
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Commission Decision 2014/858/EU (OJNo. L 345, 1.12.2014, p. 6) and Council Decision 2014/857/EU (OJ No. L 345, 1.12.2014, p. 1) (together “the Protocol 36 Decisions”), made under Article 10(5) of Protocol (No. 36) on transitional provisions (“Protocol 36”) to the Treaty on European Union, the Treaty on the Functioning of the European Union (“TEU” and “TFEU” respectively) and the Treaty establishing the European Atomic Energy Community.

Article 10(4), first sub-paragraph, of Protocol 36 gave the United Kingdom the power to notify the Council that it did not accept, with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which had been adopted before the entry into force of the Treaty of Lisbon (“the relevant acts”), the powers of the Commission and of the Court of Justice as referred to in Article 10(1) of Protocol 36. By letter to the President of the Council of 24th July 2013, the United Kingdom made use of this power, with the consequence that the relevant acts ceased to apply to the United Kingdom on 1st December 2014.

Article 10(5) of Protocol 36 allows the United Kingdom to notify the Council of its wish to re-participate in the relevant acts. By letter to the President of the Council, the United Kingdom made use of this power under Article 10(5) of Protocol 36 in relation to some of the relevant acts. For those relevant acts which are part of the Schengen *acquis*, the process for re-participation is set out in Protocol (No. 19) on the Schengen *acquis* integrated into the framework of the European Union. For all other relevant acts, the process for re-participation is set out in Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice and in Article 331(1) TFEU.

Under these processes, the Protocol 36 Decisions were adopted and the United Kingdom's re-participation in some of the relevant acts has been confirmed.

Pursuant to the Protocol 36 Decisions, the United Kingdom must transpose a number of provisions in the relevant acts which it is re-participating in. These Regulations make such transposing provision in relation to Council Framework Decision 2002/465/JHA of 13th June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p.1) (“JITs”), Council Framework Decision 2005/214/JHA of 24th February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p.16) (“MRFP”), Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p.59) (“confiscation orders Framework Decision”), Council Framework Decision 2006/960/JHA of 18th December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p.89) (“the Swedish Initiative”), Council Framework Decision 2008/909/JHA of 27th November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p.27) (“Prisoner Transfer Framework Decision”), Council Framework Decision 2008/977/JHA of 27th November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p.60) (“DPFD”), Council Framework Decision 2009/315/JHA of 26th February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p.23), Council Decision 2009/316/JHA of 6th April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p.33) (together “ECRIS”), and Council Framework Decision 2009/829/JHA of 23rd October 2009 on the application, between Member

States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, p.20) (“ESO”).

Pursuant to the operation of Article 10(2) and (4) of Protocol 36, these Regulations also make transposing provision in relation to Council Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p.45) (“freezing orders Framework Decision”).

Part 2 of, and Schedules 1 and 2 to, these Regulations make provision in relation to the freezing and confiscation of criminal assets, including the instrumentalities of crime (instrumentalities are assets used for criminal conduct). Part 2 (and Schedules 1 and 2) transposes the freezing orders Framework Decision (to the extent that the Framework Decision has not already been transposed by the Crime (International Co-operation) Act 2003) and the confiscation orders Framework Decision, including that measure as amended by Council Framework Decision 2009/299/JHA of 26th February 2009 amending, inter alia, the confiscation orders Framework Decision, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (“Trials *in absentia*”).

The Proceeds of Crime Act 2002 makes provision for the freezing and confiscation of criminal property (Part 2 in relation to England and Wales, Part 3 as respects Scotland and Part 4 in relation to Northern Ireland) by means of restraint orders and confiscation orders. Chapters 2 to 4 of Part 2 (and Schedules 1 and 2) make for England and Wales, Scotland and Northern Ireland, respectively, provision to enable the restraint and confiscation orders made by UK court's against property in other member States, to be enforced by the authorities in those states. These Regulations also make provision to allow our domestic courts to recognise and enforce restraint and confiscation orders made against property in the UK, or persons normally resident in the UK, made by the authorities in other member States. Chapter 5 makes provision in relation to various communication requirements set out in the Framework Decisions, and for saved orders made under predecessor legislation to the Proceeds of Crime Act 2002 to be enforced by the authorities in other member States.

Part 3 of, and Schedule 3 to, these Regulations completes the transposition of the MRFP, including the provisions of MRFP as amended by Trials *in absentia*. MRFP was largely transposed in the Criminal Justice and Immigration Act 2008. Paragraphs 2 and 3 of Schedule 3 make amendments as regards the issuing of a certificate in England and Wales and Northern Ireland requesting enforcement of a financial penalty in another member State. Paragraphs 5 to 8 make amendments as regards the enforcement of a financial penalty in England and Wales and Northern Ireland which has been transferred under MRFP, including provision that any alternative sanction may only be applied in so far as it is authorised by the transferring Member State. Paragraph 9 makes amendments as regards the enforcement of a financial penalty in England and Wales which has been transferred under MRFP and transferred from Northern Ireland to England and Wales. Paragraph 16 makes amendments as regards the grounds on which a court in England and Wales and Northern Ireland must refuse to enforce a financial penalty transferred under MRFP. Paragraphs 4, 5(2), 7, 8(2) and 11 to 15 make amendments consequential on the amendments in Schedule 3.

Part 4 of these Regulations transposes the DPF. In relation to the DPF, these Regulations establish a legal framework which applies to competent authorities in EEA States when transmitting or making available personal data to competent authorities in other EEA States for the prevention, investigation, detection or prosecution of criminal penalties. In implementing the DPF this Part applies instead of the Data Protection Act 1998, except as provided for by this Part.

In implementing the DPF Part 4 provides, amongst other things, for principles that govern the processing of personal data (with extra safeguards where the data is especially sensitive); a power for competent authorities to undertake automated processing; rules that permit the sharing of data with non-EEA States; procedures for monitoring the length of time for which personal data is

held; a right for an individual to ask for inaccurate data to be rectified, erased or blocked; and a right for an individual to seek limited information about processing done in relation to them. Part 5 of these Regulations transposes the Swedish Initiative, and one provision for JITs on information exchange and use of data. This Part imposes obligations on competent authorities in the United Kingdom to supply information or intelligence when requested by competent authorities of other States in accordance with the Framework Decision. In addition, this Part enables competent authorities in the United Kingdom to request information and intelligence from competent authorities in other States in accordance with the Framework Decision.

Part 6 of these Regulations transposes ECRIS which sets out a framework for the computerised exchange of information on convictions in the European Union. Part 6 implements the obligations in ECRIS firstly by designating the Chief Constable of Hampshire Constabulary as a “central authority”, which is the body responsible for the tasks relating to the exchange of information on convictions for the whole of the UK. Part 6 also sets out obligations to store information on convictions and procedures to be followed when replying to requests for information from other member States.

Part 7 of these Regulations (Chapter 2 for England and Wales, Chapter 3 for Northern Ireland) transposes the ESO which sets out a framework for the mutual recognition of decisions on supervision measures (bail conditions) in the European Union. Chapter 2 makes provision enabling: (a) certain domestic courts to make a request to a competent authority in another member State to monitor the supervision measures in relation to a person granted bail under the Bail Act 1976 (the Bail Act is modified so that conditions of bail can include those that can only be complied with in the relevant member State); and (b) a magistrates' court to recognise a decision on supervision measures imposed on a person by a competent authority in another member State, and to take steps to secure the monitoring of those measures.

Chapter 2 (and Schedule 6) also makes provision for the applicable supervision measures, the procedural requirements, the grounds for refusal, the effect of recognition of a decision on supervision measures, the duties and powers of the courts in relation to the supervision measures, arrest and detention for breach (suspected or anticipated) of a supervision measure in certain circumstances, and the exchange of information. Chapter 3 largely mirrors the provisions in Chapter 2, but with reference to the relevant legislative provisions in Northern Ireland.

Part 8 provides for the extension to Northern Ireland of speciality and transit provisions in the Repatriation of the Prisoners Act 1984 in respect of prisoner transfer arrangements and ensures that the term “international arrangements” in that Act is capable of applying to the Prisoner Transfer Framework Decision.

An impact assessment in respect of the Government's anticipated exercise of its power under Article 10(5) of Protocol 36, of the anticipated Protocol 36 Decisions, and the relevant acts covered by these Regulations was laid before Parliament in July 2014 (Cm 8897), and can be found at <https://www.gov.uk/government/publications/decision-pursuant-to-article-105-of-protocol-36-to-the-treaty-on-the-functioning-of-the-european-union>.

Changes to legislation:

There are currently no known outstanding effects for the The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.