



# Crime (International Co-operation) Act 2003

## 2003 CHAPTER 32

### PART 1

#### MUTUAL ASSISTANCE IN CRIMINAL MATTERS

### CHAPTER 2

#### MUTUAL PROVISION OF EVIDENCE

#### *Overseas freezing orders*

## 20 Overseas freezing orders

- (1) Section 21 applies where an overseas freezing order made by a court or authority in a participating country is received from the court or authority which made or confirmed the order by the territorial authority for the part of the United Kingdom in which the evidence to which the order relates is situated.
- (2) An overseas freezing order is an order—
  - (a) for protecting, pending its transfer to the participating country, evidence which is in the United Kingdom and may be used in any proceedings or investigation in the participating country, and
  - (b) in respect of which the following requirements of this section are met.
- (3) The order must have been made by—
  - (a) a court exercising criminal jurisdiction in the country,
  - (b) a prosecuting authority in the country,
  - (c) any other authority in the country which appears to the territorial authority to have the function of making such orders.

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**Changes to legislation:** *Crime (International Co-operation) Act 2003, Cross Heading: Overseas freezing orders is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (4) The order must relate to—
- (a) criminal proceedings instituted in the participating country in respect of a listed offence, or
  - (b) a criminal investigation being carried on there into such an offence.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the territorial authority has the information in question.
- (6) The certificate must—
- (a) be signed by or on behalf of the court or authority which made or confirmed the order,
  - (b) include a statement as to the accuracy of the information given in it,
  - (c) if it is not in English, include a translation of it into English (or, if appropriate, Welsh).
- The signature may be an electronic signature.
- (7) The order must be accompanied by a request for the evidence to be sent to a court or authority mentioned in section 13(2), unless the certificate indicates when such a request is expected to be made.
- (8) References below in this Chapter to an overseas freezing order include its accompanying certificate.

**Commencement Information**

**II** S. 20 in force at 19.10.2009 by [S.I. 2009/2605](#), [art. 2\(b\)](#)

## 21 Considering the order

- (1) In relation to England and Wales and Northern Ireland, where this section applies the Secretary of State must—
- (a) by a notice nominate a court in England and Wales or (as the case may be) Northern Ireland to give effect to the overseas freezing order,
  - (b) send a copy of the overseas freezing order to the nominated court and to the chief officer of police for the area in which the evidence is situated,
  - (c) tell the chief officer which court has been nominated.
- (2) In relation to Scotland, where this section applies the Lord Advocate must—
- (a) by a notice nominate a sheriff to give effect to the overseas freezing order,
  - (b) send a copy of the overseas freezing order to the sheriff and to the procurator fiscal.
- In relation to Scotland, references below in this section and in sections 22 to 25 to the nominated court are to be read as references to the nominated sheriff.
- (3) The nominated court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.

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- (4) Before giving effect to the overseas freezing order, the nominated court must give the chief officer of police or (as the case may be) the procurator fiscal an opportunity to be heard.
- (5) The court may decide not to give effect to the overseas freezing order only if, in its opinion, one of the following conditions is met.
- (6) The first condition is that, if the person whose conduct is in question were charged in the participating country with the offence to which the overseas freezing order relates or in the United Kingdom with a corresponding offence, he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.
- (7) The second condition is that giving effect to the overseas freezing order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).

#### Commencement Information

**I2** S. 21 in force at 19.10.2009 by [S.I. 2009/2605](#), [art. 2\(b\)](#)

## 22 Giving effect to the order

- (1) The nominated court is to give effect to the overseas freezing order by issuing a warrant authorising a constable—
  - (a) to enter the premises to which the overseas freezing order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates, and
  - (b) to seize and retain any evidence for which he is authorised to search.
- (2) But, in relation to England and Wales and Northern Ireland, so far as the overseas freezing order relates to excluded material or special procedure material the court is to give effect to the order by making a production order.
- (3) A production order is an order for the person who appears to the court to be in possession of the material to produce it to a constable before the end of the period of seven days beginning with the date of the production order or such longer period as the production order may specify.
- (4) The constable may take away any material produced to him under a production order; and the material is to be treated for the purposes of section 21 of the Police and Criminal Evidence Act 1984 (c. 60) or (as the case may be) Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/ 1341 (N.I.12)) (access and copying) as if it had been seized by the constable.
- (5) If a person fails to comply with a production order, the court may (whether or not it deals with the matter as a contempt of court) issue a warrant under subsection (1) in respect of the material to which the production order relates.
- (6) Section 409 of the Proceeds of Crime Act 2002 (c. 29) (jurisdiction of sheriff) has effect for the purposes of subsection (1) as if that subsection were included in Chapter 3 of Part 8 of that Act.

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**Commencement Information**

**I3** S. 22 in force at 19.10.2009 by [S.I. 2009/2605](#), [art. 2\(b\)](#)

## 23 Postponed effect

The nominated court may postpone giving effect to an overseas freezing order in respect of any evidence—

- (a) in order to avoid prejudicing a criminal investigation which is 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.

**Commencement Information**

**I4** S. 23 in force at 19.10.2009 by [S.I. 2009/2605](#), [art. 2\(b\)](#)

## 24 Evidence seized under the order

- (1) Any evidence seized by or produced to the constable under section 22 is to be retained by him until he is given a notice under subsection (2) or authorised to release it under section 25.
- (2) If—
  - (a) the overseas freezing order was accompanied by a request for the evidence to be sent to a court or authority mentioned in section 13(2), or
  - (b) the territorial authority subsequently receives such a request,
 the territorial authority may by notice require the constable to send the evidence to the court or authority that made the request.

**Commencement Information**

**I5** S. 24 in force at 19.10.2009 by [S.I. 2009/2605](#), [art. 2\(b\)](#)

## 25 Release of evidence held under the order

- (1) On an application made by a person mentioned below, the nominated court may authorise the release of any evidence retained by a constable under section 24 if, in its opinion—
  - (a) the condition in section 21(6) or (7) is met, or
  - (b) the overseas freezing order has ceased to have effect in the participating country.
- (2) In relation to England and Wales and Northern Ireland, the persons are—
  - (a) the chief officer of police to whom a copy of the order was sent,
  - (b) the constable,
  - (c) any other person affected by the order.
- (3) In relation to Scotland, the persons are—

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- (a) the procurator fiscal to whom a copy of the order was sent,
  - (b) any other person affected by the order.
- (4) If the territorial authority decides not to give a notice under section 24(2) in respect of any evidence retained by a constable under that section, the authority must give the constable a notice authorising him to release the evidence.

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**Commencement Information**

**16** S. 25 in force at 19.10.2009 by [S.I. 2009/2605](#), **art. 2(b)**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A4B inserted by [2003 c. 44 Sch. 36 para. 16](#)