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Crime (Overseas Production Orders) Act 2019

MARCH 2019

The Crime (Overseas Production Orders) Act 2019 (Act), which received Royal Assent on 12 February 2019, enables UK law enforcement authorities and prosecutors to apply to the UK Courts for an Overseas Production Order (OPO) to obtain electronic data directly from persons based outside the UK for the purposes of criminal investigations and prosecutions for serious crime. An OPO can include a requirement to produce the electronic data specified or described in the OPO, or to give access to it, regardless of where the electronic data is stored. Data protected by legal privilege and confidential personal records are defined as excepted electronic data within the Act and must not form part of the OPO.

An application for an OPO can only be made against a person who operates in or who is based in a country or territory outside the UK which is party to or participates in a "designated international co-operation arrangement", that being a treaty relating to the provision of mutual assistance in connection with the investigation or prosecution of offences. At present, the UK is prioritising the negotiation of such a treaty with the United States, it being the location of most global technology companies.

So, for the time being UK law enforcement will need to continue to request electronic data (held in Guernsey) for evidential use through the existing mutual legal assistance process. However, it is possible that a designated international co-operation arrangement could be agreed between the UK and Guernsey in the future. We will keep you posted as and when that happens.

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