraphs 38 and 53(1) and (2) of Schedule 5 to that Act.

(3) 2020 c. 1.

(4) See also paragraph 38 of Schedule 7 to the European Union (Withdrawal) Act 2018 which provides for the combination of instruments subject to different Parliamentary procedures.

## PART 1

### Introductory

#### **Citation and commencement**

1. These Regulations may be cited as the Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020 and come into force immediately before IP completion day.

#### **Extent**

2.—(1) Part 1 of these Regulations extends to England and Wales, Scotland and Northern Ireland.

(2) Regulation 2 (extent) of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019<sup>(5)</sup> applies to the amendments made to those Regulations by Part 2 of these Regulations.

(3) Part 3 of these Regulations extends to England and Wales and Northern Ireland.

## PART 2

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

#### **Amendments to law enforcement and security provisions**

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

#### CHAPTER 1

##### Freezing Orders and Confiscation Orders

#### **Transitional provisions relating to freezing orders concerning terrorist property**

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

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

5. In regulation 111 (transitional provisions in relation to amendment of the Criminal Justice and Data Protection Regulations 2014), after “has occurred” insert “(and see Articles 6 and 62(1)(c) and (e) and Title VII of Part 3 of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act

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(5) [S.I. 2019/742](#).

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

and, in relation to the continued application of Framework Decisions 2003/577/JHA and 2006/783/JHA in respect of certificates received by the United Kingdom before 19 December 2020, see Article 40(2) of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders(7)”.

### **Revocation of Regulation (EU) 2018/1805**

6. After regulation 113, insert—

#### **“Revocation of Regulation (EU) 2018/1805**

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

## CHAPTER 2

### Cross-border Surveillance

#### **Amendment of revocation provision**

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

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

#### **Amendment of transitional provision**

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

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

## CHAPTER 3

### Eurojust

#### **Interpretation**

9. Omit regulation 20 (interpretation).

#### **Revocation of the Eurojust Regulation**

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

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

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(7) Article 62(1)(c) and (e) refer to Council Framework Decisions 2003/577/JHA and 2006/783/JHA. Article 39 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders states that references to these Framework Decisions shall be construed as references to that Regulation. By virtue of Article 6 of the withdrawal agreement, the references to the Council Framework Decisions in Article 62(1)(c) and (e) are to be construed accordingly.

(b) for regulation 21, substitute—

“**21.** Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA is revoked (but see Article 62(3) of the withdrawal agreement and sections 7A and 7C of the Withdrawal Act<sup>(8)</sup>.”.

### **Revocation of saving provisions for data**

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

#### CHAPTER 4

#### European Criminal Record Information System (ECRIS)

### **Amendment of saving provision**

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

(a) in the heading before the regulation and also in paragraph (1), after “commencement day” insert “or under Article 62(1)(h) of the withdrawal agreement”;

(b) after paragraph (2)(b), insert—

“(ba) regulation 65 (obligations upon receipt of information under Article 4(2) and (3) of the Framework Decision).”

### **Amendment of transitional provisions**

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

(a) after paragraph (2)(b) insert—

“(ba) regulation 65 (obligations upon receipt of information under Article 4(2) and (3) of the Framework Decision);”;

(b) after paragraph (2)(d) insert—

“(e) regulation 70 (form of reply to a request for information under Article 6 of the Framework Decision);

(f) regulation 71(1), (2) and (4) (deadlines for replies to a request for information under Article 6 of the Framework Decision).”;

(c) after paragraph (4) insert—

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

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

## CHAPTER 5

### Europol

#### **Amendment relating to saving provisions for data**

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

## CHAPTER 6

### Exchange of information and intelligence between law enforcement authorities

#### **Amendment of transitional provision**

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

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

#### **Amendment of saving provision – information and intelligence**

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

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

#### **Amendment of saving provision – representations**

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

## CHAPTER 7

### Joint Investigation Teams

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

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

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

#### **Amendments relating to investigation teams operating in the UK**

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

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

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

### CHAPTER 8

#### Mutual Legal Assistance

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

**20.—**(1) In the heading for Chapter 7 of Part 18, for “subordinate” substitute “related”.

(2) In regulation 96 (freezing orders) after paragraph (4) insert—

“(5) Regulation 79(2) (amendment of the Criminal Justice and Police Act 2001) does not apply in respect of an overseas freezing order received before commencement day by the Secretary of State under section 1 of the 2003 Act.

(6) See Article 62(1)(c) and Title VII of Part 3 of the withdrawal agreement, and sections 7A and 7C of the Withdrawal Act.”.

#### **Amendments relating to requests for information about financial accounts and transactions**

**21.** In regulation 97 (requests for information about financial accounts and transactions), after paragraph (5) insert—

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

#### **Amendments relating to certain mutual legal assistance requests from Iceland**

**22.** In regulation 98 (certain mutual legal assistance request from Iceland), after paragraph (4) insert—

“(5) See Article 50(1) of the EEA EFTA separation agreement and sections 7B and 7C of the Withdrawal Act.”.

### **Amendments relating to mutual legal assistance requests**

23. After regulation 98 insert—

#### **“Transitional provision - requests received before commencement day**

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

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

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

### **Amendment relating to designation of participating countries**

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

## CHAPTER 9

### Extradition

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

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

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

### **Amendment to transitional provision**

26. In regulation 57 (transitional provision)—

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

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

## CHAPTER 10

### European Investigation Orders

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

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

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

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

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

(a) in paragraph (1) for the words from “prisoner temporarily transferred” to “before commencement day” (including those words in each case) substitute “relevant temporary transfer or a relevant request”;

(b) after paragraph (1) insert—

“(1A) in paragraph (1)—

“relevant temporary transfer” means a prisoner temporarily transferred to an issuing State pursuant to a warrant issued by the Secretary of State or the Scottish Ministers under regulation 54 of the 2017 Regulations (temporary transfer of UK prisoner to issuing State for the purpose of issuing State’s investigation or proceedings) before commencement day;

“relevant request” means a European investigation order which includes a request for the transfer of a prisoner received by a central authority before commencement, regardless of whether that European investigation order was forwarded to the relevant UK central authority before commencement day.”;

(c) after paragraph (2) insert—

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

CHAPTER 11

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

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

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

**Amendment relating to Third Pillar Conventions**

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

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

## CHAPTER 12

### Passenger Name Record Data

#### Saving provision

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

#### “Savings provision - requests received before commencement day

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

(2) The following provisions of the Passenger Name Record Data and Miscellaneous Amendments Regulations 2018<sup>(9)</sup> (“the 2018 Regulations”) continue to have effect in relation to those requests as if the amendments made to the provisions by regulation 104 did not apply—

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

#### Savings provision – information received by virtue of the PNR Directive

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

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

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

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

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<sup>(9)</sup> [S.I. 2018/598](#). Regulation 12(2A) was inserted by [S.I. 2019/742](#).

## CHAPTER 13

### Financial Intelligence Units and Asset Recovery Offices

#### **Amendment of revocation and saving provision**

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

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

## CHAPTER 14

### Prüm - Exchange of Data Relating to DNA

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

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

#### **Transitional provision**

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

##### **“Transitional provision – DNA profiles supplied before commencement day**

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

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

##### **Saving provision – information received before commencement day**

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

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

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

- (a) Article 26 is to be read as if—

- (i) in paragraph 1—
  - (aa) “by the receiving Member State” were omitted;
  - (ab) the words from “and subject only to” to the end were omitted;
- (ii) in paragraph 2, “by the searching or comparing Member State” were omitted;
- (iii) in the text after paragraph 2(c), for “The Member State administering the file may process the data supplied to it”, substitute “The data supplied may be processed”;
- (b) Article 27 is to be read as if “and in compliance with the law of the receiving Member State” were omitted;
- (c) paragraph 1 of Article 28 is to be read as if—
  - (i) the first sentence were omitted;
  - (ii) after “have been supplied”, there were inserted “by the authorities in the United Kingdom”;
  - (iii) for “The Member State or Member States concerned shall be obliged to correct or delete the data”, substitute “The authorities in the United Kingdom shall be obliged to correct or delete any data in respect of which the supplying Member State has made such a notification”;
- (d) paragraph 2 of Article 28 is to be read as if—
  - (i) “, in accordance with the national law of the Member States,” were omitted;
  - (ii) “subject to the national law of the Member States and” were omitted;
- (e) paragraph 1 of Article 30 is to be read as if the first sentence were “In order to verify the admissibility of the supply, the authorities in the United Kingdom shall log every non-automated supply of personal data by the body administering the file and every non-automated receipt of personal data by the searching body.”;
- (f) paragraph 2 of Article 30 is to be read as if—
  - (i) “other” were omitted from paragraph (a);
  - (ii) in paragraph (b), for “each Member State” substitute “the United Kingdom”;
- (g) Article 32 is to be read as if, for “The receiving Member State” substitute “The authorities in the United Kingdom”.

## CHAPTER 15

### Schengen Information System (SIS II)

#### **Amendment relating to revocation of retained EU law**

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

- (a) for the text before sub-paragraph (a) substitute “The following are revoked (but see Article 63(1)(e) of the withdrawal agreement, Article 52(c) of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”;
- (b) after paragraph (g), insert—
  - “(h) Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision

2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU(10).”.

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

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

#### **Amendment relating to saving provisions – supplementary information and national files**

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

## CHAPTER 16

### International Agreements

#### **Amendment of revocation and saving provision**

- 38.—**(1) In regulation 134 (revocation of rights etc.)—
- (a) in paragraph (1), after “cease to be recognised and available in domestic law” insert “(but in relation to the agreements specified in paragraph (2)(a) to (e), (g) and (h) see Title VII of Part 3 of the withdrawal agreement, Titles III and IV of Part 3 of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”;
  - (b) in paragraph (2), after sub-paragraph (g) insert—
    - “(h) the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway(11).”.
- (2) In regulation 135(1)(a) (saving provision) for “a transitional or saving provision of these Regulations” substitute “a transitional or saving provision of these Regulations (or Title VII of Part 3 of the withdrawal agreement, Titles III and IV of the EEA EFTA separation agreement and sections 7A to 7C of the Withdrawal Act)”.

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

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

## PART 3

### Amendments of the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019

#### **Amendments to criminal justice provisions**

**39.** This Part makes amendments to the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019<sup>(12)</sup>.

#### Chapter 1

##### European Protection Orders: England and Wales

#### **Amendment of interpretation provision**

**40.** For regulation 3 (interpretation) substitute—

“**3.** In this Chapter, “the England and Wales EPO Regulations” means the Criminal Justice (European Protection Order) (England and Wales) Regulations 2014<sup>(13)</sup>.”

#### **Amendment of transitional and saving provision: restraining orders made before exit day**

**41.** For regulation 5 (transitional and savings provision: restraining orders made before exit day), including its heading, substitute—

##### **“Transitional and saving provision: requests to executing States to recognise European protection orders made in England and Wales**

**5.—**(1) The following provisions of the England and Wales EPO Regulations continue to apply, as if they had not been revoked by regulation 4, to relevant European protection orders as defined in paragraph (2) below (and see Article 62(1)(k) of the withdrawal agreement and sections 7A and 7C of the European Union (Withdrawal) Act 2018)—

- (a) regulations 1 to 4;
- (b) regulation 6;
- (c) regulations 9 and 10.

(2) A relevant European protection order is one received before IP completion day by the competent authority of the executing State under regulation 9(2) of the England and Wales EPO Regulations (notifying the executing State of the European protection order), or by any other authority of the executing State with no competence to recognise a European protection order but which forwards it to the competent authority.

(3) For the purposes of this regulation—

- (a) “the competent authority” has the same meaning as in regulation 2(1) of the England and Wales EPO Regulations (interpretation – general);
- (b) “the executing State” has the same meaning as in regulations 3(2) and 4(5) of the England and Wales EPO Regulations (interpretation – Part 2 and power of a court to make a European protection order);
- (c) the provisions of the England and Wales EPO Regulations referred to in paragraph (1) are to be read as if the term “member State” included the United Kingdom.”

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<sup>(12)</sup> S.I. 2019/780.

<sup>(13)</sup> S.I. 2014/3300.

### **Amendment of saving provision: requests for recognition of European protection orders received before exit day**

**42.** For regulation 6 (saving provision: requests for recognition of European protection orders received but not determined before exit day), including its heading, substitute—

#### **“Transitional and saving provision: recognition by England and Wales of European protection orders made by issuing States**

**6.—**(1) The following provisions of the England and Wales EPO Regulations continue to apply, as if they had not been revoked by regulation 4, to relevant European protection orders as defined in paragraph (2) below—

- (a) regulations 1 and 2;
- (b) regulations 11 to 14;
- (c) regulations 16 to 19;
- (d) the Schedule (grounds for refusal to give effect to a European protection order).

(2) A relevant European protection order is one received from the issuing state before IP completion day by the central authority for England and Wales under regulation 12(2) of the England and Wales EPO Regulations (requests from other member States to recognise a European protection order), or any other authority of England and Wales with no competence to recognise a European protection order but which forwards it to the central authority.

(3) For the purposes of this regulation—

- (a) “the central authority for England and Wales” has the same meaning as in regulation 2(1) of the England and Wales EPO Regulations;
- (b) “the issuing State” has the same meaning as in regulations 11(2) and 12(1) of the England and Wales EPO Regulations (interpretation – Part 3 and the Schedule);
- (c) the provisions of the England and Wales EPO Regulations referred to in paragraph (1) are to be read as if the term “member State” included the United Kingdom.”.

### **Revocation of savings provisions**

**43.** Omit regulations 7 (savings provision: European protection order modifications communicated, but not given effect to, before exit day) and 8 (saving provision: European protection order revocation notifications made, but not given effect to, before exit day).

## Chapter 2

### European Protection Orders: Northern Ireland

### **Amendment of interpretation provision**

**44.** For regulation 9 (interpretation) substitute—

**“9.** In this Chapter, “the Northern Ireland EPO Regulations” means the Criminal Justice (European Protection Order) (Northern Ireland) Regulations 2014(14).”

**Amendment of transitional and saving provision: restraining orders made before exit day**

**45.** For regulation 11 (transitional and saving provision: restraining orders made before exit day), including its heading, substitute—

**“Transitional and saving provision: requests to executing States to recognise European protection orders made in Northern Ireland**

**11.**—(1) The following provisions of the Northern Ireland EPO Regulations continue to apply, as if they had not been revoked by regulation 10, to relevant European protection orders as defined in paragraph (2) below (and see Article 62(1)(k) of the withdrawal agreement and sections 7A and 7C of the European Union (Withdrawal) Act 2018)—

- (a) regulations 1 to 4;
- (b) regulation 6;
- (c) regulations 9 and 10.

(2) A relevant European protection order is one received before IP completion day by the competent authority of the executing State under regulation 9(2) of the Northern Ireland EPO Regulations (notifying the executing State of the European protection order) or by any other authority of the executing State with no competence to recognise a European protection order but which forwards it to the competent authority.

(3) For the purposes of this regulation—

- (a) “the competent authority” has the same meaning as in regulation 2(1) of the Northern Ireland EPO Regulations (interpretation - general);
- (b) “the executing State” has the same meaning as in regulation 3(2) and 4(5) of the Northern Ireland EPO Regulations (interpretation – Part 2 and power of a court to make a European protection order);
- (c) the provisions of the Northern Ireland EPO Regulations referred to in paragraph (1) are to be read as if the term “member State” included the United Kingdom.”.

**Amendment of saving provision: requests for recognition of European protection orders received before exit day**

**46.** For regulation 12 (saving provision: requests for recognition of European protection orders received but not determined before exit day), including its heading, substitute—

**“Transitional and saving provision: recognition by Northern Ireland of European protection orders made by issuing States**

**12.**—(1) The following provisions of the Northern Ireland EPO Regulations continue to apply, as if they had not been revoked by regulation 10, to relevant European protection orders as defined in paragraph (2) below—

- (a) regulations 1 and 2;
- (b) regulations 11 to 14;
- (c) regulations 16 to 19;
- (d) the Schedule (grounds for refusal to give effect to a European protection order).

(2) A relevant European protection order is one received from the issuing State before IP completion day by the central authority for Northern Ireland under regulation 12(2) of the Northern Ireland EPO Regulations (requests from other member States to recognise

a European protection order), or by any other authority of Northern Ireland with no competence to recognise a European protection order but which forwards it to the central authority.

(3) For the purposes of this regulation—

- (a) “the central authority for Northern Ireland” has the same meaning as in regulation 2(1) of the Northern Ireland EPO Regulations;
- (b) “the issuing State” has the same meaning as in regulation 2(1) of the Northern Ireland EPO Regulations;
- (c) the provisions of the Northern Ireland EPO Regulations referred to in paragraph (1) are to be read as if the term “member State” included the United Kingdom.”.

### **Revocation of savings provisions**

**47.** Omit regulations 13 (saving provision: European protection order modifications communicated, but not given effect to, before exit day) and 14 (saving provision: European protection order revocation notifications made, but not given effect to, before exit day).

## Chapter 3

### European Supervision Orders

### **Transitional and saving provision**

**48.** After regulation 16 insert—

**“Transitional and saving provision for England and Wales: decisions on supervision measures received before IP completion day**

**16A.—**(1) The following provisions of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014<sup>(15)</sup> (“the 2014 Regulations”) continue to apply, as if they had not been revoked by regulation 16, to relevant decisions on supervision measures as defined in paragraph (2) below (and see Article 62(1)(i) of the withdrawal agreement and sections 7A and 7C of the European Union (Withdrawal) Act 2018)—

- (a) regulation 75(1) and (3);
- (b) regulations 76 and 77;
- (c) regulations 79 to 83;
- (d) regulation 84(2) to (4);
- (e) regulations 85 to 93;
- (f) regulation 94(2) and (3);
- (g) Schedule 6.

(2) A relevant decision on supervision measures is one received before IP completion day by—

- (a) the central authority or the competent authority of the executing State under regulation 77(2) of the 2014 Regulations (requests to other member States for monitoring supervision measures), or any other authority in the executing State with no competence to recognise a decision on supervision measures but which forwards the decision to the competent authority; or

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<sup>(15)</sup> S.I. 2014/3141; amended by S.I. 2014/3191.

- (b) the central authority of England and Wales under regulation 85(2) of the 2014 Regulations (requests from other member states for monitoring supervision measure), or any other authority in England and Wales with no competence to recognise a decision on supervision measures but which forwards the decision to the central authority.
- (3) For the purposes of this regulation—
  - (a) “the central authority or competent authority of the executing State” has the same meaning as in regulations 76 and 77(9) of the 2014 Regulations (interpretation);
  - (b) “the central authority of England and Wales” has the same meaning as in regulation 76 of the 2014 Regulations;
  - (c) the provisions of the 2014 Regulations referred to in paragraph (1) are to be read as if the term “member State” included the United Kingdom.

**Transitional and saving provision for Northern Ireland: decisions on supervision measures received before IP completion day**

**16B.**—(1) The following provisions of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (“the 2014 Regulations”) continue to apply, as if they had not been revoked by regulation 16, to relevant decisions on supervision measures as defined in paragraph (2) below (and see Article 62(1)(i) of the withdrawal agreement and sections 7A and 7C of the European Union (Withdrawal) Act 2018)—

- (a) regulation 75(2) and (3);
  - (b) regulations 95 and 96;
  - (c) regulations 98 to 102;
  - (d) regulation 103(2) and (3);
  - (e) regulations 104 to 112;
  - (f) regulation 113(2) and (3);
  - (g) Schedule 6.
- (2) A relevant decision on supervision measures is one received before IP completion day by—
- (a) the central authority or the competent authority of the executing State under regulation 96(2) of the 2014 Regulations (requests to other member States for monitoring supervision measures), or any other authority in the executing State with no competence to recognise a decision on supervision measures but which forwards the decision to the competent authority; or
  - (b) the central authority of Northern Ireland under regulation 104(2) of the 2014 Regulations (requests from other member States for monitoring supervision measures), or any other authority in Northern Ireland with no competence to recognise a decision on supervision measures but which forwards the decision to the central authority for execution.
- (3) For the purposes of this regulation—
- (a) “the central authority or competent authority of the executing State” has the same meaning as in regulations 95 and 96(9) of the 2014 Regulations (interpretation);
  - (b) “the central authority of Northern Ireland” has the same meaning as in regulation 95 of the 2014 Regulations
  - (c) the provisions of the 2014 Regulations referred to in paragraph (1) are to be read as if the term “Member State” included the United Kingdom.”.

## Chapter 4

### Mutual Recognition of Financial Penalties

#### **Amendment of the Criminal Justice and Immigration Act 2008**

**49.** In regulation 19 (amendment of the 2008 Act)—

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

“(2) See Article 62(1)(d) of the withdrawal agreement and sections 7A and 7C of the European Union (Withdrawal) Act 2018.”

#### **Transitional and saving provision**

**50.** For regulation 20 (saving provision: requests from member States), including in its heading, substitute—

**“Transitional and saving provision: decisions requiring payment of financial penalties received before IP completion day**

**20.**—(1) The following provisions of the 2008 Act continue to apply, as if they had not been revoked by regulation 19, to relevant decisions requiring payment of financial penalties—

- (a) regulation 80(2) to (5);
- (b) regulations 81 to 90A;
- (c) regulation 91(1) and (2)
- (d) regulation 92;
- (e) Schedule 18;
- (f) Schedule 19;
- (g) paragraph 29(2) to (4) of Schedule 27.

(2) A relevant decision requiring payment of a financial penalty is one received, with a certificate requesting enforcement of a penalty, before IP completion day by—

- (a) the central authority or competent authority of a member State under section 81(3) or (as the case may be) under section 83(3) of the 2008 Act (procedure on issue of certificate: England and Wales and procedure on issue of certificate; Northern Ireland), or by any other authority of the member State with no jurisdiction to enforce a penalty but which transmits the decision and certificate to the competent authority; or
  - (b) the Lord Chancellor or Department of Justice in Northern Ireland under section 84(1) or (as the case may be) under section 87(1) of the 2008 Act (requests from other member States: England and Wales and requests from other member States: Northern Ireland), or by any other authority in England and Wales or Northern Ireland with no jurisdiction to enforce a penalty but which transmits the decision and certificate to the competent authority.
- (3) For the purposes of this regulation—
- (a) “central authority” and “competent authority” has the same meaning as in section 92(1) of the 2008 (interpretation of sections 80 to 91 etc.);

- (b) “a certificate requesting enforcement” has the same meaning as in section 92(3) of the 2008 Act;
- (c) for the purposes of this regulation, the provisions of the 2008 Act referred to in paragraph (1) are to be read as if the term “member State” included the United Kingdom.”.

2nd December 2020

*James Brokenshire*  
Minister of State  
Home Office

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by sections 8(1), 8B(1) and (2) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (“the Withdrawal Act”), and section 41(1) and (5) of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Chapter 9 of Part 2 of these Regulations (extradition) is also made in part in reliance on various powers in the Extradition Act 2003 (c. 41).

Part 2 of these Regulations amends the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742) (“the law enforcement regulations”), and Part 3 amends the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/780) (“the criminal justice regulations”). These instruments were the means by which amendment was made to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, and to make savings and transitional provision in respect of certain law enforcement matters and procedures which had begun but not been completed before the end of the transitional period.

The purpose of these Regulations is to amend the law enforcement regulations and the criminal justice regulations in light of Title V and, in so far as it relates to police and judicial cooperation, Title VII of Part 3 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“the withdrawal agreement”). Title V makes provisions in respect of ongoing police and judicial cooperation in criminal matters, relating to certain EU instruments for law enforcement cooperation and information exchange. Title VII makes provision in respect of data and information processed or obtained before the end of the transition period or in relation to ongoing proceedings under the withdrawal agreement. Similar provisions are made in Title III and Title IV of Part 3 of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union (“the EEA EFTA separation agreement”). These provisions are referred to in both agreements as “other separation issues”.

Generally, the other separation issues preserve the application of particular EU measures in respect of any matters or procedures begun (but not completed) before the end of the transition period. In addition, they preserve the applicable law on personal data and confidential treatment and restricted use of data and information, in respect of data and information stocks accrued or exchanged in relation to those transitional cases. By virtue of sections 7A and 7C of the Withdrawal Act, rights, powers, obligations, remedies etc as they arise or are created from time to time in the withdrawal agreement are given legal effect in the legal system of the United Kingdom (and sections 7B and 7C make similar provision in relation to the EEA EFTA separation agreement).

Additionally, these Regulations make further provision to address deficiencies in retained EU law (in particular under section 8(2)(a) to (d) and (g) of the Withdrawal Act) arising from the withdrawal of the United Kingdom from the European Union, in relation to EU law in the law enforcement and security sphere that has come into force since the law enforcement regulations were made, or where further deficiencies in existing retained EU law have been identified.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is published with the Explanatory Memorandum alongside this

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