



# Crime (Overseas Production Orders) Act 2019

## 2019 CHAPTER 5

An Act to make provision about overseas production orders and about the designation of international agreements for the purposes of section 52 of the Investigatory Powers Act 2016. [12th February 2019]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Overseas production orders*

#### **1 Making of overseas production order on application**

- (1) A judge may, on an application by an appropriate officer, make an overseas production order against a person in respect of electronic data if each of the requirements for the making of the order is fulfilled (see section 4).
- (2) An application for an overseas production order must—
  - (a) specify the designated international co-operation arrangement by reference to which the application is made, and
  - (b) specify or describe the electronic data in respect of which the order is sought.
- (3) An appropriate officer applying for an overseas production order must not specify or describe in the application for the order electronic data that the appropriate officer has reasonable grounds for believing consists of or includes excepted electronic data.
- (4) An overseas production order is an order made under this Act that either—
  - (a) requires the person against whom the order is made to produce the electronic data specified or described in the order, or

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- (b) requires the person against whom the order is made to give access to the electronic data specified or described in the order.
- (5) In this Act “designated international co-operation arrangement” means a relevant treaty which—
  - (a) relates (in whole or in part) to the provision of mutual assistance in connection with the investigation or prosecution of offences, and
  - (b) is designated by the Secretary of State by regulations.
- (6) For the purposes of subsection (5) a treaty is a relevant treaty if a Minister of the Crown has laid before Parliament a copy of the treaty under section 20(1)(a) of the Constitutional Reform and Governance Act 2010.
- (“Treaty” and “Minister of the Crown” have the same meaning for the purposes of this section as they have for the purposes of Part 2 of that Act.)
- (7) In this Act—
  - “appropriate officer” has the meaning given by section 2;
  - “electronic data” and “excepted electronic data” have the meanings given by section 3;
  - “judge” means—
    - (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;
    - (b) in relation to Scotland, a judge of the High Court of Justiciary or the sheriff;
    - (c) in relation to Northern Ireland, a Crown Court judge.

#### Commencement Information

- I1** S. 1(1)-(4)(7) in force at 9.10.2019 for E.W.S. by [S.I. 2019/1318](#), [reg. 2\(2\)\(a\)](#)
- I2** S. 1(1)-(4)(7) in force at 9.10.2019 for specified purposes for N.I. by [S.I. 2019/1318](#), [reg. 2\(3\)](#)
- I3** [S. 1\(1\)-\(4\)](#), (7) in force at 22.2.2021 by [S.I. 2021/146](#), [reg. 4\(a\)](#)
- I4** S. 1(5)(6) in force at 9.10.2019 by [S.I. 2019/1318](#), [reg. 2\(1\)\(a\)](#)

## 2 Appropriate officers

- (1) In this Act “appropriate officer” means—
  - (a) in relation to England and Wales and Northern Ireland—
    - (i) a constable,
    - (ii) an officer of Revenue and Customs,
    - (iii) a member of the Serious Fraud Office,
    - (iv) an accredited financial investigator,
    - (v) a counter-terrorism financial investigator,
    - (vi) a person appointed by the Financial Conduct Authority under section 168(3) or (5) of the Financial Services and Markets Act 2000 to conduct an investigation, or
    - (vii) a person of a description specified in regulations made by the Secretary of State;
  - (b) in relation to Scotland—
    - (i) a procurator fiscal,

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- (ii) a constable,
  - (iii) an officer of Revenue and Customs,
  - (iv) a person appointed by the Financial Conduct Authority under section 168(3) or (5) of the Financial Services and Markets Act 2000 to conduct an investigation, or
  - (v) a person of a description specified in regulations made by the Secretary of State.
- (2) An accredited financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a confiscation investigation or a money laundering investigation within the meaning of Part 8 of the Proceeds of Crime Act 2002 (see section 341 of that Act).
- (3) A counter-terrorism financial investigator other than a Schedule 5A counter-terrorism financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a terrorist investigation so far as relating to terrorist property.
- (4) A Schedule 5A counter-terrorism financial investigator may exercise a function conferred by a provision of this Act only if exercising the function for the purposes of a terrorist financing investigation.
- (5) A person mentioned in any of sub-paragraphs (ii) to (v) of subsection (1)(b) may exercise a function conferred by a provision of this Act only if authorised to do so by a procurator fiscal.
- (6) A certificate of a procurator fiscal that a person mentioned in any of sub-paragraphs (ii) to (v) of subsection (1)(b) had authority to exercise a function conferred by a provision of this Act is conclusive evidence of that fact.
- (7) If regulations under subsection (1)(a)(vii) describe a person by reference to the person being authorised by another person, the regulations may include provision which has a similar effect to the provision made by subsection (6).
- (8) In this section—
  - “accredited financial investigator” has the same meaning as in the Proceeds of Crime Act 2002 (see section 3 of that Act);
  - “counter-terrorism financial investigator” means a person who is accredited—
    - (a) by virtue of section 63F(4)(a) of the Terrorism Act 2000 in relation to that Act, or
    - (b) by virtue of section 63F(4)(c) of the Terrorism Act 2000 in relation to Schedule 5 or 5A to that Act;
  - “Schedule 5A counter-terrorism financial investigator” means a person who is accredited by virtue of section 63F(4)(c) of the Terrorism Act 2000 in relation to Schedule 5A to that Act and not in relation to Schedule 5 to that Act;
  - “terrorist financing investigation” has the same meaning as in Part 1 of Schedule 5A to the Terrorism Act 2000 (see paragraph 4 of that Schedule);
  - “terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act);
  - “terrorist property” has the same meaning as in the Terrorism Act 2000 (see section 14 of that Act).

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#### Commencement Information

- I5** [S. 2](#) in force at 9.10.2019 for specified purposes for N.I. by [S.I. 2019/1318](#), [reg. 2\(3\)](#)  
**I6** [S. 2](#) in force at 9.10.2019 for E.W.S. by [S.I. 2019/1318](#), [reg. 2\(2\)\(b\)](#)  
**I7** [S. 2](#) in force at 22.2.2021 by [S.I. 2021/146](#), [reg. 4\(b\)](#)

### 3 Meaning of “electronic data” and “excepted electronic data”

- (1) This section applies for the purposes of this Act.
- (2) “Electronic data” means data stored electronically.
- (3) “Excepted electronic data” means electronic data that is—
  - (a) an item subject to legal privilege, or
  - (b) a personal record which is a confidential personal record.
- (4) Where the person against whom an overseas production order is sought is a telecommunications operator, this Act applies as if references to excepted electronic data included electronic data that is communications data.
- (5) Where an application for an overseas production order is made for the purposes of a terrorist investigation other than a terrorist financing investigation, this Act applies as if references to excepted electronic data did not include electronic data that is a personal record which is a confidential personal record.
- (6) “Item subject to legal privilege”—
  - (a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
  - (b) in relation to Scotland, has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act);
  - (c) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 12 of that Order).
- (7) “Personal record” means a record concerning an individual (“P”) (whether living or dead) who can be identified from the record and relating to—
  - (a) P’s physical or mental health,
  - (b) spiritual counselling or assistance given, or to be given, to P, or
  - (c) counselling or assistance given, or to be given, to P for the purposes of P’s personal welfare by—
    - (i) any voluntary organisation,
    - (ii) any individual who by reason of an office or occupation has responsibilities for P’s personal welfare, or
    - (iii) any individual who by reason of an order of a court has responsibilities for P’s supervision.
- (8) A personal record is a “confidential personal record” if—
  - (a) it was created in circumstances giving rise to an obligation of confidence owed to P and the obligation continues to be owed, or
  - (b) it is held subject to a restriction on disclosure, or an obligation of secrecy, contained in an enactment (whenever passed or made).

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(9) In this section—

“communications data” and “telecommunications operator” have the same meaning as in the Investigatory Powers Act 2016 (see section 261 of that Act);

“terrorist financing investigation” has the same meaning as in Part 1 of Schedule 5A to the Terrorism Act 2000 (see paragraph 4 of that Schedule);

“terrorist investigation” has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act).

#### Commencement Information

**I8** S. 3 in force at 9.10.2019 for E.W.S. by S.I. 2019/1318, reg. 2(2)(c)

**I9** S. 3 in force at 9.10.2019 for specified purposes for N.I. by S.I. 2019/1318, reg. 2(3)

**I10** S. 3 in force at 22.2.2021 by S.I. 2021/146, reg. 4(c)

## 4 Requirements for making of order

(1) The requirements for the making of an overseas production order are—

- (a) the requirements set out in subsections (2) to (7), and
- (b) such additional requirements as are specified in regulations made by the Secretary of State (so far as applicable).

(2) The judge must be satisfied that there are reasonable grounds for believing that the person against whom the order is sought—

- (a) operates in a country or territory outside the United Kingdom which is a party to, or participates in, the designated international co-operation arrangement specified in the application for the order, or
- (b) is based in a country or territory outside the United Kingdom which is a party to, or participates in, the designated international co-operation arrangement specified in the application for the order.

(3) The judge must be satisfied that—

- (a) there are reasonable grounds for believing that an indictable offence has been committed and proceedings in respect of the offence have been instituted or the offence is being investigated, or
- (b) the order is sought for the purposes of a terrorist investigation.

(4) The judge must be satisfied that there are reasonable grounds for believing that the person against whom the order is sought has possession or control of all or part of the electronic data specified or described in the application for the order.

(5) The judge must be satisfied that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be of substantial value (whether or not by itself) to the proceedings or investigation mentioned in subsection (3)(a) or, as the case may be, to a terrorist investigation.

(6) The judge must be satisfied that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be relevant evidence in respect of the offence mentioned in subsection (3)(a).

This requirement does not apply where the order is sought for the purposes of a terrorist investigation.