

## SCHEDULE 1

Regulation 16

### Proceeds of Crime (Foreign Property and Foreign Orders): Scotland

#### **Interpretation**

**1.** In this Schedule—

“court” means—

- (a) in paragraphs 2 and 3, the Court of Session or the sheriff exercising his civil jurisdiction;
- (b) in paragraphs 4 to 6, the Court of Session;
- (c) in paragraphs 7 and 8, the High Court of Justiciary or the sheriff; and
- (d) in paragraphs 9 to 11, the Court of Session;

“domestic confiscation order” means a confiscation order under section 92 of the 2002 Act (making of order) (but see regulation 22);

“domestic restraint order” means a restraint order under section 120 of the 2002 Act (restraint orders etc) (but see regulation 21);

“specified information” means—

- (a) in relation to a certificate under paragraph 2, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;
- (b) in relation to a certificate under paragraph 7, any information required to be given by the form of certificate annexed to the 2006 Framework Decision.

#### **Domestic restraint orders: certification**

**2.—(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 apply to the court for a certificate under this paragraph to be made.

(2) The court may make a certificate under this paragraph 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 paragraph is a certificate which—

- (a) is made for the purposes of the 2003 Framework Decision, and
- (b) gives the specified information.

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

(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 paragraph.

(6) For that purpose “relevant powers” means the powers—

- (a) to consider an appeal,
- (b) to consider an application for reconsideration, variation or recall, and
- (c) to make an order on any such appeal or application.

### **Sending domestic restraint orders and certificates overseas**

3.—(1) If a certificate is made under paragraph 2, the domestic restraint order and the certificate are to be forwarded by the Lord Advocate 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 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 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 Lord Advocate for forwarding as mentioned in sub-paragraph (1).

### **Sending overseas restraint orders to the court**

4.—(1) In a case where—

- (a) the Lord Advocate 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 Lord Advocate must send a copy of the order to the 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 Scotland 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 25D(3) of Schedule 4 to the Terrorism Act 2000 (overseas freezing orders)(**1**)).

(4) Condition B is that the order received by the Lord Advocate 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;

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(1) Paragraph 25D(3) was inserted by section 90 of, and paragraphs 1 and 5 of Schedule 4 to, the Crime (International Co-operation) Act 2003.

- (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.
- (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 Lord Advocate 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 Lord Advocate to have the function of making such orders.
- (8) References in this Schedule to an overseas restraint order include its accompanying certificate.
- (9) In this paragraph “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**

5.—(1) Subject to sub-paragraph (2), where the court receives a copy of an overseas restraint order sent by the Lord Advocate in accordance with paragraph 4, 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 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 sub-paragraph (4), the 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.

(4) The court must not consider giving effect to the overseas restraint order unless the Lord Advocate—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(5) The court may decide not to give effect to the overseas restraint order only if, in its opinion, giving effect to it would be—

- (a) impossible as a consequence of an immunity under the law of Scotland; or

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- (b) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- (6) The court may postpone giving effect to an overseas restraint order in respect of any property—
  - (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
  - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.
- (7) In this paragraph, “relevant day” means the day on which a copy of an overseas restraint order sent by the Lord Advocate in accordance with paragraph 4 is received by the court.

### **Registration and enforcement of overseas restraint orders**

- 6.—(1) Where the court decides to give effect to an overseas restraint order, it must—
  - (a) direct its registration as an order in that court, and
  - (b) give directions for notice of the order to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas restraint order registered in accordance with sub-paragraph (1), the order is to have effect as if it were an order made by the court.
- (3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate, or any other person affected by it, if or to the extent that—
  - (a) the court is of the opinion mentioned in paragraph 5(5), or
  - (b) the court is of the opinion that the order has ceased to have effect in the member State.
- (4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the Lord Advocate or person affected by the order must—
  - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court;
    - (ii) the Lord Advocate (if the applicant is not the Lord Advocate); and
    - (iii) any person who will or may be affected by the application;
  - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
  - (d) set out the proposed terms of any variation; and
  - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.
- (5) Subject to sub-paragraph (6), Part 3 of the 2002 Act (confiscation: Scotland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in relation to an overseas restraint order registered in accordance with this paragraph as it applies in relation to a domestic restraint order.
- (6) No challenge to the substantive reasons in relation to which an overseas restraint order has been made by an appropriate court or authority in a member State may be considered by the court.

### **Domestic confiscation orders: certification**

- 7.—(1) If any of the property to which an application for a domestic confiscation order relates is property in a member State other than the United Kingdom, the prosecutor may apply to the court for a certificate under this paragraph to be made.
- (2) The court may make a certificate under this paragraph if—

- (a) it makes a domestic confiscation 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) was used or was intended to be used for the purposes of an offence, or
  - (ii) is the proceeds of an offence.
- (3) A certificate under this paragraph is a certificate which—
  - (a) is made for the purposes of the 2006 Framework Decision, and
  - (b) gives the specified information.
- (4) If the court makes a certificate under this paragraph, the domestic confiscation order must provide for notice of the certificate to be given to the person affected by it.
- (5) A court which has relevant powers in respect of a domestic confiscation order is to have the same relevant powers in respect of a certificate under this paragraph.
- (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 confiscation orders and certificates overseas**

- 8.—**(1) If a certificate is made under paragraph 7, the domestic confiscation order and the certificate are to be forwarded by the Lord Advocate 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 certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).
- (3) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
- (4) The signature may be an electronic signature.

#### **Sending overseas confiscation orders to the court**

- 9.—**(1) In a case where—
- (a) the Lord Advocate receives an overseas confiscation order from the court or authority which made or confirmed the order, and
  - (b) conditions A to C are met,
- the Lord Advocate must send a copy of the order to the court.
- (2) An overseas confiscation order is an order made by an appropriate court or authority in a member State for the confiscation of property which is in Scotland, or is the property of a resident of Scotland, and which the appropriate court or authority considers—
- (a) was used or intended to be used for the purposes of criminal conduct, or
  - (b) is the proceeds of criminal conduct.
- (3) Condition A is that a person has been convicted of that criminal conduct in the member State.
- (4) Condition B is that the overseas confiscation order was made at the conclusion of the proceedings that gave rise to the conviction.

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- (5) Condition C is that the order 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.
- (6) For the purposes of Condition C—
  - (a) the certificate may be treated as giving any specified information which is not given in it if the Lord Advocate has the information in question;
  - (b) the signature may be an electronic signature.
- (7) An appropriate court or authority in a member State in relation to an overseas confiscation 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 Lord Advocate to have the function of making such orders.
- (8) References in this Schedule to an overseas confiscation order include its accompanying certificate.
- (9) In this paragraph—
  - “criminal conduct” means—
    - (a) a listed 2006 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;
  - “resident of Scotland” means—
    - (a) an individual who is normally resident in Scotland, or
    - (b) a body of persons (whether corporate or not) established in Scotland (including a company registered in Scotland).

### **Giving effect to overseas confiscation orders**

**10.**—(1) Where the court receives a copy of an overseas confiscation order sent by the Lord Advocate in accordance with paragraph 9, the court must consider giving effect to the order.

(2) Subject to sub-paragraph (3), the court may consider giving effect to the overseas confiscation order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or
- (b) without a hearing.

(3) The court must not consider giving effect to the overseas confiscation order unless the Lord Advocate—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(4) The court may decide not to give effect to the overseas confiscation order only if, in its opinion, giving effect to it would be—

- (a) statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of Scotland;
  - (b) impossible as a consequence of an immunity under the law of Scotland; or
  - (c) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- (5) The court may postpone giving effect to an overseas confiscation order in respect of any property—
- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom;
  - (b) where it considers that there is a risk that the amount recovered through the execution of the order in Scotland may exceed the amount specified in the order because of simultaneous execution of the order in more than one member State;
  - (c) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with, or the property is subject to proceedings for such an order; or
  - (d) if a person affected by the order has applied to cancel the registration of the order, or vary the property to which the order applies, in accordance with paragraph 11.

#### **Registration and enforcement of overseas confiscation orders**

- 11.**—(1) Where the court decides to give effect to an overseas confiscation order, it must—
- (a) direct its registration as an order in that court,
  - (b) give directions for notice of the order to be given to any person affected by it, and
  - (c) appoint a sheriff clerk for the purpose of receiving payment of any amount due under the order.
- (2) For the purpose of enforcing an overseas confiscation order registered in accordance with this paragraph, the order is to have effect as if it were a domestic confiscation order.
- (3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate, or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 10(4), or
  - (b) the court is of the opinion that the order has ceased to have effect in the member State.
- (4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the Lord Advocate or person affected by the order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court;
    - (ii) the Lord Advocate (if the applicant is not the Lord Advocate); and
    - (iii) any person who will or may be affected by the application;
  - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
  - (d) set out the proposed terms of any variation; and
  - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.
- (5) Subject to sub-paragraphs (6) and (7), Part 3 of the 2002 Act (confiscation: Scotland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in

relation to an overseas confiscation order registered in accordance with this paragraph as it applies in relation to a domestic confiscation order.

(6) Sections 117 (interest on unpaid sums) and 118 (application of provisions about fine enforcement) of the 2002 Act do not apply to an overseas confiscation order registered in the court in accordance with this paragraph.

(7) No challenge to the substantive reasons in relation to which an overseas confiscation order has been made by an appropriate court or authority in a member State may be considered by the court.

## SCHEDULE 2

Regulation 17

### Proceeds of Crime (Foreign Property and Foreign Orders): Northern Ireland

#### Interpretation

##### 1. In this Schedule—

“court” means—

- (a) in paragraphs 2 to 6, the High Court;
- (b) in paragraphs 7 to 11, the Crown Court;

“domestic confiscation order” means a confiscation order under section 156 of the 2002 Act (making of order)<sup>(2)</sup> (but see regulation 24);

“domestic restraint order” means a restraint order under section 190 of the 2002 Act (restraint orders) (but see regulation 23);

“relevant prosecutor” means the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office;

“specified information” means—

- (c) in relation to a certificate under paragraph 2, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;
- (d) in relation to a certificate under paragraph 7, any information required to be given by the form of certificate annexed to the 2006 Framework Decision.

#### Domestic restraint orders: certification

2.—(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 relevant prosecutor may ask the court to make a certificate under this paragraph.

(2) The court may make a certificate under this paragraph 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 paragraph is a certificate which—

- (a) is made for the purposes of the 2003 Framework Decision, and
- (b) gives the specified information.

<sup>(2)</sup> Section 156 was amended by section 74 of, and paragraphs 1 and 36 of Schedule 8 to, the Serious Crime Act 2007.



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

(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 paragraph.

(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**

**3.—**(1) If a certificate is made under paragraph 2, the domestic restraint order and the certificate are to be forwarded by the relevant 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 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 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 relevant prosecutor for forwarding as mentioned in sub-paragraph (1).

### **Sending overseas restraint orders to the court**

**4.—**(1) In a case where—

- (a) the 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 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 Northern Ireland 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 an offence, or
  - (ii) is the proceeds of an offence.

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(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 41D(3) of Schedule 4 to the Terrorism Act 2000 (overseas freezing orders)(3)).

(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.

(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 Schedule to an overseas restraint order include its accompanying certificate.

(9) In this paragraph “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**

5.—(1) Subject to sub-paragraph (2), where the court receives a copy of an overseas restraint order sent by the relevant prosecutor in accordance with paragraph 4, 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 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 sub-paragraph (4), the court may consider giving effect to the overseas restraint order—

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(3) Paragraph 41D(3) was inserted by section 90 of, and paragraphs 1 and 7 of Schedule 4 to, the Crime (International Co-operation) Act 2003 (c. 32).

- (a) at a hearing, which must be in private unless the court directs otherwise; or
  - (b) without a hearing.
- (4) The court must not consider giving effect to the overseas restraint order unless the relevant prosecutor—
- (a) is present; or
  - (b) has had a reasonable opportunity to make representations.
- (5) The court may decide not to give effect to the overseas restraint order only if, in its opinion, giving effect to it would be—
- (a) impossible as a consequence of an immunity under the law of Northern Ireland; or
  - (b) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- (6) The court may postpone giving effect to an overseas restraint order in respect of any property—
- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
  - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.
- (7) In this paragraph, “relevant day” means the day on which a copy of an overseas restraint order sent by the relevant prosecutor in accordance with paragraph 4 is received by the court.

### **Registration and enforcement of overseas restraint orders**

- 6.—(1) Where the court decides to give effect to an overseas restraint order, it must—
- (a) direct its registration as an order in that court, and
  - (b) give directions for notice of the order to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas restraint order registered in the court, the order is to have effect as if it were an order made by that court.
- (3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the relevant prosecutor or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 5(5), or
  - (b) the court is of the opinion that the order has ceased to have effect in the member State.
- (4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court;
    - (ii) the relevant prosecutor (if the applicant is not the relevant prosecutor); and
    - (iii) any person who will or may be affected by the application;
  - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
  - (d) set out the proposed terms of any variation; and
  - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary
- (5) Subject to sub-paragraph (6), Part 4 of the 2002 Act (confiscation: Northern Ireland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in

relation to an overseas restraint order registered in the court as it applies in relation to a domestic restraint order.

(6) No challenge to the substantive reasons in relation to which an overseas restraint order has been made by an appropriate court or authority in a member State may be considered by the court.

#### **Domestic confiscation orders: certification**

7.—(1) If any of the property to which an application for a domestic confiscation order relates is property in a member State other than the United Kingdom, the relevant prosecutor may ask the court to make a certificate under this paragraph.

(2) The court may make a certificate under this paragraph if—

- (a) it makes a domestic confiscation 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) was used or was intended to be used for the purposes of an offence, or
  - (ii) is the proceeds of an offence.

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

- (a) is made for the purposes of the 2006 Framework Decision, and
- (b) gives the specified information.

(4) If the court makes a certificate under this paragraph, the domestic confiscation order must provide for notice of the certificate to be given to the person affected by it.

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

(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 confiscation orders and certificates overseas**

8.—(1) If a certificate is made under paragraph 7, the domestic confiscation order and the certificate are to be forwarded by the relevant 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 certificate must include a translation of it into an appropriate language of the other member State (if that language is not English).

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

(4) The signature may be an electronic signature.

#### **Sending overseas confiscation orders to the court**

9.—(1) In a case where—

- (a) the relevant prosecutor receives an overseas confiscation 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 court.

(2) An overseas confiscation order is an order made by an appropriate court or authority in a member State for the confiscation of property which is in Northern Ireland, or is the property of a resident of Northern Ireland, and which the appropriate court or authority considers—

- (a) was used or intended to be used for the purposes of a criminal conduct, or
- (b) is the proceeds of criminal conduct.

(3) Condition A is that a person has been convicted of that criminal conduct in the member State.

(4) Condition B is that the overseas confiscation order was made at the conclusion of the proceedings that gave rise to the conviction.

(5) Condition C is that the order 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.

(6) For the purposes of Condition C—

- (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.

(7) An appropriate court or authority in a member State in relation to an overseas confiscation 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 Schedule to an overseas confiscation order include its accompanying certificate.

(9) In this paragraph—

“criminal conduct” means—

- (a) a listed 2006 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;

“resident of Northern Ireland” means—

- (a) an individual who is normally resident in Northern Ireland, or
- (b) a body of persons (whether corporate or not) established in Northern Ireland (including a company registered in Northern Ireland).

### **Giving effect to overseas confiscation orders**

**10.—**(1) Where the court receives a copy of an overseas confiscation order sent by the relevant prosecutor in accordance with paragraph 9, the court must consider giving effect to the order.

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

(2) Subject to sub-paragraph (3), the court may consider giving effect to the overseas confiscation order—

- (a) at a hearing, which must be in private unless the court directs otherwise; or
- (b) without a hearing.

(3) The court must not consider giving effect to the overseas confiscation order unless the relevant prosecutor—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(4) The court may decide not to give effect to the overseas confiscation order only if, in its opinion, giving effect to it would be—

- (a) statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of Northern Ireland;
- (b) impossible as a consequence of an immunity under the law of Northern Ireland; or
- (c) incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

(5) The court may postpone giving effect to an overseas confiscation order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom;
- (b) where it considers that there is a risk that the amount recovered through the execution of the order in Northern Ireland may exceed the amount specified in the order because of simultaneous execution of the order in more than one member State;
- (c) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with, or the property is subject to proceedings for such an order; or
- (d) if a person affected by the order has applied to cancel the registration of the order, or vary the property to which the order applies, in accordance with paragraph 11.

### **Registration and enforcement of overseas confiscation orders**

**11.**—(1) Where the court decides to give effect to an overseas confiscation order, it must—

- (a) direct its registration as an order in that court, and
- (b) give directions for notice of the order to be given to any person affected by it.

(2) For the purpose of enforcing an overseas confiscation order registered in the court, the order is to have effect as if it were an order made by that court.

(3) Subject to sub-paragraph (4), the court may cancel the registration of the order, or vary the property to which the order applies, on an application by the relevant prosecutor or any other person affected by it, if or to the extent that—

- (a) the court is of the opinion mentioned in paragraph 10(4), or
- (b) the court is of the opinion that the order has ceased to have effect in the member State.

(4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
  - (i) the court;

- (ii) the relevant prosecutor (if the applicant is not the relevant prosecutor); and
  - (iii) any person who will or may be affected by the application;
  - (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
  - (d) set out the proposed terms of any variation; and
  - (e) if a hearing is requested in relation to the application, explain why a hearing is necessary
- (5) Subject to sub-paragraphs (6) and (7), Part 4 of the 2002 Act (confiscation: Northern Ireland) applies (with the appropriate modifications and subject to the preceding provisions of this Schedule) in relation to an overseas confiscation order registered in the court as it applies in relation to a domestic confiscation order.
- (6) Sections 162 (interest on unpaid sums), 185 (enforcement as fines), 187 (provisions about imprisonment or detention) and 188 (reconsideration etc: variation of prison term) of the 2002 Act do not apply to an overseas confiscation order registered in the Crown Court.
- (7) No challenge to the substantive reasons in relation to which an overseas confiscation order has been made by an appropriate court or authority in a member State may be considered by the court.

### SCHEDULE 3

Regulation 26

#### Mutual recognition of financial penalties: amendments of Criminal Justice and Immigration Act 2008

1. The Criminal Justice and Immigration Act 2008 is amended as follows.
- 2.—(1) Section 81 (procedure on issue of certificate: England and Wales) is amended as follows.
  - (2) In subsection (2), for the words from “fines” to “other case” substitute “the relevant officer”.
  - (3) After subsection (2) insert—
    - “(2A) The “relevant officer” means—
      - (a) the fines officer (in the case of a certificate issued by the officer), or
      - (b) the designated officer for the magistrates’ court (in any other case).”.
  - (4) For subsection (4) substitute—
    - “(4) Subsections (4A) to (4C) apply where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3).
      - (4A) No further steps to enforce the decision may be taken in England and Wales unless—
        - (a) an event mentioned in Article 15(2)(a) of the Framework Decision on financial penalties occurs in relation to the decision, or
        - (b) the relevant officer or the Lord Chancellor informs the central authority or competent authority as mentioned in subsection (4C)(b).
      - (4B) The relevant officer or the Lord Chancellor must inform the central authority or competent authority without delay if the officer receives any sum of money which the person concerned has paid voluntarily in respect of the decision requiring payment of the financial penalty.
      - (4C) The relevant officer or the Lord Chancellor must inform the central authority or competent authority forthwith of any decision or measure as a result of which the decision requiring payment of the financial penalty—

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- (a) ceases to be enforceable, or
- (b) is withdrawn from the competent authority for any other reason.”.

**3.—**(1) Section 83 (procedure on issue of certificate: Northern Ireland)(**4**) is amended as follows.

(2) For subsection (4) substitute—

“(4) Subsections (4A) to (4C) apply where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3).

(4A) No further steps to enforce the decision may be taken in Northern Ireland unless—

- (a) an event mentioned in Article 15(2)(a) of the Framework Decision on financial penalties occurs in relation to the decision, or
- (b) the designated officer or the Department of Justice informs the central authority or competent authority as mentioned in subsection (4C)(b).

(4B) The designated officer or the Department of Justice must inform the central authority or competent authority without delay if the officer receives any sum of money which the person concerned has paid voluntarily in respect of the decision requiring payment of the financial penalty.

(4C) The designated officer or the Department of Justice must inform the central authority or competent authority forthwith of any decision or measure as a result of which the decision requiring payment of the financial penalty—

- (a) ceases to be enforceable, or
- (b) is withdrawn from the competent authority for any other reason.”.

**4.** In section 84 (requests from other member States: England and Wales)(**5**), in subsection (1) (a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

**5.—**(1) Section 85 (procedure on receipt of certificate by designated officer) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a decision, or a certified copy of a decision, requiring payment of a financial penalty,
- (b) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

(3) After subsection (4) insert—

“(4A) If the magistrates’ court is of the view that one or more of the grounds for refusal mentioned in paragraphs A1, 2A and 6 of Schedule 19 may apply, the designated officer for the magistrates’ court or the Lord Chancellor must, before the magistrates’ court takes a decision under subsection (3)—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(4) After subsection (7) insert—

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(4) Section 83 was amended by [S.I. 2010/976](#).

(5) Section 84 was amended by [S.I. 2010/976](#).



“(7A) But any power of a magistrates’ court to impose a relevant alternative sanction in connection with a default in paying the financial penalty—

- (a) may be exercised only if its exercise is authorised by the certificate, and
- (b) is subject to any provision of the certificate specifying the maximum level of sanction that may be imposed.

(7B) “Any power of a magistrates’ court to impose a relevant alternative sanction” means any of the following powers conferred on a magistrates’ court by virtue of subsection (6)—

- (a) the power under section 76 of the Magistrates’ Courts Act 1980 to issue a warrant committing a person to prison;
- (b) the power under Schedule 6 to the Courts Act 2003 to make an order requiring a person to perform unpaid work;
- (c) the power under section 300 of the Criminal Justice Act 2003 to order a person to comply with an unpaid work requirement, a curfew requirement or an attendance centre requirement;
- (d) the power under section 301 of that Act to order a person to be disqualified for holding or obtaining a driving licence;
- (e) the power under section 39 of this Act to order a person aged under 18 to comply with an unpaid work requirement, a curfew requirement or an attendance centre requirement.”.

(5) After subsection (7B) (as inserted by sub-paragraph (4) above) insert—

“(7C) If the person required to pay the financial penalty to which the certificate relates provides evidence that all or part of the penalty has been paid in any State, the designated officer for the magistrates’ court or the Lord Chancellor must—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(6) For subsection (8) substitute—

“(8) If—

- (a) the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid,
- (b) the Lord Chancellor is informed, in accordance with Article 15(3) of that Decision, that all or part of the financial penalty has been paid, or
- (c) the magistrates’ court is satisfied, having regard to evidence provided as mentioned in subsection (7C) and following consultation under that subsection, that all or part of the financial penalty has been paid in any State,

the references in subsections (6) and (7A) to the financial penalty are to be read as references to so much of the penalty as remains unpaid (and, accordingly, if none of the penalty remains unpaid, subsection (6) ceases to have effect in relation to the penalty).”.

(7) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution), section 85(7B) of the Criminal Justice and Immigration Act 2008 applies as if after paragraph (a) there were inserted—

“(aa) the power under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit a person to detention;”.

(8) In relation to any time before the coming into force of section 303(b)(iii) of the Criminal Justice Act 2003 (repeal of sections 35 and 40 of the Crime (Sentences) Act 1997), section 85(7B)

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of the Criminal Justice and Immigration Act 2008 applies as if after paragraph (aa), as treated as inserted by sub-paragraph (7) above, there were inserted—

- “(ab) the power under section 35 of the Crime (Sentences) Act 1997 to make a community service order or a curfew order;
- (ac) the power under section 40 of that Act to order a person to be disqualified for holding or obtaining a driving licence;”.

(9) In relation to any time before the coming into force of section 6(1) of the Criminal Justice and Immigration Act 2008 (abolition of certain youth orders) as respects the abolition of attendance centre orders, section 85(7B) of that Act applies as if after paragraph (ac), as treated as inserted by sub-paragraph (8) above, there were inserted—

- “(ad) the power under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000 to order a person to attend an attendance centre;”.

**6.—(1)** Section 86 (modification of Magistrates’ Courts Act 1980) is amended as follows.

(2) After subsection (2) insert—

“(3) Where a transfer of fine order is made under section 90 of the Magistrates’ Courts Act 1980 as applied by section 85(6) of this Act—

- (a) subsections (6A) to (7) of section 88 of this Act apply in relation to the powers conferred by Article 96 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (transfer of fines to Northern Ireland) as a result of the order as they apply in relation to the powers conferred on a magistrates’ court by virtue of section 88(6) of this Act, and
- (b) for this purpose—
  - (i) references in those subsections to the financial penalty are to be treated as references to the financial penalty to which the order relates, and
  - (ii) references in those subsections to the certificate are to be treated as references to the certificate by virtue of which the order is made.”.

(3) In the heading, at the end insert “etc”.

**7.** In section 87 (requests from other member States: Northern Ireland)(6), in subsection (1)(a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

**8.—(1)** Section 88 (procedure on receipt of certificate by clerk of petty sessions)(7) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a decision, or a certified copy of a decision, requiring payment of a financial penalty,
- (b) a certificate requesting enforcement under the Framework Decision on financial penalties, and”.

(3) After subsection (4) insert—

“(4A) If the magistrates’ court is of the view that one or more of the grounds for refusal mentioned in paragraphs A1, 2A and 6 of Schedule 19 may apply, the designated officer

(6) Section 87 was amended by [S.I. 2010/976](#).

(7) Section 88 was amended by [S.I. 2010/976](#).

for the magistrates' court or the Department of Justice must, before the magistrates' court takes a decision under subsection (3)—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(4) After subsection (6) insert—

“(6A) But any power of a magistrates' court to impose a relevant alternative sanction in connection with a default in paying the financial penalty—

- (a) may be exercised only if its exercise is authorised by the certificate, and
- (b) is subject to any provision of the certificate specifying the maximum level of sanction that may be imposed.

(6B) “Any power of a magistrates' court to impose a relevant alternative sanction” means any of the following powers conferred on a magistrates' court by virtue of subsection (6)—

- (a) the power under Article 92(1)(b) or (c) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 12)) to issue a warrant committing a person to prison;
- (b) the power under Article 37 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) to make an attendance centre order;
- (c) the power under Article 48 of the Criminal Justice (Children) (Northern Ireland) Order 1998 to commit a person aged 16 to 18 to custody in a young offenders' institution.”.

(5) After subsection (6B) (as inserted by sub-paragraph (4) above) insert—

“(6C) If the person required to pay the financial penalty to which the certificate relates provides evidence that all or part of the penalty has been paid in any State, the designated officer for the magistrates' court or the Department of Justice must—

- (a) consult the competent authority or central authority concerned, and
- (b) request the authority to supply without delay any further information required.”.

(6) For subsection (7) substitute—

“(7) If—

- (a) the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid,
- (b) the Department of Justice is informed, in accordance with Article 15(3) of that Decision, that all or part of the financial penalty has been paid, or
- (c) the magistrates' court is satisfied, having regard to evidence provided as mentioned in subsection (6C) and following consultation under that subsection, that all or part of the financial penalty has been paid in any State,

the references in subsections (6) and (6A) to the financial penalty are to be read as references to so much of the penalty as remains unpaid (and, accordingly, if none of the penalty remains unpaid, subsection (6) ceases to have effect in relation to the penalty).”.

9.—(1) Section 89 (modification of Magistrates' Courts (Northern Ireland) Order 1981)(8) is amended as follows.

(2) After subsection (5) insert—

“(6) Where a transfer of fine order is made under Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 as applied by section 88(6) of this Act—

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(8) Section 89(5) was amended by S.I. 2010/976.

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- (a) subsections (7A) to (8) of section 85 of this Act apply in relation to the powers conferred by section 91 of the Magistrates' Courts Act 1980 (transfer of fines from Northern Ireland) as a result of the order as they apply in relation to the powers conferred on a magistrates' court by virtue of section 85(6) of this Act, and
- (b) for this purpose—
  - (i) references in those subsections to the financial penalty are to be treated as references to the financial penalty to which the order relates, and
  - (ii) references in those subsections to the certificate are to be treated as references to the certificate by virtue of which the order is made.”.

(3) In the heading, at the end insert “etc”.

**10.** In section 90 (transfer of certificates to central authority for Scotland)(**9**), in subsection (1) (a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, but”.

**11.**—(1) Section 90A (transfer of certificates by Department of Justice to Lord Chancellor and vice versa)(**10**) is amended as follows.

(2) In subsection (1)(a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, or”.

(3) In subsection (3)(a), for sub-paragraphs (i) and (ii) substitute—

- “(i) a decision, or a certified copy of a decision, requiring payment of a financial penalty, and
- (ii) a certificate requesting enforcement under the Framework Decision on financial penalties, or”.

**12.**—(1) Section 91 (recognition of financial penalties: general)(**11**) is amended as follows.

(2) In subsection (2), after “85(3)” insert “, (4A)” and after “88(3)” insert “, (4A)”.

(3) In subsection (4), omit “81(4), 83(4)”.

**13.** In section 92 (interpretation of sections 80 to 91 etc)(**12**), in the definition of “decision” in subsection (2), for “in sections 85(4) and 88(4)” substitute “where the context requires otherwise”.

**14.** In section 147 (orders, rules and regulations)(**13**), in subsection (5)(d), omit “81(4) or”.

**15.** In section 152 (extent)—

- (a) in subsection (3)(e), for “and (7)” substitute “to (7B)”, and
- (b) in subsection (4)(b), for “to 89” substitute “, 88 and 89(1) to (5)”.

**16.**—(1) Schedule 19 (grounds for refusal to enforce financial penalties)(**14**) is amended as follows.

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(9) Section 90 was amended by [S.I. 2010/976](#).

(10) Section 90A was inserted by [S.I. 2010/976](#).

(11) Section 91 was amended by [S.I. 2010/976](#).

(12) Section 92 was amended by [S.I. 2010/976](#).

(13) Section 147 was amended by [S.I. 2010/976](#).

(14) Schedule 19 was amended by [S.I. 2010/976](#).

- (2) Before paragraph 1 insert—
- “**A1.** The certificate is incomplete or obviously does not correspond to the decision.”.
- (3) After paragraph 2 insert—
- “**2A.** Enforcement of the financial penalty is statute-barred under the law of the relevant part of the United Kingdom and the decision was made in respect of conduct that, under the law of that part of the United Kingdom, falls within its jurisdiction.”.
- (4) In paragraph 3, omit sub-paragraph (2).
- (5) After paragraph 3 insert—
- “**3A.** The decision was made in respect of conduct—
- (a) that occurred in the relevant part of the United Kingdom, and
- (b) does not constitute an offence under the law of that part of the United Kingdom.”.
- (6) In paragraph 4, omit sub-paragraph (2).
- (7) After paragraph 5 insert—
- “**5A.** It appears that the decision was in fact made for the purpose of punishing the liable person on account of the liable person’s race, ethnic origin, religion, nationality, language, gender, sexual orientation or political opinions.”.
- (8) For paragraph 6 substitute—
- “**6.**—(1) The certificate indicates that the proceedings in which the decision was made were conducted in writing but does not confirm that the liable person was informed of—
- (a) the right to contest the proceedings, and
- (b) the time limits that applied to the exercise of that right.
- (2) The certificate indicates that the proceedings in which the decision was made provided for a hearing to take place and that the liable person did not attend but does not contain the statement described in—
- (a) Article 7(2)(i)(i) (liable person summoned in person or by other means actually notified of scheduled date and place of hearing and informed that decision may be made in his or her absence),
- (b) Article 7(2)(i)(ii) (liable person’s defence conducted at hearing by authorised legal representative),
- (c) Article 7(2)(i)(iii) (liable person indicated intention not to contest decision or did not exercise right to further hearing or appeal within time limit), or
- (d) Article 7(2)(j) (liable person expressly waived right to attend and indicated intention not to contest proceedings).
- (3) In this paragraph references to Articles are to Articles of the Framework Decision on financial penalties.”.
- (9) In paragraph 47, in sub-paragraph (1), after paragraph (b) insert—
- “(c) “relevant part of the United Kingdom” means—
- (i) England and Wales, in the application of this Schedule to England and Wales, and
- (ii) Northern Ireland, in the application of this Schedule to Northern Ireland.”

SCHEDULE 4

Regulation 27

UK competent authorities

PART 1

The Association of Chief Police Officers  
The Chief Officer of a Police force for a Police Area in England and Wales  
The Chief Constable of the Police Service of Northern Ireland  
The Chief Constable of the Police Service of Scotland  
The Chief Executive of the Scottish Prison Service  
The Crown Agent  
The Director-General of the Northern Ireland Prison Service  
The Director of Public Prosecutions  
The Director of Public Prosecution Service Northern Ireland  
The Financial Conduct Authority  
The Foreign and Commonwealth Office  
The Health and Safety Executive  
Her Majesty's Revenue and Customs  
The Home Office  
The Information Commissioner  
The Lord Advocate  
The Ministry of Defence  
The Ministry of Defence Police Service  
The Ministry of Justice  
The National Crime Agency  
The Northern Ireland Department of Justice  
The Port of Dover Police  
A Procurator Fiscal  
The Scottish Court Service  
The Scottish Information Commissioner  
The Scottish Ministers  
The Scottish Police Authority  
The Secretary of State for the Department for Communities and Local Government  
The Secretary of State for the Department for Energy and Climate Change  
The Secretary of State for the Department for Environment, Food and Rural Affairs  
The Secretary of State for the Department of Health  
The Secretary of State for the Department for Transport  
The Secretary of State for the Department for Work and Pensions  
The Serious Fraud Office

## PART 2

An agency or other body established by a legal instrument adopted under Title VI of the Treaty on European Union (as it had effect before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union that is in the UK.

### SCHEDULE 5

Regulation 51

#### Functions of the Commissioner under the Act: modifications

| <i>Column 1</i>  | <i>Column 2</i>                                      |
|--|--|
| this Act (the Data Protection Act 1998)                                      | Part 4 of these Regulations                          |
| the data protection principles, or any of them                               | the requirements of Part 4 of these Regulations      |
| data controller  | UK competent authority                               |
| section 7 of the Act (right of access to personal data)                      | regulation 44 of these Regulations (right of access) |
| section 4(4) of the Act (duty to comply with the data protection principles) | the provision made by Part 4 of these Regulations    |
| section 54A of and paragraph 12 of Schedule 9 to the Act                     | section 54A of the Act                               |

### SCHEDULE 6

Regulations 85 and 104

#### Grounds for refusal to monitor supervision measures

## PART 1

### Grounds for refusal

1. The certificate requesting monitoring under the Framework Decision—
  - (a) is incomplete or obviously does not correspond to the decision on supervision measures, and
  - (b) is not completed or corrected within the period specified under regulation 86(3)(c) or 105(3)(c).

2.—(1) Where the person subject to the decision on supervision measures is lawfully and ordinarily resident in the relevant part of the United Kingdom, the person has not consented to return there with a view to the supervision measures being monitored there under the Framework Decision.

(2) Where the person subject to the decision on supervision measures is not lawfully and ordinarily resident in the relevant part of the United Kingdom, the person—

- (a) has not asked for a request to be made for monitoring of the supervision measures under the Framework Decision by a competent authority in that part of the United Kingdom, or
- (b) has asked for such a request to be made but has not given adequate reasons as to why it should be made.

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**3.** The certificate includes measures other than those referred to in Article 8(1) of the Framework Decision (types of supervision measures).

**4.** Recognition of the decision on supervision measures would contravene the principle of *ne bis in idem*.

**5.—(1)** The decision on supervision measures was based on conduct that would not constitute an offence under the law of the relevant part of the United Kingdom if it occurred there.

(2) But sub-paragraph (1) does not apply if—

- (a) the conduct is specified in Part 2 of this Schedule, and
- (b) the conduct is punishable under the law of the issuing State with imprisonment or another form of detention for a term of 3 years or a greater punishment.

(3) For the purposes of sub-paragraph (1) —

- (a) if the conduct relates to a tax or duty, it does not matter whether the law of the relevant part of the United Kingdom contains the same kind of tax or duty or contains rules of the same kind as those of the law of the issuing State;
- (b) if the conduct relates to customs or exchange, it does not matter whether the law of the relevant part of the United Kingdom contains rules of the same kind as those of the law of the issuing State.

**6.** The decision was based on conduct where, under the law of the relevant part of the United Kingdom—

- (a) the criminal prosecution of the conduct would be statute-barred, and
- (b) the conduct falls within the jurisdiction of that part of the United Kingdom.

**7.** The decision on supervision measures was based on conduct by a person who was under the age of 10 when the conduct took place.

**8.** The conduct on which the decision on supervision measures was based is such that—

- (a) if there was a breach of the supervision measures, and
- (b) a warrant was issued by the issuing State for the arrest of the person subject to the decision,

the person would have to be discharged at an extradition hearing under the Extradition Act 2003(15).

**9.** It appears that the decision on supervision measures was in fact made for the purpose of punishing the person subject to the decision on account of the person's race, ethnic origin, religion, nationality, language, gender, sexual orientation or political opinions.

## PART 2

### European Framework List (supervision measures)

- 10.** Participation in a criminal organisation.
- 11.** Terrorism.
- 12.** Trafficking in human beings.
- 13.** Sexual exploitation of children and child pornography.
- 14.** Illicit trafficking in narcotic drugs and psychotropic substances.

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(15) 2003 c.41.



15. Illicit trafficking in weapons, munitions and explosives.
16. Corruption.
17. Fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26th July 1995<sup>(16)</sup> on the protection of the European Union's financial interests.
18. Laundering of the proceeds of crime.
19. Counterfeiting currency, including of the euro.
20. Computer-related crime.
21. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
22. Facilitation of unauthorised entry and residence.
23. Murder, grievous bodily injury.
24. Illicit trade in human organs and tissue.
25. Kidnapping, illegal restraint and hostage-taking.
26. Racism and xenophobia.
27. Organised or armed robbery.
28. Illicit trafficking in cultural goods, including antiques and works of art.
29. Swindling.
30. Racketeering and extortion.
31. Counterfeiting and piracy of products.
32. Forgery of administrative documents and trafficking therein.
33. Forgery of means of payment.
34. Illicit trafficking in hormonal substances and other growth promoters.
35. Illicit trafficking in nuclear or radioactive materials.
36. Trafficking in stolen vehicles.
37. Rape.
38. Arson.
39. Crimes within the jurisdiction of the International Criminal Court.
40. Unlawful seizure of aircraft or ships.
41. Sabotage.

## PART 3

### Interpretation

42. In this Schedule—  
“conduct” includes any act or omission;

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(16) OJ No. C 316, 27.11.1995, p. 49.

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

“relevant part of the United Kingdom” means—

- (a) England and Wales, in the application of this Schedule to England and Wales, or
- (b) Northern Ireland, in the application of this Schedule to Northern Ireland.