

APPLICATION FOR CONDITIONAL BAIL WITH RESIDENCE IN EU MEMBER STATE: NOTES FOR USE WITH THE FORMS OF DRAFT ORDER AND DRAFT CERTIFICATE

(Criminal Procedure Rules, rr.14.7 & 14.16; Criminal Justice & Data Protection (Protocol No. 36) Regulations 2014, regulations 77 – 84; EU Council Framework Decision 2009/829/JHA)

These notes explain ESO bail and how to complete the forms.

These notes and the associated forms of draft order and draft certificate are for use with a notice of application under CrimPR 14.7 where a defendant wants the court to grant bail with a condition or conditions to be supervised in a European Union member State other than the UK, under EU Council Framework Decision 2009/829/JHA (the European Supervision Order (ESO) Framework Decision).

When you have completed all three forms, i.e. (i) the notice of application under CrimPR 14.7, (ii) the draft order and (iii) the draft certificate, send copies of all three to:

- (a) the court,**
- (b) each other party to the case, and**
- (c) any surety or proposed surety who this application will affect.**

If you use electronic versions of the forms, the spaces to enter information will expand¹. If you use paper versions and need more space, you may attach extra sheets.

Background information

The European Supervision Order is a measure which allows those accused of crime in certain circumstances to return to their home EU member State while awaiting trial in another member State, instead of being held in custody or subject to conditional bail in the State in which they are due to be tried.

ESO bail allows a defendant to return home to continue with normal life, work or study. It therefore allows courts to return a non-UK resident defendant to his or her home member State to be supervised there whilst awaiting trial. This relieves domestic authorities of the responsibility and costs of the detention or supervision of the defendant and allows them to return to their home country.

An ESO provides a legal framework for the transfer of responsibility to supervise bail conditions from one member State (the 'issuing' member State) to another (the defendant's home member State – the 'executing' State). The ESO assumes the suspect will return voluntarily for trial when required. If not, a European Arrest Warrant can be used to enforce return.

The ESO has been made part of UK law by the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014, SI 2014/3141.

The EU Framework Decision can be read at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009F0829>

The UK Regulations can be read at: <http://www.legislation.gov.uk/uksi/2014/3141/contents/made>

Extracts from the Framework Decision and Regulations are appended to these notes.

¹ Forms for use with the Rules are at: www.justice.gov.uk/courts/procedure-rules/criminal/formspage.

General considerations

Any authority identified as a competent authority for the purposes of the EU Framework Decision can issue an ESO. In England and Wales, the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 provide that a magistrates' court, the Crown Court, the High Court or the Court of Appeal can grant bail, with conditions supervised by another member State, to a defendant charged with an offence.

An ESO can be issued in cases where supervised bail in the UK would be appropriate; the court is satisfied that the defendant is ordinarily resident in the executing member State (or the executing State has agreed to supervise the defendant); and that appropriate monitoring arrangements can be made in the executing State.

An ESO will not be appropriate in a case in which there would be concerns about public safety if the defendant were at liberty in the community. Such defendants are likely still to be remanded in custody pending trial despite the potential availability of ESO bail. ESO bail is also unlikely to be appropriate if the court is satisfied that unconditional bail should be granted.

The UK central authority

Under regulation 76 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014, the central authority for England and Wales means the Lord Chancellor, who acts through the Central Authority for the Reciprocal Recognition of European Supervision Orders ('CARREUSO') at Westminster Magistrates' Court, 181 Marylebone Road, London NW1 5BR. Enquiries should be directed to:

CARREUSO@hmcts.gsi.gov.uk

Contact details - Tel: - +44 020 3126 3029

Office opening times - Monday to Friday 9am to 4.30pm

The ESO process

The court must be satisfied that the offence with which the defendant is charged is one to which Article 14 of the Framework Decision applies, and must be satisfied that the conditions of bail which the court thinks appropriate to impose are ones to which Article 8 applies.

The court can be expected to enquire into the background to the request and to satisfy itself that the defendant has e.g. family and/or community ties/residence/job in the proposed executing State. Article 9(2) of the Framework Decision allows for the possibility of ESO bail being supervised in a member State other than the State in which the defendant ordinarily lives, as long as that other State has agreed to do so. It may be that the defendant works away from home and is concerned to keep his employment whilst awaiting trial.

Article 22 of the Framework Decision provides for consultation between the issuing and executing States and requires that unless impracticable such consultation should take place before the court's order and the ESO certificate are submitted formally to the executing State. The court can be expected to take this opportunity through CARREUSO to make enquiries of the proposed executing State to confirm the identity and residence of the defendant, to obtain details of any previous criminal record or other relevant information, if not already available, and to ascertain the executing State's likely formal response to the proposed request.

Depending upon the outcome of those enquiries, if the court decides to grant ESO bail then the court's order and the ESO certificate must be sent to CARREUSO which will arrange for their translation into the language of the executing State unless that State accepts documents in English.

Once the court's order and the ESO certificate are submitted formally to the executing State through CARREUSO, under Article 12 of the Framework Decision the executing State has 20 working days within which formally to decide whether or not to recognise the court's order and supervise the bail conditions. For that reason any order granting bail should provide for the conditions with which the defendant must comply in the meantime. Depending on the circumstances, it may be possible for the order to make adequate provision without requiring a further hearing once the executing State's decision has been received.

CARREUSO must be notified of any significant developments in the case while the decision of the executing State is awaited so that relevant information which may affect the request can be passed on without delay.

If the defendant's passport or other identity document has been retained the court will need to consider how these documents should be returned to enable the defendant to travel; and will need to decide whether a notice to the defendant of the executing State's decision will suffice, or whether a further hearing must be convened. The prescribed form of draft order includes some common potential provisions, but those may not be appropriate in all cases.

Responsibility for making the necessary travel arrangements rests exclusively with the defendant.

Once the court is notified by CARREUSO that the executing State has agreed to monitor ESO bail the responsibilities of the court in relation to the monitoring of bail requirements ceases. However, the court still has jurisdiction to make certain other decisions such as the variation of the bail (supervision) requirements, and any such subsequent decision must be communicated to CARREUSO.

If the executing State decides that one or more of the grounds for refusal of recognition are met, then they must inform the court immediately through CARREUSO stating the grounds on which the refusal is based.

Completing the draft order

It is the responsibility of the court to decide with what conditions of bail the defendant must comply while in the United Kingdom and while in the executing State. What conditions are appropriate will depend upon the circumstances of each case. However, unless the court otherwise directs the draft order should be prepared so as to include the conditions with which the defendant offers to comply (i) in the United Kingdom, both before travelling to the executing State and on return to the UK from that State, and (ii) in the proposed executing State (having regard to Article 8 of the Framework Decision).

The draft order should provide also for the defendant's proposals for notifying him or her of the grant or refusal of permission to travel, on the court's receipt of the executing State's decision whether or not to supervise the conditions imposed by the court.

Completing the draft certificate

The content of the certificate required by Article 10 of the Framework Decision is prescribed by the Framework Decision and must not be altered. The applicant should complete, as far as possible, sections (a), (d), (e), (f), (g) and (h). The information required by sections (b) and (c) will be entered by court staff. The final endorsement will be added by the court when satisfied with the content of the certificate.

It is important to include a full summary of the alleged circumstances in section (f), paragraph 1, under the heading 'The Alleged Offences', even if those circumstances are in dispute. The competent authority in the executing State may reject the request to supervise bail conditions there if the information given is incomplete.

Breach of ESO bail conditions

If an ESO bail condition is broken in the executing State then as soon as the relevant authority becomes aware of it they must alert CARREUSO to the circumstances of the breach and the UK court must decide what to do. If the defendant has committed a crime according to the law of the executing State, then they will be dealt with there for that crime.

If a defendant does not return to the United Kingdom when required, consideration will be given to issuing a European arrest warrant to secure his or her return. In any event, if the defendant fails to attend court on the date required the trial may go ahead in his or her absence.

Appendix

Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014

Requests to other member States for monitoring supervision measures

77.—(1) A court which makes a decision on supervision measures may request a competent authority of a member State other than the United Kingdom (“the executing State”) to monitor the supervision measures under the Framework Decision where—

- (a) the measures are suitable for monitoring in the executing State, and
- (b) the executing State is one to which the request may be made.

(2) To make the request, the court must—

- (a) issue a certificate requesting monitoring under the Framework Decision in respect of the decision on supervision measures, and
- (b) give the following documents to the competent authority or to the central authority of the executing State.

(3) The documents are—

- (a) the decision on supervision measures or a certified copy of it,
- (b) the certificate, and
- (c) a copy of the certificate translated into the official language, or one of the official languages, of the executing State.

(4) But paragraph (3)(c) does not apply if—

- (a) English is an official language of the executing State, or
- (b) the executing State has declared under Article 24 of the Framework Decision that it will accept a certificate translated into English.

(5) A court makes a “decision on supervision measures” if—

- (a) it grants bail in accordance with the Bail Act 1976, as modified by regulation 78, to a person who is charged with an offence, and
- (b) requirements are imposed on the person in accordance with section 3(6) of that Act (general provisions), as so modified, as a condition of bail.

(6) “Supervision measures” means the requirements imposed on the person as a condition of bail.

(7) A supervision measure is “suitable for monitoring in the executing State” if it constitutes—

- (a) a supervision measure of a kind mentioned in Article 8(1) of the Framework Decision (types of supervision measures), or
- (b) a supervision measure of a kind which the executing State has given notice, under Article 8(2) of that Decision, that it is prepared to monitor.

(8) The executing State is “one to which the request may be made” if—

- (a) the person is lawfully and ordinarily resident in the executing State and consents to return to that State with a view to the supervision measures being monitored there under the Framework Decision, or
- (b) the person is not lawfully and ordinarily resident in the executing State but—
 - (i) the person asks for the request to be made to a competent authority of the executing State, and
 - (ii) the competent authority consents to the making of the request.

(9) In regulations 78 to 84—

“the competent authority of the executing State”, in relation to a request under this regulation, means the competent authority to which the request is made;

“decision on supervision measures” and “supervision measures” are to be read in accordance with this regulation;

“the executing State”, in relation to a request under this regulation, means the member State of the competent authority to which the request is made.

Consultation and exchange of information

84.—(1) A court which is considering making a request under regulation 77 for a competent authority of a member State other than the United Kingdom to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—

- (a) while preparing the documents mentioned in paragraph (3) of that regulation, or

- (b) at the latest, before giving those documents to the competent authority or to the central authority of that State.
- (2) A court which has made a request under regulation 77 for the competent authority of the executing State to monitor supervision measures under the Framework Decision must, unless impracticable, consult the competent authority—
- (a) at such times as it considers necessary, with a view to facilitating the smooth and efficient monitoring of the supervision measures;
 - (b) if the competent authority notifies it, in accordance with Article 19(3) of the Framework Decision (obligations of the authorities involved), of a serious breach of those measures.
- (3) In consulting under this regulation, the court must co-operate with the competent authority with a view to the exchange of any useful information, including—
- (a) information for verifying the identity and place of residence of the person concerned, and
 - (b) relevant information taken from the person's criminal records in accordance with applicable legislation including Part 6 of these Regulations.
- (4) The court must take due account of any indications communicated by the competent authority as to the risk the person may pose to victims and the general public.

EU Framework Decision 2009/829/JHA

Article 8

Types of supervision measures

1. This Framework Decision shall apply to the following supervision measures:
 - (a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
 - (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
 - (c) an obligation to remain at a specified place, where applicable during specified times;
 - (d) an obligation containing limitations on leaving the territory of the executing State;
 - (e) an obligation to report at specified times to a specific authority;
 - (f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.
2. Each Member State shall notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, which supervision measures, apart from those referred to in paragraph 1, it is prepared to monitor. These measures may include in particular:
 - (a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;
 - (b) an obligation not to drive a vehicle;
 - (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
 - (d) an obligation to undergo therapeutic treatment or treatment for addiction;
 - (e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.
3. The General Secretariat of the Council shall make the information received under this Article available to all Member States and to the Commission.

Article 9

Criteria relating to the Member State to which the decision on supervision measures may be forwarded

1. A decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State.

2. The competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.
3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a decision on supervision measures in cases pursuant to paragraph 2.
4. Each Member State shall make a statement to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a statement at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 10

Procedure for forwarding a decision on supervision measures together with the certificate

1. When, in application of Article 9(1) or (2), the competent authority of the issuing State forwards a decision on supervision measures to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I.
2. The decision on supervision measures or a certified copy of it, together with the certificate, shall be forwarded by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the decision on supervision measures, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.
3. The certificate shall be signed, and its content certified as accurate, by the competent authority in the issuing State.
4. The certificate referred to in paragraph 1 of this Article shall include, apart from the measures referred to in Article 8(1), only such measures as notified by the executing State in accordance with Article 8(2).
5. The competent authority in the issuing State shall specify:
 - (a) where applicable, the length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible; and
 - (b) on an indicative basis, the provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded.
6. The competent authority in the issuing State shall forward the decision on supervision measures together with the certificate only to one executing State at any one time.
7. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network, in order to obtain the information from the executing State.
8. When an authority in the executing State which receives a decision on supervision measures together with a certificate has no competence to recognise that decision, this authority shall, ex officio, forward the decision together with the certificate to the competent authority.

Article 14

Double criminality

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the decision on supervision measures:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,

- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

...

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the decision on supervision measures subject to the condition that the decision relates to acts which also constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

...