

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Mutual Assistance in Criminal Matters

Chapter 3: Hearing Evidence through Television Links or by Telephone

Section 29: Hearing witnesses abroad through television links

87. Article 10 of the MLAC permits the hearing of witnesses by video link where it is neither possible nor desirable for the witness to travel from his Member State to that where his evidence is required.
88. Outgoing requests from the UK are currently covered by the provisions contained in section 32 of the Criminal Justice Act 1988, and section 273 of the Criminal Procedure (Scotland) Act 1995, which allow the use of video links in limited circumstances. The Act does not change the current position on the types of case when video links can be used to import evidence into UK court proceedings, although the section makes provision for the Secretary of State (or, in relation to Scotland, the Scottish Ministers) to extend this provision to other types of criminal proceedings in the future.

Section 30: Hearing witnesses in the UK through television links

89. This section introduces arrangements so that, for the first time, courts can take video evidence of witnesses for transmission abroad. All requests will be sent to the Secretary of State, (or, in Scotland, the Lord Advocate), who will then nominate a court where the hearing will take place. The proceedings will be subject to section 1 of the Perjury Act 1911, (in Northern Ireland, Article 3 of the Perjury (Northern Ireland) Order 1979, and, in Scotland, sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 or any matter pertaining to the common law crime of perjury), and the rules on contempt of court will apply to the hearing. Although the hearing will not be a UK court proceeding, states must (in accordance with Article 10(8) of the MLAC), be able to deal with witnesses who refuse to testify or do not testify according to the truth under their domestic law.
90. Subsection (6) makes reference to Schedule 2 to the Act which makes provision on procedural matters such as securing attendance of witnesses, the conduct of the hearing, and witness privilege. The domestic court must ensure that it protects the rights and privileges of the witness (such as the privilege against self-incrimination) and is to intervene where necessary to safeguard the rights of the witness. Translation must be available for the benefit of the court as well as the witness.

Section 31: Hearing witnesses in the UK by telephone

91. Article 11 of the MLAC allows for courts to hear witnesses or experts by telephone within the scope of national law. This section allows the UK to respond to requests for assistance in arranging telephone hearings at the request of a participating country. All requests will be sent to the Secretary of State, (in Scotland, the Lord Advocate) who will then nominate a court where the hearing will take place. Unlike the provisions concerning evidence by television link, the witness or expert has to give his consent, in accordance with Article 11(2) of the MLAC, and subsection (3) provides that a request for a person to give evidence in this way must state that the witness is willing to give evidence. There is, therefore, no power to compel witnesses to attend the hearing. As with section 30, proceedings will be subject to the law on perjury, and the rules on contempt of court will apply to the hearing, but, except for these limited purposes, the evidence given before the nominated court is not to be treated as evidence given in UK proceedings. Some countries find telephone hearings a useful means of taking routine statements from key witnesses. As UK law does not provide any scope for evidence to be heard in this way there is no provision made here for outgoing requests.