

SCHEDULES

SCHEDULE 1

Regulation 2

Designated prosecutors, investigating authorities and executing authorities

PART 1

Designated public prosecutors

The Bank of England

The Director of Public Prosecutions and any Crown Prosecutor

The Director of Public Prosecutions for Northern Ireland and any Public Prosecutor

The Director of the Serious Fraud Office and any person designated under section 1(7) of the Criminal Justice Act 1987

The Environment Agency

The Financial Conduct Authority

The Prudential Regulation Authority

PART 2

Other designated prosecutors

The Attorney General for England and Wales

The Attorney General for Northern Ireland

The Northern Ireland Department for Communities

The Secretary of State for Business, Energy and Industrial Strategy

The Secretary of State for Health

The Secretary of State for Transport

The Secretary of State for Work and Pensions

PART 3

Designated investigating authorities

The Chief Constable of the British Transport Police Force

The Chief Constable of the Police Service of Northern Ireland

The Chief Officer of police for a police area in England and Wales

The Health and Safety Executive

Her Majesty's Revenue and Customs

The Ministry of Defence Police Service

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The National Crime Agency
The Port of Dover Police
The Secretary of State for Health
The Secretary of State for the Home Department
The Secretary of State for Justice

PART 4

Designated executing authorities

The Chief Constable of the British Transport Police Force
The Chief Constable of the Police Service of Northern Ireland
The Chief Officer of police for a police area in England and Wales
The Director of Public Prosecutions and any Crown Prosecutor
The Director of Public Prosecutions for Northern Ireland and any Public Prosecutor
The Director of the Serious Fraud Office and any person designated under section 1(7) of the Criminal Justice Act 1987
The Financial Conduct Authority
The Health and Safety Executive
Her Majesty's Revenue and Customs
The Land Registry
The Ministry of Defence Police Service
The National Crime Agency
The Northern Ireland Department for Communities
The Northern Ireland Department of Justice
The Port of Dover Police
The Secretary of State for Business, Energy and Industrial Strategy
The Secretary of State for Defence
The Secretary of State for Environment, Food and Rural Affairs
The Secretary of State for the Home Department
The Secretary of State for Justice
The Secretary of State for Transport
The Secretary of State for Work and Pensions

SCHEDULE 2

Regulation 2

Participating States

Austria
Belgium
Bulgaria
Croatia

Cyprus
Czech Republic
Estonia
Finland
France
Germany
Greece
Hungary
Italy
Latvia
Lithuania
Luxembourg
Malta
The Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

SCHEDULE 3

Regulation 4

Consequential amendments

PART 1

Amendments to Acts

Amendment of the Criminal Justice Act 1987

1.—(1) In section 2 of the Criminal Justice Act 1987 (powers of the Director of the Serious Fraud Office)(1)—

(a) in subsection (1A), for paragraph (b) substitute—

“(b) the Secretary of State, acting—

(i) under section 15(2) of the Crime (International Co-operation) Act 2003, in response to a request received from a person mentioned in section 13(2) of that Act, or

(1) 1987 c. 38; section 2 was amended by section 143 of the Criminal Justice Act 1988 (c. 33), by section 164(2) of the Criminal Justice and Public Order Act 1994 (c. 33) and by paragraph 12 of Schedule 5 to the Crime (International Co-operation) Act 2003.

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- (ii) under regulation 51 of the Criminal Justice (European Investigation Order) Regulations 2017, on a referral under that regulation of a European investigation order issued by an authority in a participating State (within the meaning of Part 3 of those Regulations).”;
- (b) for subsection (18) substitute—
 - “(18) In this section—
 - “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;
 - “evidence”, in relation to subsections (1B), (8A) and (8C) above, includes documents and other articles;
 - “overseas authority” means a person mentioned in subsection (1A)(b)(i) or an authority mentioned in subsection (1A)(b)(ii).”.

Amendment of the Criminal Justice Act 1988

2. In Schedule 13 to the Criminal Justice Act 1988(2), in paragraph 6 (letters of request etc.)(3), in sub-paragraph (1), after “2003” insert “, and no order shall be made or validated under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.”.

Amendment of the Criminal Procedure (Scotland) Act 1995

- 3.—(1) The Criminal Procedure (Scotland) Act 1995(4) is amended as follows.
 - (2) In section 210 (consideration of time spent in custody), in paragraph (c) of subsection (1), after “section 47(1) of the Crime (International Co-operation) Act 2003”, insert “ or regulation 20 or 54 of the Criminal Justice (European Investigation Order) Regulations 2017”.
 - (3) In section 267A (citation of witnesses for precognition), after subsection (1) insert—
 - “(1A) Subsection (1) extends to citation for precognition by the prosecutor where a European investigation order having effect by virtue of Part 3 of the Criminal Justice (European Investigation Order) Regulations 2017 contains a request for a person in Scotland to be heard under regulations 35 to 37 of those Regulations.”.
 - (4) In section 272 (evidence by letter of request or on commission)(5), after subsection (13) insert—
 - “(14) This section does not apply to a witness who or evidence that is the subject of a European investigation order made under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.”.
 - (5) In section 273 (television link evidence from abroad)(6), after subsection (4) insert—
 - “(5) This section does not apply to a witness who or evidence that is the subject of a European investigation order made under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.”.

(2) 1988 c. 33.

(3) Paragraph 6 of Schedule 13 was amended by paragraph 16 of Schedule 5 to the Crime (International Co-operation) Act 2003.

(4) 1995 c. 46.

(5) Section 272 was amended by section 35(4) of the Criminal Proceedings etc. (Reform) (Scotland) 2007 asp 6.

(6) Section 273 was amended by section 91(2) of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13.

Amendment of the Criminal Law (Consolidation) (Scotland) Act 1995

4.—(1) The Criminal Law (Consolidation) Scotland Act 1995(7) is amended as follows.

(2) In subsection (2) of section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (Lord Advocate’s direction)(8), for the words from “under this section” to the end, substitute

““under this section—

- (a) by virtue of section 15(4) of the Crime (International Co-operation) Act 2003,
- (b) by virtue of regulation 52 of the Criminal Justice (European Investigation Order) Regulations 2017, or
- (c) on a request made by the Attorney-General of the Isle of Man, Jersey or Guernsey acting under legislation corresponding to this Part of this Act.”.

Amendment of the Regulation of Investigatory Powers Act 2000

5.—(1) The Regulation of Investigatory Powers Act 2000(9) is amended as follows.

(2) In section 1 (unlawful interception)—

- (a) in subsection (4), after “assistance” where it appears after paragraph (c), insert “in connection with, or in the form of, the interception of communications”;
- (b) after subsection (4) (as amended by paragraph (a) above), insert—

“(4A) The Secretary of State must also secure that a request for assistance to which subsection (4B) applies is made only with lawful authority.

(4B) This subsection applies to a request for assistance on behalf of a person in the United Kingdom to the competent authorities of a country or territory outside the United Kingdom where—

- (a) the assistance is in connection with, or in form of, the interception of communications, and
- (b) the request is made in accordance with [Directive 2014/41/EU](#) of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.”.

(3) In section 20, at the end of the definition of “international mutual assistance agreement”, insert “or [Directive 2014/41/EU](#) of the European Parliament and of the Council”.

Amendment of the Criminal Justice and Police Act 2001

6. In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure to which the additional powers in section 50 of that Act apply)(10), at the end insert—

“Criminal Justice (European Investigation Order) Regulations 2017”

“73R. The power of seizure conferred by regulation 39 of the Criminal Justice (European Investigation Order) Regulations 2017 (search warrants and production orders for giving effect to a European investigation order).”.

(7) 1995 c. 39.

(8) Section 27 was amended by paragraph 62 of Schedule 5 to the Crime (International Co-operation) Act 2003.

(9) 2000 c. 23.

(10) 2001 c. 16.

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Amendment of the Crime (International Co-operation) Act 2003

7. In subsection (2) of section 51 of the 2003 Act (general interpretation), for paragraph (a) substitute—

“(a) Denmark or the Republic of Ireland, and”.

Amendment of the Criminal Justice Act 2003

8. In section 117 of the Criminal Justice Act 2003 (hearsay evidence: business and other documents)(11), in subsection (4) for paragraph (b) substitute—

“(b) was not obtained pursuant to—

(i) a request under section 7 of the Crime (International Co-operation) Act 2003,

(ii) an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988, or

(iii) an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017,

(all of which relate to overseas evidence).”.

Amendment of the Investigatory Powers Act 2016

9.—(1) In section 10 of the Investigatory Powers Act 2016—

(a) in subsection (1), after paragraph (b) (as closing words of the subsection), insert “so far as the assistance is in connection with, or in the form of, the interception of communications.”;

(b) after subsection (2) insert—

“(2A) Subsection (2) does not apply in the case of a request for assistance in connection with, or in the form of, interception of a communication stored in or by a telecommunication system if the request is made—

(a) in the exercise of a statutory power that is exercised for the purpose of obtaining information or taking possession of any document or other property, or

(b) in accordance with a court order that is made for that purpose.”.

PART 2

Amendments to subordinate legislation

Amendment of the Criminal Justice (Evidence) (Northern Ireland) Order 2004

10. In article 21 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (hearsay evidence: business and other documents)(12), in paragraph (4) for sub-paragraph (b) substitute—

“(b) was not obtained pursuant to—

(i) a request under section 7 of the Crime (International Co-operation) Act 2003,

(11) 2003 c. 44.

(12) S.I. 2004/1501 (N.I. 10).

- (ii) an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988, or
 - (iii) an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017,
- (all of which relate to overseas evidence).”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009

11. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009(13)—

- (a) in article 3, for the text after “sections 4”, substitute “and 4B of that Act.”;
- (b) in article 4, for the text after “sections 4”, substitute “and 4B of that Act.”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009

12. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009(14)—

- (a) for article 2 substitute—
 - “2. Bulgaria and Romania are designated as participating countries under section 51(2)(b) of the Crime (International Co-operation) Act 2003 for the purposes of section 6 of that Act.”;
- (b) for article 3 substitute—
 - “3. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of section 6 of that Act.”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009

13. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009(15)—

- (a) in article 2, omit “Croatia.”;
- (b) after article 3, insert—
 - “4. Austria, Belgium, Croatia, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden are designated as participating countries under section 51(2)(b) of the Crime (International Co-operation) Act 2003 for the purposes of section 6 of that Act.”.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010

14. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010(16)—

(13) S.I. 2009/613.
(14) S.S.I. 2009/106.
(15) S.S.I. 2009/441.
(16) S.I. 2010/36.

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- (a) in articles 3 and 4, omit “Croatia,”;
- (b) after article 4, insert—

“5. Austria, Belgium, Croatia, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 4 and 4B of that Act.”.

SCHEDULE 4

Regulation 28

General grounds for refusal

1. The execution of the European investigation order would be impossible as a consequence of—
 - (a) an immunity or privilege under the law of the part of the United Kingdom in which the evidence to which the order relates is situated, or
 - (b) any rule of law of that part of the United Kingdom on the determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media.
2. The execution of the European investigation order would harm essential national security interests, jeopardise a source of information or involve the use of classified information relating to specific intelligence activities.
3. An investigative measure specified in the European investigation order would not be authorised in a similar domestic case under the law of the part of the United Kingdom in which the evidence to which the order relates is situated, where—
 - (a) the European investigation order has been issued in relation to proceedings brought by administrative or judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and
 - (b) the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters.
4. The execution of the European investigation order would be contrary to the principle of *ne bis in idem*.
5. The European investigation order relates to conduct which is alleged to have occurred outside the territory of the issuing State and wholly or partially in the United Kingdom, and the conduct does not constitute an offence under the general criminal law of the part of the United Kingdom in which it occurred.
6. There are substantial grounds for believing that executing the European investigation order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
7. There are substantial grounds for believing that—
 - (a) the European investigation order has been issued for the purpose of investigating or prosecuting a person on account of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions;
 - (b) a person’s position in relation to the investigation or proceedings to which the European investigation order relates might be prejudiced by reason of that person’s sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions.

SCHEDULE 5

Regulation 35

Receiving evidence before a nominated court

1. In this Schedule, “nominated court” means a court nominated under regulation 35.
2. The nominated court has the same powers for securing the attendance of a person as it has for the purposes of securing the attendance of a witness in other proceedings.
3. In Scotland the nominated court has the power to issue a warrant to officers of law to cite a witness, and section 156 of the Criminal Procedure (Scotland) Act 1995 (apprehension of witness)(17) applies in relation to such a witness.
4. The nominated court may take evidence on oath.
5. Rules of court may, in particular, make provision in respect of persons entitled to appear to take part in proceedings and for excluding the public from the proceedings.
- 6.—(1) A person cannot be compelled to give any evidence—
 - (a) which that person could not be compelled to give in criminal proceedings in the part of the United Kingdom in which the nominated court exercises jurisdiction;
 - (b) subject to sub-paragraph (2), which that person could not be compelled to give in proceedings in the issuing State;
 - (c) if doing so would be prejudicial to the security of the United Kingdom; or
 - (d) in that person’s capacity as an officer or servant of the Crown.

(2) Sub-paragraph (1)(b) does not apply unless the issuing authority concedes the claim of the person questioned to be exempt from giving the evidence.

(3) Where the person’s claim for exemption under sub-paragraph (1)(b) is not conceded, that person may be required to give the evidence to which the claim relates (subject to the other provisions of this paragraph); but the evidence may not be forwarded to the issuing authority if a court in the issuing State upholds the claim.

(4) A certificate signed by or on behalf of the Secretary of State or, where the nominated court is in Scotland, the Lord Advocate to the effect that sub-paragraph (1)(c) applies is conclusive evidence of that fact.
7. The evidence received by the nominated court is to be transferred to the central authority for forwarding to the issuing authority.
8. So far as may be necessary to give effect to the European investigation order—
 - (a) where the evidence received consists of a document, the original or copy is to be provided,
 - (b) where it consists of any other article, the article itself, or a description, photograph or other representation of it, is to be provided.
9. The Bankers’ Books Evidence Act 1879(18) applies to proceedings under this Schedule as it applies to other proceedings before the court.
10. No order for costs (or in Scotland, expenses) may be made.

(17) 1995 c. 46; section 156 was substituted by section 16 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

(18) 1879 c. 11.

SCHEDULE 6

Regulations 36 and 37

Hearing a person by video-link or telephone conference

PART 1

Hearing by video-link

1. In this Part—
 - “nominated court” means a court nominated under regulation 36;
 - “overseas proceedings” and “video-link” have the meanings given by that regulation.
2. The nominated court has the same powers for securing the attendance of a person to give evidence through a video-link as it has for the purposes of securing the attendance of a witness in other proceedings.
3. In Scotland the nominated court has the power to issue a warrant to officers of law to cite a witness for the purpose of securing a person’s attendance to give evidence through the video-link, and section 156 of the Criminal Procedure (Scotland) Act 1995 applies in relation to such a witness.
4. The nominated court must establish the identity of the person concerned.
5. The person must be heard—
 - (a) in the presence of the nominated court;
 - (b) under the supervision of the court of the issuing State;
 - (c) in accordance with the laws of that State; and
 - (d) with any measures for the protection of the person concerned agreed between the central authority and the issuing authority.
6. The nominated court must intervene where it considers it necessary to do so to safeguard the rights of the person concerned.
7. A person cannot be compelled to give any evidence—
 - (a) which that person could not be compelled to give in criminal proceedings in the part of the United Kingdom in which the nominated court exercises jurisdiction;
 - (b) if doing so would be prejudicial to the security of the United Kingdom; or
 - (c) in that person’s capacity as an officer or servant of the Crown.
8. A certificate signed by or on behalf of the Secretary of State or, where the court is in Scotland, the Lord Advocate to the effect that paragraph 7(b) applies is conclusive evidence of that fact.
9. Rules of court must make provision for—
 - (a) the use of interpreters;
 - (b) the drawing up of a record of the hearing, and
 - (c) sending the record to the issuing authority.

PART 2

Hearing by telephone conference

10. In this Part, “nominated court” means a court nominated under regulation 37.

11. The nominated court must notify the witness or expert of the time when and the place at which that person is to be heard by telephone.

12. The nominated court must—

- (a) establish the identity of the witness or expert, and
- (b) be satisfied that the witness or expert is willing to be heard by telephone.

13. The witness or expert must be heard—

- (a) in the presence of the nominated court;
- (b) under the supervision of the court of the issuing State, and
- (c) in accordance with the laws of that State.

14. Rules of court must make provision for—

- (a) the use of interpreters;
- (b) the drawing up of a record of the hearing, and
- (c) sending the record to the issuing authority.