

PART 49

INTERNATIONAL CO-OPERATION

**Contents of this Part**

Notice required to accompany process served outside the United Kingdom and translations	rule 49.1
Proof of service outside the United Kingdom	rule 49.2
Supply of copy of notice of request for assistance abroad	rule 49.3
Persons entitled to appear and take part in proceedings before a nominated court, and exclusion of the public	rule 49.4
Record of proceedings to receive evidence before a nominated court	rule 49.5
Interpreter for the purposes of proceedings involving a television or telephone link	rule 49.6
Record of television link hearing before a nominated court	rule 49.7
Record of telephone link hearing before a nominated court	rule 49.8
Overseas record	rule 49.9
Overseas freezing orders	rule 49.10
Overseas forfeiture orders	rule 49.11
Overseas restraint orders	rule 49.12
Overseas confiscation orders	rule 49.13
Giving effect to a European investigation order for the receipt of oral evidence	rule 49.14
Giving effect to a European investigation order for hearing a person by live link	rule 49.15
Giving effect to a European investigation order by issuing a search warrant or production etc. order	rule 49.16
Application to vary or revoke a search warrant or production, etc. order issued to give effect to a European investigation order	rule 49.17

**Notice required to accompany process served outside the United Kingdom and translations**

**49.1.**—(1) The notice which by virtue of section 3(4)(b) of the Crime (International Co-operation) Act 2003(a) (general requirements for service of process) must accompany any process served outside the United Kingdom must give the information specified in paragraphs (2) and (4) below.

(2) The notice must—

- (a) state that the person required by the process to appear as a party or attend as a witness can obtain information about his rights in connection therewith from the relevant authority; and
- (b) give the particulars specified in paragraph (4) about that authority.

(3) The relevant authority where the process is served—

- (a) at the request of the prosecuting authority, is that authority; or
- (b) at the request of the defendant or the prosecutor in the case of a private prosecution, is the court by which the process is served.

(4) The particulars referred to in paragraph (2) are—

- (a) the name and address of the relevant authority, together with its telephone and fax numbers and e-mail address; and

---

(a) 2003 c. 32.

- (b) the name of a person at the relevant authority who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.

(5) The justices' clerk or Crown Court officer must send, together with any process served outside the United Kingdom —

- (a) any translation which is provided under section 3(3)(b) of the 2003 Act; and
- (b) any translation of the information required to be given by this rule which is provided to him.

(6) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

#### **Proof of service outside the United Kingdom**

**49.2.**—(1) A statement in a certificate given by or on behalf of the Secretary of State—

- (a) that process has been served on any person under section 4(1) of the Crime (International Co-operation) Act 2003 (service of process otherwise than by post);
- (b) of the manner in which service was effected; and
- (c) of the date on which process was served;

shall be admissible as evidence of any facts so stated.

(2) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

#### **Supply of copy of notice of request for assistance abroad**

**49.3.** Where a request for assistance under section 7 of the Crime (International Co-operation) Act 2003 is made by a justice of the peace or a judge exercising the jurisdiction of the Crown Court and is sent in accordance with section 8(1) of the 2003 Act, the justices' clerk or the Crown Court officer shall send a copy of the letter of request to the Secretary of State as soon as practicable after the request has been made.

#### **Persons entitled to appear and take part in proceedings before a nominated court, and exclusion of the public**

**49.4.** A court nominated under section 15(1) of the Crime (International Co-operation) Act 2003 (nominating a court to receive evidence) may—

- (a) determine who may appear or take part in the proceedings under Schedule 1 to the 2003 Act before the court and whether a party to the proceedings is entitled to be legally represented; and
- (b) direct that the public be excluded from those proceedings if it thinks it necessary to do so in the interests of justice.

#### **Record of proceedings to receive evidence before a nominated court**

**49.5.**—(1) Where a court is nominated under section 15(1) of the Crime (International Co-operation) Act 2003 the justices' clerk or Crown Court officer shall enter in an overseas record—

- (a) details of the request in respect of which the notice under section 15(1) of the 2003 Act was given;
- (b) the date on which, and place at which, the proceedings under Schedule 1 to the 2003 Act in respect of that request took place;
- (c) the name of any witness who gave evidence at the proceedings in question;
- (d) the name of any person who took part in the proceedings as a legal representative or an interpreter;

- (e) whether a witness was required to give evidence on oath or (by virtue of section 5 of the Oaths Act 1978(a)) after making a solemn affirmation; and
- (f) whether the opportunity to cross-examine any witness was refused.

(2) When the court gives the evidence received by it under paragraph 6(1) of Schedule 1 to the 2003 Act to the court or authority that made the request or to the territorial authority for forwarding to the court or authority that made the request, the justices' clerk or Crown Court officer shall send to the court, authority or territorial authority (as the case may be) a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

*[Note. As to the keeping of an overseas record, see rule 49.9.]*

### **Interpreter for the purposes of proceedings involving a television or telephone link**

**49.6.**—(1) This rule applies where a court is nominated under section 30(3) (hearing witnesses in the UK through television links) or section 31(4) (hearing witnesses in the UK by telephone) of the Crime (International Co-operation) Act 2003.

(2) Where it appears to the justices' clerk or the Crown Court officer that the witness to be heard in the proceedings under Part 1 or 2 of Schedule 2 to the 2003 Act ('the relevant proceedings') is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the proceedings to translate what is said into English.

(3) Where it appears to the justices' clerk or the Crown Court officer that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the proceedings of the court referred to in section 30(1) or, as the case may be, 31(1) of the 2003 Act ('the external court') will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is either given in a language other than English or is not translated into English by an interpreter, the court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

(5) Where a court in Wales understands Welsh—

- (a) paragraph (2) does not apply where it appears to the justices' clerk or Crown Court officer that the witness in question is likely to give evidence in Welsh;
- (b) paragraph (4) does not apply where the evidence is given in Welsh; and
- (c) any translation which is provided pursuant to paragraph (2) or (4) may be into Welsh instead of English.

### **Record of television link hearing before a nominated court**

**49.7.**—(1) This rule applies where a court is nominated under section 30(3) of the Crime (International Co-operation) Act 2003.

(2) The justices' clerk or Crown Court officer shall enter in an overseas record—

- (a) details of the request in respect of which the notice under section 30(3) of the 2003 Act was given;
- (b) the date on which, and place at which, the proceedings under Part 1 of Schedule 2 to that Act in respect of that request took place;
- (c) the technical conditions, such as the type of equipment used, under which the proceedings took place;
- (d) the name of the witness who gave evidence;
- (e) the name of any person who took part in the proceedings as a legal representative or an interpreter; and

---

(a) 1978 c. 19.

- (f) the language in which the evidence was given.

(3) As soon as practicable after the proceedings under Part 1 of Schedule 2 to the 2003 Act took place, the justices' clerk or Crown Court officer shall send to the external authority that made the request a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

*[Note. As to the keeping of an overseas record, see rule 49.9.]*

#### **Record of telephone link hearing before a nominated court**

**49.8.**—(1) This rule applies where a court is nominated under section 31(4) of the Crime (International Co-operation) Act 2003.

- (2) The justices' clerk or Crown Court officer shall enter in an overseas record—
  - (a) details of the request in respect of which the notice under section 31(4) of the 2003 Act was given;
  - (b) the date, time and place at which the proceedings under Part 2 of Schedule 2 to the 2003 Act took place;
  - (c) the name of the witness who gave evidence;
  - (d) the name of any interpreter who acted at the proceedings; and
  - (e) the language in which the evidence was given.

*[Note. As to the keeping of an overseas record, see rule 49.9.]*

#### **Overseas record**

**49.9.**—(1) The overseas records of a magistrates' court shall be part of the register (within the meaning of section 150(1) of the Magistrates' Courts Act 1980(a)).

- (2) The overseas records of any court shall not be open to inspection by any person except—
  - (a) as authorised by the Secretary of State; or
  - (b) with the leave of the court.

*[Note. As to the making of court records, see rule 5.4.]*

#### **Overseas freezing orders**

**49.10.**—(1) This rule applies where a court is nominated under section 21(1) of the Crime (International Co-operation) Act 2003(b) to give effect to an overseas freezing order.

- (2) Where the Secretary of State serves a copy of such an order on the court officer—
  - (a) the general rule is that the court must consider the order no later than the next business day;
  - (b) exceptionally, the court may consider the order later than that, but not more than 5 business days after service.
- (3) The court must not consider the order unless—
  - (a) it is satisfied that the chief officer of police for the area in which the evidence is situated has had notice of the order; and
  - (b) that chief officer of police has had an opportunity to make representations, at a hearing if that officer wants.
- (4) The court may consider the order—

---

(a) 1980 c. 43; a relevant amendment was made to section 150(1) by paragraph 250 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).  
(b) 2003 c. 32.

- (a) without a hearing; or
- (b) at a hearing, in public or in private.

*[Note. Under sections 20, 21 and 22 of the Crime (International Co-operation) Act 2003, a court nominated by the Secretary of State must consider an order, made by a court or other authority in a country outside the United Kingdom, the purpose of which is to protect evidence in the United Kingdom which may be used in proceedings or an investigation in that other country pending the transfer of that evidence to that country. The court may decide not to give effect to such an order only if—*

- (a) were the person whose conduct is in question to be charged with the offence to which the order relates, a previous conviction or acquittal would entitle that person to be discharged; or*
- (b) giving effect to the order would be incompatible with a Convention right, within the meaning of the Human Rights Act 1998.]*

### Overseas forfeiture orders

**49.11.**—(1) This rule applies where—

- (a) the Crown Court can—
  - (i) make a restraint order under article 5 of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005<sup>(a)</sup>, or
  - (ii) give effect to an external forfeiture order under article 19 of that Order;
- (b) the Director of Public Prosecutions or the Director of the Serious Fraud Office receives—
  - (i) a request for the restraint of property to which article 3 of the 2005 Order applies, or
  - (ii) a request to give effect to an external forfeiture order to which article 15 of the Order applies; and
- (c) the Director wants the Crown Court to—
  - (i) make such a restraint order, or
  - (ii) give effect to such a forfeiture order.

(2) The Director must—

- (a) apply in writing;
- (b) serve the application on the court officer; and
- (c) serve the application on the defendant and on any other person affected by the order, unless the court is satisfied that—
  - (i) the application is urgent, or
  - (ii) there are reasonable grounds for believing that to give notice of the application would cause the dissipation of the property which is the subject of the application.

(3) The application must—

- (a) identify the property the subject of the application;
- (b) identify the person who is or who may become the subject of such a forfeiture order;
- (c) explain how the requirements of the 2005 Order are satisfied, as the case may be—
  - (i) for making a restraint order, or
  - (ii) for giving effect to a forfeiture order;
- (d) where the application is to give effect to a forfeiture order, include an application to appoint the Director as the enforcement authority; and
- (e) propose the terms of the Crown Court order.

---

(a) S.I. 2005/3180.

- (4) If the court allows the application, it must—
- (a) where it decides to make a restraint order—
    - (i) specify the property the subject of the order,
    - (ii) specify the person or persons who are prohibited from dealing with that property,
    - (iii) specify any exception to that prohibition, and
    - (iv) include any ancillary order that the court believes is appropriate to ensure that the restraint order is effective;
  - (b) where it decides to give effect to a forfeiture order, exercise its power to—
    - (i) direct the registration of the order as an order of the Crown Court,
    - (ii) give directions for notice of the order to be given to any person affected by it, and
    - (iii) appoint the applicant Director as the enforcement authority.
- (5) Paragraph (6) applies where a person affected by an order, or the Director, wants the court to vary or discharge a restraint order or cancel the registration of a forfeiture order.
- (6) Such a person must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on the court officer and, as applicable—
    - (i) the other party, and
    - (ii) any other person who will or may be affected;
  - (c) explain why it is appropriate, as the case may be—
    - (i) for the restraint order to be varied or discharged, or
    - (ii) for the registration of the forfeiture order to be cancelled;
  - (d) propose the terms of any variation; and
  - (e) ask for a hearing, if one is wanted, and explain why it is needed.
- (7) The court may—
- (a) consider an application
    - (i) at a hearing, which must be in private unless the court otherwise directs, or
    - (ii) without a hearing;
  - (b) allow an application to be made orally.

*[Note. Under article 19 of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005, on the application of the Director of Public Prosecutions or the Director of the Serious Fraud Office the Crown Court may give effect to an order made by a court in a country outside the United Kingdom for the forfeiture and destruction, or other disposal, of any property in respect of which an offence has been committed in that country, or which was used or intended for use in connection with the commission of such an offence (described in the Order as an 'external forfeiture order').*

*Under article 5 of the 2005 Order, on the application of the Director of Public Prosecutions or the Director of the Serious Fraud Office the Crown Court may make a restraint order prohibiting any specified person from dealing with property, for the purpose of facilitating the enforcement of such a forfeiture order which has yet to be made.]*

### **Overseas restraint orders**

- 49.12.**—(1) This rule applies where—

- (a) the Crown Court can give effect to an overseas restraint order under regulation 10 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(a);
  - (b) the Director of Public Prosecutions or the Director of the Serious Fraud Office receives a request from a court or authority in another European Union member State to give effect to such an order; and
  - (c) the Director serves on the Crown Court officer—
    - (i) the certificate which accompanied the request for enforcement of the order,
    - (ii) a copy of the order restraining the property to which that certificate relates, and
    - (iii) a copy of an order confiscating the property in respect of which the restraint order was made, or an indication of when such a confiscation order is expected.
- (2) On service of those documents on the court officer—
- (a) the general rule is that the Crown Court must consider the order, with a view to its registration, no later than the next business day;
  - (b) exceptionally, the court may consider the order later than that, but not more than 5 business days after service.
- (3) The court—
- (a) must not consider the order unless the Director—
    - (i) is present, or
    - (ii) has had a reasonable opportunity to make representations;
  - (b) subject to that, may consider the order—
    - (i) at a hearing, which must be in private unless the court otherwise directs, or
    - (ii) without a hearing.
- (4) If the court decides to give effect to the order, the court must—
- (a) direct its registration as an order of the Crown Court; and
  - (b) give directions for notice of the order to be given to any person affected by it.
- (5) Paragraph (6) applies where a person affected by the order, or the Director, wants the court to cancel the registration or vary the property to which the order applies.
- (6) Such a person must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on the court officer and, as applicable—
    - (i) the other party, and
    - (ii) any other person who will or may be affected;
  - (c) explain, as applicable—
    - (i) when the overseas restraint order ceased to have effect in the European Union member State in which it was made,
    - (ii) why continuing to give effect to that order would be impossible as a consequence of an immunity under the law of England and Wales,
    - (iii) why continuing to give effect to that order would be incompatible with a Convention right within the meaning of the Human Rights Act 1998,
    - (iv) why therefore it is appropriate for the registration to be cancelled or varied;
  - (d) include with the application any evidence in support;
  - (e) propose the terms of any variation; and
  - (f) ask for a hearing, if one is wanted, and explain why it is needed.

---

(a) S.I. 2014/3141.

*[Note. See regulations 8, 9 and 10 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014.*

*An overseas restraint order is an order made by a court or authority in a European Union member State which—*

- (a) relates to—*
  - (i) criminal proceedings instituted in that state, or*
  - (ii) a criminal investigation being carried on there; and*
- (b) prohibits dealing with property in England and Wales which the 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.*

*Where this rule applies, the Crown Court—*

- (a) may decide not to give effect to an overseas restraint order only if that would be—*
  - (i) impossible as a consequence of an immunity under the law of England and Wales, or*
  - (ii) incompatible with a Convention right within the meaning of the Human Rights Act 1998;*
- (b) may postpone giving effect to an overseas restraint order in respect of any property—*
  - (i) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or*
  - (ii) if, under an order made by a court in criminal proceedings in the UK, the property may not be dealt with;*
- (c) may cancel a registration, or vary the property to which an order applies, if or to the extent that—*
  - (i) any of the circumstances listed in paragraph (a) of this note applies, or*
  - (ii) the order has ceased to have effect in the member State in which it was made.*

*Under regulation 10(6) of the 2014 Regulations, 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 European Union member State may be considered by the court.*

*Under regulation 3 of the 2014 Regulations, a reference to the proceeds of criminal conduct includes a reference to—*

- (a) any property which wholly or partly, and directly or indirectly, represents the proceeds of an offence (including payments or other rewards in connection with the commission of an offence); and*
- (b) any property which is the equivalent to the full value or part of the value of such property.]*

### **Overseas confiscation orders**

**49.13.**—(1) This rule applies where—

- (a) the Crown Court can give effect to an overseas confiscation order under regulation 15 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(a);
- (b) the Director of Public Prosecutions or the Director of the Serious Fraud Office receives a request from a court or authority in another European Union member State to give effect to such an order; and
- (c) the Director serves on the Crown Court officer—

---

(a) S.I. 2014/3141.



- (i) the certificate which accompanied the request for enforcement of the order, and
  - (ii) a copy of the confiscation order to which that certificate relates.
- (2) The court—
- (a) must not consider the order unless the Director—
    - (i) is present, or
    - (ii) has had a reasonable opportunity to make representations;
  - (b) subject to that, may consider the order—
    - (i) at a hearing, which must be in private unless the court otherwise directs, or
    - (ii) without a hearing.
- (3) If the court decides to give effect to the order, the court must—
- (a) direct its registration as an order of the Crown Court; and
  - (b) give directions for notice of the order to be given to any person affected by it.
- (4) Paragraph (5) applies where a person affected by the order, or the Director, wants the court to cancel the registration or vary the property to which the order applies.
- (5) Such a person must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on the court officer and, as applicable—
    - (i) the other party, and
    - (ii) any other person who will or may be affected;
  - (c) explain, as applicable—
    - (i) when the overseas confiscation order ceased to have effect in the European Union member State in which it was made,
    - (ii) why continuing to give effect to that order would be statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of England and Wales,
    - (iii) why continuing to give effect to that order would be impossible as a consequence of an immunity under the law of England and Wales,
    - (iv) why continuing to give effect to that order would be incompatible with a Convention right within the meaning of the Human Rights Act 1998,
    - (v) why therefore it is appropriate for the registration to be cancelled or varied;
  - (d) include with the application any evidence in support;
  - (e) propose the terms of any variation; and
  - (f) ask for a hearing, if one is wanted, and explain why it is needed.

*[Note. See regulations 13, 14 and 15 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(a).*

*An overseas confiscation order is an order made by a court or authority in a European Union member State for the confiscation of property which is in England and Wales, or is the property of a resident of England and Wales, and which the 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.*

*Where this rule applies, the Crown Court—*

- (a) may decide not to give effect to an overseas confiscation order only if that would be—*

---

(a) S.I. 2014/3141.

- (i) *statute-barred, provided that the criminal conduct that gave rise to the order falls within the jurisdiction of England and Wales,*
- (ii) *impossible as a consequence of an immunity under the law of England and Wales, or*
- (iii) *incompatible with a Convention right within the meaning of the Human Rights Act 1998;*
- (b) *may postpone giving effect to an overseas confiscation order in respect of any property—*
  - (i) *in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom,*
  - (ii) *where the court considers that there is a risk that the amount recovered through the execution of the order in England and Wales may exceed the amount specified in the order because of the simultaneous execution of the order in more than one member State,*
  - (iii) *if, under an order made by a court in criminal proceedings in the UK, the property may not be dealt with, or the property is subject to proceedings for such an order, or*
  - (iv) *if a person affected by the order has applied to cancel the registration, or vary the property to which it applies;*
- (c) *may cancel a registration, or vary the property to which an order applies, if or to the extent that—*
  - (i) *any of the circumstances listed in paragraph (a) of this note applies, or*
  - (ii) *the order has ceased to have effect in the member State in which it was made.]*

*Under regulation 15(7) of the 2014 Regulations, 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 European Union member State may be considered by the court.*

*Regulation 3 of the 2014 Regulations applies also where this rule applies. See the note to rule 49.12.]*

### **Giving effect to a European investigation order for the receipt of oral evidence**

**49.14.**—(1) This rule applies where a court is nominated under regulation 35 of the Criminal Justice (European Investigation Order) Regulations 2017(a) to give effect to a European investigation order by—

- (a) examining a witness; and
- (b) transmitting the product to the participating State in which the order was made.

(2) The court—

- (a) must give effect to the order within 90 days beginning with the day after the day on which the court is nominated, unless a different period is agreed between the court, the Secretary of State and the issuing authority in the participating State in which the order was made;
- (b) must conduct the examination in accordance with Schedule 5 to the 2017 Regulations;
- (c) subject to that, may conduct the examination—
  - (i) in public or in private,
  - (ii) in the presence of such other persons as the court allows.

(3) Subject to paragraph (2) and to such adaptations as the court directs, the court must receive the witness' evidence as if it were given at trial and to that extent—

- (a) Part 17 (Witness summonses, warrants and orders) applies to the exercise of the power to secure a witness' attendance under paragraph 2 of Schedule 5 to the 2017 Regulations as if that power were one of those listed in rule 17.1(a) (When this Part applies);

---

(a) S.I. 2017/730.

- (b) rule 24.4 (Evidence of a witness in person) applies where the evidence is received in a magistrates' court;
- (c) rule 25.11 (Evidence of a witness in person) applies where the evidence is received in the Crown Court.

*[Note. The Criminal Justice (European Investigation Order) Regulations 2017 give effect in the United Kingdom to Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters. Schedule 2 to the Regulations lists participating States.]*

*Under regulation 35 of the 2017 Regulations (Nominating a court, etc. to receive evidence from a person) the Secretary of State may nominate a court to give effect to a European investigation order by receiving the evidence to which the order relates.]*

### **Giving effect to a European investigation order for hearing a person by live link**

**49.15.**—(1) This rule applies where a court is nominated under regulation 36 or 37 of the Criminal Justice (European Investigation Order) Regulations 2017 to give effect to a European investigation order by—

- (a) facilitating the giving of oral evidence by live video or audio link by a person who is in England and Wales in proceedings in the participating State in which the order was made; and
- (b) superintending the giving of evidence by that person by those means.

(2) The court—

- (a) must give effect to the order within 90 days beginning with the day after the day on which the court is nominated, unless a different period is agreed between the court, the Secretary of State and the issuing authority in the participating State in which the order was made;
- (b) must conduct the proceedings—
  - (i) in accordance with Schedule 6 to the 2017 Regulations,
  - (ii) subject to that, under the supervision of the court which receives the evidence in the participating State in which the order was made;
- (c) subject to paragraph (2)(b), may conduct the proceedings—
  - (i) in public or in private,
  - (ii) in the presence of such other persons as the court allows.

(3) Subject to paragraph (2) and to such adaptations as the court directs, the court must conduct the proceedings as if the witness were giving evidence at a trial in England and Wales and to that extent—

- (a) Part 17 (Witness summonses, warrants and orders) applies to the exercise of the power to secure a witness' attendance under paragraph 2 of Schedule 6 to the 2017 Regulations as if that power were one of those listed in rule 17.1(a) (When this Part applies);
- (b) rule 24.4 (Evidence of a witness in person) applies where the proceedings take place in a magistrates' court;
- (c) rule 25.11 (Evidence of a witness in person) applies where the proceedings take place in the Crown Court.

*[Note. Under regulation 36 or regulation 37 of the Criminal Justice (European Investigation Order) Regulations 2017 (respectively, Hearing a person through videoconference or other audio visual transmission and Hearing a person by telephone conference) the Secretary of State may nominate a court to give effect to a European investigation order by requiring a person to give evidence, under the court's superintendence, by live video or audio link (described in the Regulations as 'videoconference or other audio visual transmission' and as 'telephone conference' respectively) in proceedings before a court in a participating State.]*

**Giving effect to a European investigation order by issuing a search warrant or production, etc. order**

**49.16.**—(1) This rule applies where—

- (a) a court is nominated under regulation 38 of the Criminal Justice (European Investigation Order) Regulations 2017 (Search warrants and production orders: nominating a court) to give effect to a European investigation order by issuing—
  - (i) a search warrant under regulation 39(1) (Search warrants and production orders: giving effect to the European investigation order),
  - (ii) a production order in respect of excluded material or special procedure material under regulation 39(2), or
  - (iii) a search warrant in respect of excluded material or special procedure material under regulation 39(8);
- (b) a court is nominated under regulation 43 of the 2017 Regulations (Nominating a court to make a customer information order or an account monitoring order) to give effect to a European investigation order by making—
  - (i) a customer information order under regulation 44 (Court’s power to make a customer information order), or
  - (ii) an account monitoring order under regulation 45 (Court’s power to make an account monitoring order).

(2) The Secretary of State must serve on the court officer a draft warrant or order in terms that give effect to the European investigation order.

(3) The court must consider the European investigation order—

- (a) without a hearing, as a general rule; and
- (b) within 5 business days beginning with the day after the day on which the court is nominated, unless a different period is agreed between the court and the Secretary of State.

(4) The court must not give effect to the European investigation order unless it is satisfied that each of the following authorities has had notice of that order and has had an opportunity to make representations, at a hearing if that authority wants—

- (a) the relevant chief officer of police; and
- (b) any other authority that will be responsible for the execution of the warrant or order.

*[Note. Under regulations 38, 39, 43, 44 and 45 of the Criminal Justice (European Investigation Order) Regulations 2017 the Secretary of State may nominate a court to give effect to a European investigation order by means of one of the warrants or orders listed in rule 49.16 and must send that court the order. Under regulations 38(5) and 43(5) the Secretary of State must send a copy of the European investigation order to the chief officer of police for the police area in which the evidence is situated, in the case of a search warrant or production order or, in the case of a customer information order or account monitoring order, to the chief officer of police for a police area appearing to the Secretary of State to be the appropriate chief officer to receive it.*

*Under regulation 39(5), (6) or 46 the court may refuse to give effect to the European investigation order only if the court is of the opinion that—*

- (a) *the execution of the European investigation order would be contrary to the principle of ne bis in idem;*
- (b) *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(a));*

---

(a) 1998 c. 42.

- (c) *there are substantial grounds for believing that the European investigation order has been issued for the purpose of prosecuting or punishing a person on account of that person's sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions;*
- (d) *there are substantial grounds for believing that 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.*

*Under regulation 39(7) or 47 the court may postpone giving effect to the European investigation order if—*

- (a) *to do so might prejudice a criminal investigation or proceedings taking place in the United Kingdom; or*
- (b) *if, under an order made by a court in criminal proceedings in the United Kingdom, the evidence may not be removed from the United Kingdom.]*

**Application to vary or revoke a search warrant or production etc. order issued to give effect to a European investigation order**

**49.17.**—(1) This rule applies where—

- (a) under regulation 41 of the Criminal Justice (European Investigation Order) Regulations 2017 (Power to revoke or vary a search warrant or production order or to authorise the release of evidence seized or produced) the court can vary or revoke—
  - (i) a search warrant issued under regulation 39(1) of the 2017 Regulations,
  - (ii) a production order issued in respect of excluded material or special procedure material under regulation 39(2),
  - (iii) a search warrant issued in respect of excluded material or special procedure material under regulation 39(8);
- (b) under regulation 41 of the 2017 Regulations the court can authorise the release of evidence seized by or produced to a constable on the execution of a search warrant or production order issued on an application under rule 49.16;
- (c) under regulation 48 of the 2017 Regulations (Power to vary or revoke customer information and account monitoring orders) the court can vary or revoke—
  - (i) a customer information order issued under regulation 44,
  - (ii) an account monitoring order issued under regulation 45.

(2) The applicant must—

- (a) apply in writing and serve the application on—
  - (i) the court officer, and as appropriate
  - (ii) the chief officer of police to whom the European investigation order was sent by the Secretary of State,
  - (iii) any other person affected by the warrant or order;
- (b) demonstrate that the applicant is, as the case may be—
  - (i) the chief officer of police to whom the European investigation order was sent by the Secretary of State, or
  - (ii) any other person affected by the warrant or order.

(3) An application to vary a warrant or order must propose the terms of the variation.

(4) An application to revoke a warrant or order or to authorise the release of evidence seized or produced must indicate, as the case may be, that—

- (a) the European investigation order has been withdrawn or no longer has effect in the participating State in which it was issued; or

- (b) one of the grounds for refusing to give effect to the order obtains.
- (5) Where the court—
- (a) varies a warrant or order to which this rule applies the court officer must promptly serve a copy of that warrant or order, as varied, on the Secretary of State;
  - (b) revokes such a warrant or order the court officer must promptly notify the Secretary of State.