

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE AND DATA PROTECTION (PROTOCOL No. 36)
(AMENDMENT) REGULATIONS 2014**

2014 No. 3191

1. This Explanatory Memorandum has been prepared by the Home Office and Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments (JCSI).

2. Purpose of the Instrument

2.1 These Regulations make a small number of minor amendments to the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (“the main Regulations”) which give effect to a Commission Decision and a Council Decision (to be published in the Official Journal) (together “the Protocol 36 Decisions”), made under Article 10(5) of Protocol (No. 36) on transitional provisions to the EU Treaties on 1st December 2014. These Regulations also make minor amendments to the transposition made by the main Regulations 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. These amendments were set out in the voluntary memorandum of 11th November 2014 from the Home Office and Ministry of Justice to the JCSI. The voluntary memorandum was considered by the JCSI on 11th November 2014 and details are included in the report of JCSI of 12th November 2014.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The power to make the Regulations under section 2(2) of the European Communities Act 1972 only crystallises once the Protocol 36 Decisions have been made by the Commission and the Council.

3.2 As explained in the voluntary memorandum of 11th November 2014 from the Home Office and Ministry of Justice to the JCSI, these Regulations will come into force on the day after the day on which they are made, at the same time as the main Regulations come into force. This will require a breach of the 21 day rule. No delay in commencement is possible as the five year transitional period under Article 10 of Protocol 36, which limits the powers of the European Commission and the jurisdiction of the Court of Justice of the European Union, comes to an end on 1st December 2014. To comply with EU obligations and for legal clarity, it is important that the amendments are made to the main Regulations, as quickly as possible after 1st December.

4. Legislative Context

4.1 Information on the legislative context is set out in the Explanatory Memorandum to the main Regulations.

5. Territorial Extent and Application

5.1 These Regulations have the same territorial extent as the provisions of the main Regulations which they amend, details of which are set out in the Explanatory Memorandum to the main Regulations.

6. European Convention on Human Rights

6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 The Government considers that it is in the national interest for the UK to seek to rejoin the EU measures detailed in the Explanatory Memorandum to the main Regulations. Following the endorsement by both Houses of Parliament of the package of measures, the Prime Minister wrote to the President of the Council of the EU on 20th November 2014 to notify formally the United Kingdom's wish to rejoin the 35 measures identified to be in the national interest.

7.2 These Regulations make no changes of policy substance to the main Regulations.

8. Consultation outcome

8.1 No consultation has been undertaken on these Regulations as the amendments are minor.

9. Guidance

9.1 No guidance will be published on the effect of these Regulations.

10. Impact

10.1 No impact assessment has been prepared in relation to these Regulations. An impact assessment in respect the Government's anticipated exercise of its power under Article 10(5) of Protocol 36, of the anticipated Protocol 36 Decisions, and the relevant measures covered by these Regulations was laid before Parliament in July 2014 (Command Paper 8897 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326698/41670_Cm_8897_Accessible.pdf).

11. Regulating small business

11.1 The legislation has no impact on small business.

12. Monitoring & review

12.1 The Home Office and Ministry of Justice will closely monitor the impact of the main Regulations which these Regulations amend.

13. Contact

Any queries regarding the instrument can be sent to:

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