Draft Regulations laid before Parliament under section 2(2) of, and paragraph 2(2) of Schedule 2 to, the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

CRIMINAL LAW
DATA PROTECTION

The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014

Made - - - - 2014

Coming into force in accordance with regulation 1

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**) and data protection(**3**), in exercise of the powers conferred by that section, makes the following Regulations.

A draft of the Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 2(2) of, and paragraph 2(2) of Schedule 2 to, that Act.

PART 1

General

Citation and commencement

1. These Regulations—

(a) may be cited as the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014; and

(b) come into force on the day after the day on which they are made.

(**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 section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(**2**) S.I. 2012/2752.
(**3**) S.I. 1998/2793.

PART 2

Proceeds of Crime (Foreign Property and Foreign Orders)

CHAPTER 1

General

Extent

2. In this Part—

(a) Chapter 2 and regulations 19 and 20 extend to England and Wales only;

(b) Chapter 3, Schedule 1 and regulations 21 and 22 extend to Scotland only; and

(c) Chapter 4, Schedule 2 and regulations 23 and 24 extend to Northern Ireland only.

Interpretation

3.—(1) In, and for the purposes, of this Part—

"listed 2003 Framework Decision offence" means an offence described in Article 3(2) of the 2003 Framework Decision;

"listed 2006 Framework Decision offence" means an offence described in Article 6(1) of the 2006 Framework Decision;

"the 1995 Act" means the Proceeds of Crime (Scotland) Act 1995(**4**);

"the 2002 Act" means the Proceeds of Crime Act 2002(**5**);

"the 2003 Framework Decision" means Council Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence(**6**);

"the 2006 Framework Decision" means Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders(**7**);

"working day" means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**8**).

(2) A reference in this Part to—

(a) property includes a reference to property of any description, whether corporeal or incorporeal, moveable or immovable, and legal documents and instruments evidencing title to or interest in such property;

(b) property used for the purposes of an offence includes a reference to property part of which has been used for those purposes;

(c) the proceeds of an offence or criminal conduct includes a reference to—

(i) any property which wholly or partly, and directly or indirectly, represents the proceeds of an offence (including payments or other rewards in connection with the commission of an offence); and

(ii) any property which is the equivalent to the full value or part of the value of the property specified in paragraph (i).

(**4**) 1995 c. 43.
(**5**) 2002 c. 29.
(**6**) OJ No. L 196, 2.8.2003, p. 45.
(**7**) OJ No. L 328, 24.11.2006, p. 59.
(**8**) 1971 c. 80.

Consequential amendments

4. In the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**9**)—

(a) in article 20 (applications to give effect to external orders), in paragraph (2), after "an order" insert "under this Order";

(b) in article 66 (applications to give effect to external orders), in paragraph (2), after "an order" insert "under this Order"; and

(c) in article 106 (applications to give effect to external orders), in paragraph (2), after "an order" insert "under this Order".

CHAPTER 2

England and Wales

Interpretation

5. In this Chapter—

"domestic confiscation order" means a confiscation order under section 6 of the 2002 Act (making of order)(**10**) (but see regulation 20);

"domestic restraint order" means a restraint order under section 41 of the 2002 Act (restraint orders)(**11**) (but see regulation 19);

"relevant prosecutor" means the Director of Public Prosecutions or the Director of the Serious Fraud Office;

"specified information" means—

(a) in relation to a certificate under regulation 6, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;

(b) in relation to a certificate under regulation 11, any information required to be given by the form of certificate annexed to the 2006 Framework Decision.

Domestic restraint orders: certification

6.—(1) If any of the property to which an application for a domestic restraint order relates is property in a member State other than the United Kingdom, the prosecutor may ask the Crown Court to make a certificate under this regulation.

(2) The Crown Court may make a certificate under this regulation if—

(a) it makes a domestic restraint order in relation to property in the other member State, and

(b) it is satisfied that there is a good arguable case that the property—

(i) has been or is likely to be used for the purposes of an offence, or

(ii) is the proceeds of an offence.

(3) A certificate under this regulation is a certificate which—

(a) is made for the purposes of the 2003 Framework Decision, and

(b) gives the specified information.

(4) If the Crown Court makes a certificate under this regulation, the domestic restraint order must provide for notice of the certificate to be given to the person affected by it.

(**9**) S.I. 2005/3181, to which there are amendments not relevant to these Regulations.

(**10**) Section 6 was amended by section 41 of, and paragraph 75 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), section 74 of, and paragraphs 1 and 2 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), and section 10 of, and paragraphs 11 and 12 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3).

(**11**) Section 41 was amended by section 46 of the Crime and Courts Act 2013 (c. 22) on a day to be appointed.

(5) A court which has relevant powers in respect of a domestic restraint order is to have the same relevant powers in respect of a certificate under this regulation.

(6) For that purpose "relevant powers" means the powers—

(a) to consider an appeal,

(b) to consider an application for reconsideration, variation or discharge, and

(c) to make an order on any such appeal or application.

Sending domestic restraint orders and certificates overseas

7.—(1) If a certificate is made under regulation 6, the domestic restraint order and the certificate are to be forwarded by the prosecutor to—

(a) a court exercising jurisdiction in the other member State where the property is situated, or

(b) any authority recognised by the government of the other member State as the appropriate authority for receiving orders of that kind.

(2) The domestic restraint order and the certificate must be accompanied by a domestic confiscation order, unless the certificate indicates when the Crown Court expects a domestic confiscation order to be sent.

(3) The certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

(4) The certificate must be signed by or on behalf of the Crown Court and must include a statement as to the accuracy of the information given in it.

(5) The signature may be an electronic signature.

(6) If the domestic restraint order and the certificate are not accompanied by a domestic confiscation order, but a domestic confiscation order is subsequently made, it is to be sent to the prosecutor for forwarding as mentioned in paragraph (1).

Sending overseas restraint orders to the court

8.—(1) In a case where—

(a) a relevant prosecutor receives an overseas restraint order from the court or authority which made or confirmed the order, and

(b) conditions A to C are met,

the relevant prosecutor must send a copy of the order to the Crown Court.

(2) An overseas restraint order is an order made by an appropriate court or authority in a member State which—

(a) relates to—

(i) criminal proceedings instituted in the member State, or

(ii) a criminal investigation being carried on there; and

(b) prohibits dealing with property which is in England and Wales and which the appropriate court or authority considers to be property that—

(i) has been or is likely to be used for the purposes of criminal conduct, or

(ii) is the proceeds of criminal conduct.

(3) Condition A is that the action which the appropriate court or authority considered would constitute or, as the case may be, constituted the criminal conduct is not action done as an act of

terrorism or for the purposes of terrorism (within the meaning of paragraph 11D(3) of Schedule 4 to the Terrorism Act 2000(**12**) (overseas freezing orders)).

(4) Condition B is that the order received by the relevant prosecutor is accompanied by a certificate which—

(a) gives the specified information;

(b) is signed by or on behalf of the court or authority which made or confirmed the order;

(c) includes a statement as to the accuracy of the information given in it; and

(d) if it is not in English, includes a translation of it into English (or, if appropriate, Welsh).

(5) For the purposes of Condition B—

(a) the certificate may be treated as giving any specified information which is not given in it if the relevant prosecutor has the information in question;

(b) the signature may be an electronic signature.

(6) Condition C is that—

(a) the order is accompanied by another order made by a court exercising criminal jurisdiction in the member State for the confiscation of the property; or

(b) such an order for the confiscation of the property may be made and the certificate indicates when that order is expected to be sent.

(7) An appropriate court or authority in a member State in relation to an overseas restraint order is—

(a) a court exercising criminal jurisdiction in the country,

(b) a prosecuting authority in the country, or

(c) any other authority in the country which appears to the relevant prosecutor to have the function of making such orders.

(8) References in this Chapter to an overseas restraint order include its accompanying certificate.

(9) In this regulation "criminal conduct" means—

(a) a listed 2003 Framework Decision offence; or

(b) conduct which—

(i) constitutes an offence in any part of the United Kingdom; or

(ii) would constitute an offence in any part of the United Kingdom if it occurred there.

Giving effect to overseas restraint orders

9.—(1) Subject to paragraph (2), where the Crown Court receives a copy of an overseas restraint order sent by the relevant prosecutor in accordance with regulation 8, the Court must consider giving effect to the order no later than the end of the next working day after the relevant day.

(2) In exceptional circumstances, the Crown Court may delay its consideration of the overseas restraint order, provided that it does consider giving effect to the order no later than the end of the fifth working day after the relevant day.

(3) Subject to paragraph (4), the Crown Court may consider giving effect to the overseas restraint order—

(a) at a hearing, which must be in private unless the Court directs otherwise; or

(b) without a hearing.

(**12**) 2000 c. 11; paragraph 11D was inserted by section 90 of, and paragraphs 1 and 3 of Schedule 4 to, the Crime (International Co-operation) Act 2003 (c. 32).