STATUTORY INSTRUMENTS

2017 No. 730

CRIMINAL LAW

The Criminal Justice (European Investigation Order) Regulations 2017

Made - - - -	*5th July 2017*
Laid before Parliament	*10th July 2017*
Coming into force - -	*31st July 2017*

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to criminal justice(**2**), makes the following Regulations in exercise of the powers conferred by that section and by section 10(3) of the Investigatory Powers Act 2016(**3**).

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Criminal Justice (European Investigation Order) Regulations 2017 and come into force on 31st July 2017.

(2) Each amendment made by Schedule 3 has the same extent as the provision to which it relates.

(3) Regulation 32 does not extend to Scotland.

General Interpretation

2.—(1) In these Regulations—

"the 1990 Act" means the Criminal Justice (International Co-operation) Act 1990(**4**);

(**1**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(**2**) S.I. 2012/2752. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under European Union law in relation to certain matters by virtue of section 53 of that Act, these functions continue to be exercisable by the Secretary of State as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(**3**) 2016 c. 25.

(**4**) 1990 c. 5.

"the 2003 Act" means the Crime (International Co-operation) Act 2003(**5**);

"business in the regulated sector" is to be interpreted in accordance with Schedule 9 to the Proceeds of Crime Act 2002 (regulated sector and supervisory activities)(**6**);

"designated investigating authority" means an authority listed in Part 3 of Schedule 1 (investigating authorities);

"designated public prosecutor" means—

(a) in relation to England and Wales and Northern Ireland, a prosecutor listed in Part 1 of Schedule 1 (public prosecutors);

(b) in relation to Scotland, the Lord Advocate and any procurator fiscal;

"the Directive" means Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters(**7**);

"EU prisoner" means a person who is detained in a participating State—

(a) by virtue of a sentence or order of a court exercising criminal jurisdiction there, or

(b) in consequence of—

(i) having been transferred there, or responsibility for that person's detention and release having been transferred there, from the United Kingdom under the Repatriation of Prisoners Act 1984(**8**), or

(ii) having been transferred there, or responsibility for that person's detention and release having been transferred there, under any similar provision or arrangement from any other country or territory;

"evidence" includes information in any form and articles;

"financial institution" means a person who is carrying on business in the regulated sector;

"notify" means notify in writing (and "notice" and "notification" are to be read accordingly);

"participating State" means a State listed in Schedule 2;

"prison" includes an institution to which any of the following applies—

(a) the Prison Act 1952(**9**);

(b) the Prison Act (Northern Ireland) 1953(**10**), or

(c) article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998(**11**);

"prisoner"—

(a) in relation to England and Wales or Northern Ireland, means a person—

(i) serving a sentence in a prison;

(ii) in custody awaiting trial or sentence, or

(iii) committed to prison for default in paying a fine;

(b) in relation to Scotland, means a person detained in custody;

"prosecuting authority" includes any prosecutor listed in Part 1 or Part 2 of Schedule 1.

(2) For the purposes of these Regulations, the central authority—

(**5**) 2003 c. 32.
(**6**) 2002 c. 29; Parts 1 and 2 of Schedule 9 were substituted by S.I. 2007/3287 and then amended by S.I. 2011/99, 2011/2701, 2012/1534, 2012/2299, 2013/3155, 2015/575 and 2016/680.
(**7**) OJ No L 130, 1.5.2014, p1.
(**8**) 1984 c. 47.
(**9**) 1952 c. 52.
(**10**) 1953 c. 18 (N.I.).
(**11**) S.I. 1998/1504 (N.I. 9).

(a) in relation to England and Wales and Northern Ireland, is the Secretary of State (but see regulation 32);

(b) in relation to Scotland, is the Lord Advocate;

(c) in relation to a participating State, is an authority designated by that State for the purposes of Article 7(3) of the Directive.

Transitional provisions

3.—(1) These Regulations do not apply in relation to a case where, before the date on which these Regulations come into force, any of the following has occurred—

(a) a domestic freezing order made under section 10 of the 2003 Act (domestic freezing orders) is forwarded by the Secretary of State or the Lord Advocate under section 11 of that Act (sending freezing orders);

(b) an overseas freezing order (within the meaning of section 20 of the 2003 Act (overseas freezing orders)) is received by the Secretary of State or the Lord Advocate;

(c) the Secretary of State receives a request to which any of the following provisions applies—

(i) section 31 of the 2003 Act (hearing witnesses in the UK by telephone);

(ii) section 32 of the 2003 Act (information about banking transactions: customer information);

(iii) section 35 of the 2003 Act (information about banking transactions: account information);

(d) the Lord Advocate receives a request to which any of the following provisions applies—

(i) section 31 of the 2003 Act;

(ii) section 37 of the 2003 Act (information about banking transactions: customer information);

(iii) section 40 of the 2003 Act (information about banking transactions: account information);

(e) a request for assistance under section 43 (information about a person's bank account) or section 44 (monitoring banking transactions) of the 2003 Act is forwarded by the Secretary of State or the Lord Advocate or, in an urgent case, sent direct under section 45 of that Act (sending requests for assistance);

(f) a warrant is issued by the Secretary of State or the Scottish Ministers under section 47(1) of the 2003 Act (transfer of UK prisoner to assist investigation abroad); or

(g) a warrant is issued by the Secretary of State or the Scottish Ministers under section 48(1) of the 2003 Act (transfer of EU etc. prisoner to assist UK investigation).

Consequential amendments

4. Schedule 3 contains consequential amendments.

PART 2

Making or validating a European investigation order in the United Kingdom

CHAPTER 1

General

Interpretation

5.—(1) In this Part—

"European investigation order" means—

(a) in relation to this Chapter and Chapter 2, an order made or validated under regulation 6 or 7;

(b) in relation to Chapter 3, an order made under regulation 22;

"executing authority" means an authority of the executing State having competence to recognise a European investigation order and ensure its execution in accordance with the Directive and the procedure applicable in a similar domestic case;

"judicial authority"—

(a) in relation to England and Wales, means any judge or justice of the peace;

(b) in relation to Northern Ireland, means any judge;

(c) in relation to Scotland, means any judge of the High Court or sheriff;

"specified information" means the information required by Article 5 of the Directive to be included on the form set out in Annex A to the Directive.

(2) References in this Part to "the executing State"—

(a) in relation to a European investigation order made under regulation 6, are to be construed in accordance with regulation 6(2);

(b) in relation to a European investigation order made or validated under regulation 7, are to be construed in accordance with regulation 7(3);

(c) in relation to a warrant issued under regulation 20, or to a European investigation order made under regulation 22 pursuant to such a warrant, are to be construed in accordance with regulation 20(1);

(d) in relation to a warrant issued under regulation 21, or a European investigation order made under regulation 22 pursuant to such a warrant, are to be construed in accordance with regulation 21(1).

(3) For the purposes of this Part, a person transmits a European investigation order to a central authority or executing authority if that person sends the order to such an authority by any means capable of producing a written record under conditions allowing the authority to establish the order's authenticity.

Power of a judicial authority to make a European investigation order

6.—(1) If it appears to a judicial authority on an application made by a person mentioned in paragraph (3)—

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted or it is being investigated,

the judicial authority may make an order under this regulation.

(2) An order under this regulation is an order specifying one or more investigative measures that are to be carried out in a participating State ("the executing State") for the purpose of obtaining evidence for use either in the investigation or the proceedings in question or both.

(3) An application under this regulation may be made—

(a) in relation to England and Wales and Northern Ireland, by—

(i) a prosecuting authority;

(ii) a constable (but only with the consent of a prosecuting authority);

(b) in relation to Scotland, by the Lord Advocate or a procurator fiscal;

(c) in any case where proceedings have been instituted, by or on behalf of a party to those proceedings.

(4) But an order under this regulation may only be made it if it appears to the judicial authority that—

(a) it is necessary and proportionate to make the order for the purposes of the investigation or proceedings in question;

(b) the investigative measures to be specified in the order could lawfully have been ordered or undertaken under the same conditions in a similar domestic case (see regulation 11), and

(c) where the order is for an investigative measure in relation to which specific provision is made in Chapter 2 of this Part, any conditions imposed by virtue of such provision are satisfied.

Power of a designated public prosecutor to make or validate a European investigation order

7.—(1) If it appears to a designated public prosecutor—

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) proceedings have been instituted in respect of the offence in question or it is being investigated,

the prosecutor may make an order under this regulation.

(2) A designated public prosecutor in England and Wales and Northern Ireland may, at the request of a designated investigating authority, validate an order under this regulation where it appears to the prosecutor that the conditions in paragraph (1) are satisfied.

(3) An order under this regulation is an order specifying one or more investigative measures to be carried out in a participating State ("the executing State") for the purpose of obtaining evidence for use either in the investigation or the proceedings in question or both.

(4) But an order under this regulation may only be made or validated if it appears to the designated public prosecutor that—

(a) it is necessary and proportionate to make or validate the order for the purposes of the investigation or proceedings in question;

(b) the investigative measures to be specified in the order could lawfully have been ordered or undertaken under the same conditions in a similar domestic case (see regulation 11), and

(c) where the order is for an investigative measure in relation to which specific provision is made in Chapter 2 of this Part, any conditions imposed by virtue of such provision are satisfied.

Form and content of a European investigation order

8. A European investigation order must—