



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019**

**DATE**            **3 May 2019**

**BY**                **Rebecca Evans AM, Minister for Finance and Trefnydd**

### **The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019**

**The Law which is being amended:**

**Primary legislation**

- Terrorism Act 2000
- Regulation of Investigatory Powers Act 2000
- Psychoactive Substances Act 2016
- Anti-terrorism, Crime and Security Act 2001
- Anti-social Behaviour, Crime and Policing Act 2014
- Firearms Act 1968
- Firearms (Amendment) Act 1988
- Police Act 1996
- Police (Northern Ireland) Act 1998
- Police and Fire Reform (Scotland) Act 2012
- Crime and Courts Act 2013
- Criminal Justice Act 1987
- Criminal Justice Act 1988
- Criminal Procedure (Scotland) Act 1995
- Criminal Law (Consolidation) (Scotland) Act 1995
- Criminal Justice and Police Act 2001
- Criminal Justice Act 2003
- Investigatory Powers Act 2016
- Proceeds of Crime Act 2002
- Serious Organised Crime and Police Act 2005
- Criminal Finances Act 2017
- Serious Crime Act 2007

- Local Government (Miscellaneous Provisions) Act 1982
- Licensing Act 2003
- Anti-social Behaviour, Crime and Policing Act 2014
- Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015
- Policing and Crime Act 2017

### **Secondary Legislation**

- Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007
- Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008
- Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008
- The European Police College (Immunities and Privileges) Order 2004
- Criminal Justice and Data Protection (Protocol No 36) Regulations 2014
- Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013
- Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014
- Control of Poisons and Explosives Precursors Regulations 2015
- Extradition Act 2003 (Designation of Part 1 Territories) Order 2003
- Extradition Act 2003 (Designation of Part 2 Territories) Order 2003
- Firearms Acts (Amendment) Regulations 1992
- Firearms (Amendment) Act 1988 (Amendment) Regulations 2011
- Firearms (Northern Ireland) Order 2004
- International Joint Investigation Teams (International Agreement) Order 2004
- Criminal Justice (Evidence) (Northern Ireland) Order 2004
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2011
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011
- Investigatory Powers (Consequential Amendments etc.) Regulations 2018
- Immigration and Police (Passenger, Crew and Service Information) Order 2008
- Passenger Name Record Data and Miscellaneous Amendments Regulations 2018
- Police Pensions (Additional Voluntary Contributions) Regulations 1991
- Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

- Police Pensions Regulations 2015
- Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

## **EU Decisions**

- Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA
- Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA
- Council Decision 2010/779/EU of 14 December 2010 concerning the request of the
- United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;
- Council Decision (EU) 2018/1600 of 28 September 2018 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Union
- Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).  
Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network
- Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);
- Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information;
- Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements;
- Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files;
- Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information.
- Commission Decision (EU) 2017/388 of 6 March 2017 confirming the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol)
- Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet
- Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension;
- Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension.
- Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United

- Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the
- United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.
- Council Decision 2012/381/EU of 13 December 2011 on the conclusion of the
- Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service;
- Council Decision 2012/472/EU of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security.
- Commission Implementing Decision (EU) 2017/759 of 28 April 2017 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units is revoked.
- Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information;
- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.
- Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.
- Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision
- 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
- Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;
- Council Decision 2014/837/EU of 27 November 2014 determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon.
- Commission Decision (EU) 2016/809 of 20 May 2016 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation

- Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.
- Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar);
- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene
- Manual and other implementing measures for the second generation Schengen Information System (SIS II);
- Council Decision 2013/157/EU of 7 March 2013 fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland;
- Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems;
- Commission Implementing Decision (EU) 2016/1345 of 4 August 2016 on minimum data quality standards for fingerprint records within the second generation Schengen Information System (SIS II).
- Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations

## **EU Regulations**

- Council Regulation (EC) 273/2004 on drug precursors
- Council Regulation (EC) 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors
- Commission Delegated Regulation (EU) 2015/1011 of 24 April 2015 supplementing Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, and repealing Commission Regulation (EC) 1277/2005

- Commission Implementing Regulation (EU) 2015/1013 of 25 June 2015 laying down rules in respect of Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and of Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors
- Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12
- December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (recast)
- Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances
- Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011
- Regulation (EU) 2016/794 of the European Parliament and of the
- Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA
- Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15
- January 2013 on the marketing and use of explosives precursors
- Commission Implementing Regulation (EU) No 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable
- Council Regulation (EU) No 331/2014 of the European Parliament and of the Council of 11 March 2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles 2020' programme) and repealing Council Decisions 2001/923/EC, 2001/924/EC, 2006/75/EC, 2006/76/EC, 2006/849/EC and 2006/850/EC

**Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence**

This SI does not have any impact on the Assembly's legislative competence or the Welsh Ministers' executive competence

**The purpose of the amendments**

The primary legislation and directly applicable EU law amended by this SI contain provisions which would be deficient following the United Kingdom's departure from the European Union. This legislation relates to policing, criminal investigations, law enforcement and security.

The purpose of these amendments is to correct these deficiencies. The instrument also includes transitional provisions and savings provisions to ensure the legislation operates effectively after exit day.

The SI and accompanying Explanatory Memorandum, setting out the effect of the SI, are available here:

<https://www.legislation.gov.uk/ukdsi/2019/9780111178102/contents>

### **Matters of special interest to the Constitutional and Legislative Affairs Committee**

The UK Government is of the view that the entire SI is reserved, and therefore did not seek the consent of the Welsh Ministers in bringing forward this SI. However, Welsh Ministers are of the opinion that amendments to the Local Government (Miscellaneous Provisions) Act 1982 do fall within devolved competence, and therefore the consent of the Welsh Ministers should have been sought for this SI. The Minister for Housing and Local Government has written to the UK Government on this point, and has written a letter to CLAC setting out the Welsh Government's views. Although consent was not sought at the time, Welsh Ministers are content with the SI and would not withhold consent.

### **Why consent was given**

There is no policy divergence between the Welsh Government and the UK Government on the policy for the amendments and the substance of the amendments are not considered politically sensitive. Making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to the Local Government (Miscellaneous Provisions) Act 1982