



# European Union (Future Relationship) Act 2020

## 2020 CHAPTER 29

### PART 1

#### SECURITY

##### *Criminal records*

#### **1 Duty to notify member States of convictions**

- (1) This section applies where—
  - (a) an individual who is a national of a member State has been convicted by or before a court in a part of the United Kingdom, and
  - (b) the conviction is recorded in the criminal records database for that part.
- (2) This section also applies where—
  - (a) an individual who is a national of a member State has been convicted in UK service disciplinary proceedings (whether or not in a part of the United Kingdom), and
  - (b) the conviction is recorded in the criminal records database for any part of the United Kingdom.
- (3) The designated UK authority must notify the central authority of the member State of the conviction.
- (4) If the individual is a national of more than one member State, the designated UK authority must notify the central authority of each of those member States of the conviction.
- (5) Notification under this section must be given before the end of the period of 28 days beginning with the day on which the conviction is recorded in the criminal records database.

- (6) A notification under this section—
  - (a) must include the information listed in Schedule 1, and
  - (b) may include any other information that the designated UK authority considers appropriate.
- (7) If the record of the conviction is amended so as to alter or delete any of the information mentioned in paragraph 13, 14, 16, 17, 19 or 20 of Schedule 1 (information about the conviction), subsections (3) to (6) apply in relation to the amendment as they apply in relation to the conviction.
- (8) Nothing in this section requires the designated UK authority to disclose any information if the disclosure would contravene the data protection legislation (but, in determining whether the disclosure would contravene that legislation, the duties imposed by this section are to be taken into account).
- (9) For the purposes of this section it does not matter if the individual is a national of the United Kingdom as well as a national of a member State.

## **2 Retention of information received from member States**

- (1) This section applies where—
  - (a) an individual who is a UK national has been convicted under the law of a member State, and
  - (b) the central authority of the member State notifies the designated UK authority of the conviction.
- (2) The designated UK authority must retain a record of—
  - (a) the conviction, and
  - (b) any other information listed in Schedule 1 that is included in the notification.
- (3) The record may be retained in whatever way the designated UK authority considers appropriate.
- (4) If the designated UK authority is notified by the central authority of any amendment or deletion relating to the information contained in the record, the designated UK authority must amend the record accordingly.
- (5) Nothing in this section requires the designated UK authority to retain any information if the retention would contravene the data protection legislation (but, in determining whether the retention would contravene that legislation, the duty imposed by subsection (2) is to be taken into account).

## **3 Transfers to third countries of personal data notified under section 2**

- (1) Personal data notified to the designated UK authority as mentioned in section 2 may not be transferred to a third country unless conditions A and B are met.
- (2) Condition A is that the transfer—
  - (a) is based on adequacy regulations, or
  - (b) is based on there being appropriate safeguards.
- (3) For the purposes of subsection (2)—

- (a) the reference to a transfer being based on adequacy regulations has the same meaning as it has for the purposes of Part 3 of the Data Protection Act 2018;
  - (b) the reference to a transfer being based on there being appropriate safeguards is to be read in accordance with section 75 of that Act.
- (4) Condition B is that the intended recipient has functions relating to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
- (5) See also section 73 of the Data Protection Act 2018 for additional conditions that must be met before personal data may be transferred to a third country (in particular, that the transfer must be necessary for any of the law enforcement purposes).
- (6) Where personal data within subsection (1) is transferred to a third country, the person making the transfer must make it a condition of the transfer that the data may be used only for the purpose for which it is being transferred.
- (7) In this section—
- “personal data” has the same meaning as in the Data Protection Act 2018 (see section 3(2) of that Act);
  - “third country” means a country or territory other than—
    - (a) the United Kingdom, or
    - (b) a member State.

#### **4 Requests for information from member States**

- (1) The designated UK authority may, for any of the law enforcement purposes, make a request to the central authority of a member State for information relating to any overseas convictions of an individual recorded in a criminal records database of the member State.
- (2) If an individual who is a national of a member State makes a request to the designated UK authority for information relating to the individual’s overseas convictions, the designated UK authority must make a request to the central authority of that member State for information relating to any overseas convictions of the individual recorded in a criminal records database of the member State.
- (3) If the individual is a national of more than one member State, the designated UK authority must make a request to the central authority of each of those member States for the information.
- (4) Any information provided to the designated UK authority in response to a request made under this section may be used only—
- (a) for the purpose or purposes for which it was requested, and
  - (b) in accordance with any restrictions specified by the central authority that provided it.
- (5) But subsection (4) does not prohibit the use of such information for the purpose of preventing an immediate and serious threat to public security.
- (6) In this section “overseas conviction” means a conviction under the law of a country or territory outside the United Kingdom.

## 5 Requests for information made by member States

- (1) If—
- (a) the central authority of a member State makes a request to the designated UK authority for information relating to an individual’s convictions, and
  - (b) conditions A and B are met,
- the designated UK authority must, as soon as practicable before the end of the relevant period, provide the information to the central authority (but see subsection (5)).
- (2) Condition A is that the request is made—
- (a) for any of the law enforcement purposes, or
  - (b) for the purposes of enabling the central authority to comply with a request made by an individual who is a UK national for information relating to the individual’s convictions.
- (3) Condition B is that the information—
- (a) is recorded in the criminal records database for a part of the United Kingdom, or
  - (b) is retained in accordance with section 2.
- (4) “The relevant period” means the period of 20 working days beginning with the day on which the designated UK authority receives the request.
- (5) Subsection (1) does not require the designated UK authority to provide any information relating to a conviction that is spent unless—
- (a) the request has been made for the purposes of any criminal investigation or criminal proceedings, or
  - (b) subsection (6) applies.
- (6) If the request has been made for the purposes of determining the suitability of an individual to work with children, the information to be provided under subsection (1) must include any information relating to any conviction of the individual for a child sexual offence (whether or not spent).
- (7) Nothing in this section requires the designated UK authority to disclose any information if the disclosure would contravene the data protection legislation (but, in determining whether the disclosure would contravene that legislation, the duties imposed by this section are to be taken into account).
- (8) In this section—
- “ancillary offence” means—
    - (a) an offence of attempting or conspiring to commit a child sexual offence,
    - (b) an offence under Part 2 of the Serious Crime Act 2007 in relation to a child sexual offence,
    - (c) an offence of inciting a person to commit a child sexual offence,
    - (d) an offence of aiding, abetting, counselling or procuring the commission of a child sexual offence, or
    - (e) an offence of being involved art and part in the commission of a child sexual offence;
  - “child” means an individual under the age of 18;
  - “child sexual offence” means—
    - (a) an offence consisting of—

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*Status: This is the original version (as it was originally enacted).*

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- (i) the sexual abuse or sexual exploitation of a child, or
- (ii) conduct relating to such abuse or exploitation,
- (b) an offence relating to indecent images of a child,
- (c) an offence consisting of any other behaviour carried out in relation to a child that is of a sexual nature or carried out for sexual purposes, or
- (d) an ancillary offence;

and for these purposes “offence” includes an offence under a law that is no longer in force;

“conviction” means—

- (a) a conviction by or before a court in a part of the United Kingdom,
- (b) a conviction in UK service disciplinary proceedings (whether or not in a part of the United Kingdom), or
- (c) a conviction under the law of a country or territory outside the United Kingdom;

“criminal proceedings” means—

- (a) proceedings before a court for dealing with an individual accused of an offence, or
- (b) proceedings before a court for dealing with an individual convicted of an offence, including proceedings in respect of a sentence or order;

“working day” means any day other than—

- (a) Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday, and
- (d) any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

- (9) For the purposes of this section a conviction is “spent” if—
- (a) in the case of a conviction in Northern Ireland, it is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27));
  - (b) in any other case, it is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974.

## **6 Interpretation of the criminal records provisions**

- (1) In the criminal records provisions—

“central authority”, in relation to a member State, means an authority designated by the government of that member State as the appropriate authority for requesting, receiving or providing information relating to convictions;

“conviction”, in relation to UK service disciplinary proceedings—

- (a) in the case of proceedings in respect of a service offence, includes anything that under section 376(1) and (2) of the Armed Forces Act 2006 (which relates to summary hearings and the Summary Appeal Court) is to be treated as a conviction for the purposes of that Act;
- (b) in the case of any other UK service disciplinary proceedings, includes a finding of guilt in those proceedings;

and “convicted”, in relation to UK service disciplinary proceedings, is to be read accordingly;

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“criminal records database” means—

- (a) in relation to England and Wales, the names database held by the Secretary of State for the use of constables;
- (b) in relation to Scotland, the criminal history database of the Police Service of Scotland held for the use of police forces generally;
- (c) in relation to Northern Ireland, the names database maintained by the Department of Justice in Northern Ireland for the purpose of recording convictions and cautions;
- (d) in relation to a member State, any database maintained in respect of the member State that corresponds to the criminal records database for England and Wales;

“the criminal records provisions” means sections 1 to 5, this section and Schedule 1;

“designated UK authority” means a person designated for the purposes of the criminal records provisions by a direction given by the Secretary of State;

“the law enforcement purposes” means the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;

“service offence” means—

- (a) a service offence within the meaning of the Armed Forces Act 2006, or
- (b) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 ([S.I. 2009/1059](#));

“UK national” means an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act;

“UK service disciplinary proceedings” means—

- (a) any proceedings (whether or not before a court) in respect of a service offence (except proceedings before a civilian court within the meaning of the Armed Forces Act 2006);
- (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);
- (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976.

(2) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of the criminal records provisions to a conviction of an individual for an offence in respect of which an order has been made discharging the individual absolutely or conditionally—

- (a) section 247 of the Criminal Procedure (Scotland) Act 1995;
- (b) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 ([S.I. 1996/3160 \(N.I. 24\)](#));
- (c) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (d) section 82 of the Sentencing Code;

- (e) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.
- (3) The appropriate national authority may by regulations amend this section so as to change the meaning of “criminal records database” in relation to a part of the United Kingdom.
- (4) For the purposes of subsection (3) the “appropriate national authority” is—
  - (a) in relation to England and Wales, the Secretary of State;
  - (b) in relation to Scotland, the Scottish Ministers;
  - (c) in relation to Northern Ireland, the Department of Justice in Northern Ireland.