



Crime (International Co- operation) Act 2003

2003 CHAPTER 32

PART 1

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CHAPTER 1

MUTUAL SERVICE OF PROCESS ETC.

Service of overseas process in the UK

1 Service of overseas process

- (1) The power conferred by subsection (3) is exercisable where the Secretary of State receives any process or other document to which this section applies from the government of, or other authority in, a country outside the United Kingdom, together with a request for the process or document to be served on a person in the United Kingdom.
- (2) This section applies—
 - (a) to any process issued or made in that country for the purposes of criminal proceedings,
 - (b) to any document issued or made by an administrative authority in that country in administrative proceedings,
 - (c) to any process issued or made for the purposes of any proceedings on an appeal before a court in that country against a decision in administrative proceedings,
 - (d) to any document issued or made by an authority in that country for the purposes of clemency proceedings.

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- (3) The Secretary of State may cause the process or document to be served by post or, if the request is for personal service, direct the chief officer of police for the area in which that person appears to be to cause it to be personally served on him.
- (4) In relation to any process or document to be served in Scotland, references in this section to the Secretary of State are to be read as references to the Lord Advocate.

2 Service of overseas process: supplementary

- (1) Subsections (2) and (3) apply to any process served in a part of the United Kingdom by virtue of section 1 requiring a person to appear as a party or attend as a witness.
- (2) No obligation under the law of that part to comply with the process is imposed by virtue of its service.
- (3) The process must be accompanied by a notice—
 - (a) stating the effect of subsection (2),
 - (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country where it was issued or made, and
 - (c) indicating that under that law he may not be accorded the same rights and privileges as a party or as a witness as would be accorded to him in proceedings in the part of the United Kingdom in which the process is served.
- (4) Where a chief officer of police causes any process or document to be served under section 1, he must at once—
 - (a) tell the Secretary of State (or, as the case may be, the Lord Advocate) when and how it was served, and
 - (b) (if possible) provide him with a receipt signed by the person on whom it was served.
- (5) Where the chief officer of police is unable to cause any process or document to be served as directed, he must at once inform the Secretary of State (or, as the case may be, the Lord Advocate) of that fact and of the reason.

Service of UK process abroad

3 General requirements for service of process

- (1) This section applies to any process issued or made for the purposes of criminal proceedings by a court in England and Wales or Northern Ireland.
- (2) The process may be issued or made in spite of the fact that the person on whom it is to be served is outside the United Kingdom.
- (3) Where the process is to be served outside the United Kingdom and the person at whose request it is issued or made believes that the person on whom it is to be served does not understand English, he must—
 - (a) inform the court of that fact, and
 - (b) provide the court with a copy of the process, or of so much of it as is material, translated into an appropriate language.

- (4) Process served outside the United Kingdom requiring a person to appear as a party or attend as a witness—
 - (a) must not include notice of a penalty,
 - (b) must be accompanied by a notice giving any information required to be given by rules of court.
- (5) If process requiring a person to appear as a party or attend as a witness is served outside the United Kingdom, no obligation to comply with the process under the law of the part of the United Kingdom in which the process is issued or made is imposed by virtue of the service.
- (6) Accordingly, failure to comply with the process does not constitute contempt of court and is not a ground for issuing a warrant to secure the attendance of the person in question.
- (7) But the process may subsequently be served on the person in question in the United Kingdom (with the usual consequences for non-compliance).

4 Service of process otherwise than by post

- (1) Process to which section 3 applies may, instead of being served by post, be served on a person outside the United Kingdom in accordance with arrangements made by the Secretary of State.
- (2) But where the person is in a participating country, the process may be served in accordance with those arrangements only if one of the following conditions is met.
- (3) The conditions are—
 - (a) that the correct address of the person is unknown,
 - (b) that it has not been possible to serve the process by post,
 - (c) that there are good reasons for thinking that service by post will not be effective or is inappropriate.

5 General requirements for effecting Scottish citation etc.

- (1) This section applies to any citation for the purposes of criminal proceedings in Scotland and to any document issued there for such purposes by the prosecutor or by the court.
- (2) The citation may proceed or document be issued in spite of the fact that the person against whom it is to be effected or on whom it is to be served is outside the United Kingdom.
- (3) Where—
 - (a) citation or issue is by the prosecutor,
 - (b) the citation is to be effected or the document issued is to be served outside the United Kingdom, and
 - (c) the prosecutor believes that the person against whom it is to be effected or on whom it is to be served does not understand English,the citation or document must be accompanied by a translation of it (or, in the case of a document, by a translation of so much of it as is material) in an appropriate language.
- (4) Where—

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- (a) citation or issue is by the court,
- (b) the citation is to be effected or the document issued is to be served outside the United Kingdom, and
- (c) the person at whose request that is to happen believes that the person against whom it is to be effected or on whom it is to be served does not understand English,

he must inform the court of that fact, and provide the court with a copy of the citation or document (or, in the case of a document, so much of it as is material) translated into an appropriate language.

- (5) A citation effected outside the United Kingdom—
 - (a) must not include notice of a penalty,
 - (b) must be accompanied by a notice giving any information required to be given by rules of court.
- (6) If a citation is effected outside the United Kingdom, no obligation under the law of Scotland to comply with the citation is imposed by virtue of its being so effected.
- (7) Accordingly, failure to comply with the citation does not constitute contempt of court and is not a ground for issuing a warrant to secure the attendance of the person in question or for imposing any penalty.
- (8) But the citation may subsequently be effected against the person in question in the United Kingdom (with the usual consequences for non-compliance).

6 Effecting Scottish citation etc. otherwise than by post

- (1) A citation or document to which section 5 applies may, instead of being effected or served by post, be effected against or served on a person outside the United Kingdom in accordance with arrangements made by the Lord Advocate.
- (2) But where the person is in a participating country, the citation may be effected or document served in accordance with those arrangements only if one of the following conditions is met.
- (3) The conditions are—
 - (a) that the correct address of the person is unknown,
 - (b) that it has not been possible to effect the citation or serve the document by post,
 - (c) that there are good reasons for thinking that citation or (as the case may be) service by post will not be effective or is inappropriate.

CHAPTER 2

MUTUAL PROVISION OF EVIDENCE

Assistance in obtaining evidence abroad

7 Requests for assistance in obtaining evidence abroad

- (1) If it appears to a judicial authority in the United Kingdom on an application made by a person mentioned in subsection (3)—

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,the judicial authority may request assistance under this section.
- (2) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom any evidence specified in the request for use in the proceedings or investigation.
- (3) The application may be made—
 - (a) in relation to England and Wales and Northern Ireland, by a prosecuting authority,
 - (b) in relation to Scotland, by the Lord Advocate or a procurator fiscal,
 - (c) where proceedings have been instituted, by the person charged in those proceedings.
- (4) The judicial authorities are—
 - (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any judge of the High Court or sheriff,
 - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (5) In relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request assistance under this section if—
 - (a) it appears to the authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) the authority has instituted proceedings in respect of the offence in question or it is being investigated.“Designated” means designated by an order made by the Secretary of State.
- (6) In relation to Scotland, the Lord Advocate or a procurator fiscal may himself request assistance under this section if it appears to him—
 - (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated.
- (7) If a request for assistance under this section is made in reliance on Article 2 of the 2001 Protocol (requests for information on banking transactions) in connection with the investigation of an offence, the request must state the grounds on which the person making the request considers the evidence specified in it to be relevant for the purposes of the investigation.

8 Sending requests for assistance

- (1) A request for assistance under section 7 may be sent—
 - (a) to a court exercising jurisdiction in the place where the evidence is situated, or
 - (b) to any authority recognised by the government of the country in question as the appropriate authority for receiving requests of that kind.

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- (2) Alternatively, if it is a request by a judicial authority or a designated prosecuting authority it may be sent to the Secretary of State (in Scotland, the Lord Advocate) for forwarding to a court or authority mentioned in subsection (1).
- (3) In cases of urgency, a request for assistance may be sent to—
 - (a) the International Criminal Police Organisation, or
 - (b) any body or person competent to receive it under any provisions adopted under the Treaty on European Union,for forwarding to any court or authority mentioned in subsection (1).

9 Use of evidence obtained

- (1) This section applies to evidence obtained pursuant to a request for assistance under section 7.
- (2) The evidence may not without the consent of the appropriate overseas authority be used for any purpose other than that specified in the request.
- (3) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be returned to the appropriate overseas authority, unless that authority indicates that it need not be returned.
- (4) In exercising the discretion conferred by section 25 of the Criminal Justice Act 1988 (c. 33) or Article 5 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/ 1847 (N.I. 17)) (exclusion of evidence otherwise admissible) in relation to a statement contained in the evidence, the court must have regard—
 - (a) to whether it was possible to challenge the statement by questioning the person who made it, and
 - (b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being obtained.
- (5) In Scotland, the evidence may be received in evidence without being sworn to by witnesses, so far as that may be done without unfairness to either party.
- (6) In this section, the appropriate overseas authority means the authority recognised by the government of the country in question as the appropriate authority for receiving requests of the kind in question.

10 Domestic freezing orders

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a person mentioned in subsection (4)—
 - (a) that proceedings in respect of a listed offence have been instituted or such an offence is being investigated,
 - (b) that there are reasonable grounds to believe that there is evidence in a participating country which satisfies the requirements of subsection (3), and
 - (c) that a request has been made, or will be made, under section 7 for the evidence to be sent to the authority making the request,the judicial authority may make a domestic freezing order in respect of the evidence.

- (2) A domestic freezing order is an order for protecting evidence which is in the participating country pending its transfer to the United Kingdom.
- (3) The requirements are that the evidence—
 - (a) is on premises specified in the application in the participating country,
 - (b) is likely to be of substantial value (whether by itself or together with other evidence) to the proceedings or investigation,
 - (c) is likely to be admissible in evidence at a trial for the offence, and
 - (d) does not consist of or include items subject to legal privilege.
- (4) The application may be made—
 - (a) in relation to England and Wales and Northern Ireland, by a constable,
 - (b) in relation to Scotland, by the Lord Advocate or a procurator fiscal.
- (5) The judicial authorities are—
 - (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any judge of the High Court or sheriff,
 - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (6) This section does not prejudice the generality of the power to make a request for assistance under section 7.

11 Sending freezing orders

- (1) A domestic freezing order made in England and Wales or Northern Ireland is to be sent to the Secretary of State for forwarding to—
 - (a) a court exercising jurisdiction in the place where the evidence is situated, or
 - (b) any authority recognised by the government of the country in question as the appropriate authority for receiving orders of that kind.
- (2) A domestic freezing order made in Scotland is to be sent to the Lord Advocate for forwarding to such a court or authority.
- (3) The judicial authority is to send the order to the Secretary of State or the Lord Advocate before the end of the period of 14 days beginning with its being made.
- (4) The order must be accompanied by a certificate giving the specified information and, unless the certificate indicates when the judicial authority expects such a request to be made, by a request under section 7 for the evidence to be sent to the authority making the request.
- (5) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (6) The certificate must be signed by or on behalf of the judicial authority who made the order and must include a statement as to the accuracy of the information given in it.

The signature may be an electronic signature.

12 Variation or revocation of freezing orders

- (1) The judicial authority that made a domestic freezing order may vary or revoke it on an application by a person mentioned below.

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- (2) The persons are—
- (a) the person who applied for the order,
 - (b) in relation to England and Wales and Northern Ireland, a prosecuting authority,
 - (c) in relation to Scotland, the Lord Advocate,
 - (d) any other person affected by the order.

Assisting overseas authorities to obtain evidence in the UK

13 Requests for assistance from overseas authorities

- (1) Where a request for assistance in obtaining evidence in a part of the United Kingdom is received by the territorial authority for that part, the authority may—
- (a) if the conditions in section 14 are met, arrange for the evidence to be obtained under section 15, or
 - (b) direct that a search warrant be applied for under or by virtue of section 16 or 17 or, in relation to evidence in Scotland, 18.
- (2) The request for assistance may be made only by—
- (a) a court exercising criminal jurisdiction, or a prosecuting authority, in a country outside the United Kingdom,
 - (b) any other authority in such a country which appears to the territorial authority to have the function of making such requests for assistance,
 - (c) any international authority mentioned in subsection (3).
- (3) The international authorities are—
- (a) the International Criminal Police Organisation,
 - (b) any other body or person competent to make a request of the kind to which this section applies under any provisions adopted under the Treaty on European Union.

14 Powers to arrange for evidence to be obtained

- (1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with—
- (a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,
 - (b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,
 - (c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.
- (2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied—
- (a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.

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An offence includes an act punishable in administrative proceedings.

- (3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.
- (4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless—
 - (a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or
 - (b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.

15 Nominating a court etc. to receive evidence

- (1) Where the evidence is in England and Wales or Northern Ireland, the Secretary of State may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.
- (2) But if it appears to the Secretary of State that the request relates to an offence involving serious or complex fraud, he may refer the request (or any part of it) to the Director of the Serious Fraud Office for the Director to obtain any evidence to which the request or part relates which appears to him to be appropriate for the purpose of giving effect to the request or part.
- (3) Where the evidence is in Scotland, the Lord Advocate may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.
- (4) But if it appears to the Lord Advocate that the request relates to an offence involving serious or complex fraud, he may give a direction under section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (directions applying investigatory provisions).
- (5) Schedule 1 is to have effect in relation to proceedings before a court nominated under this section.

16 Extension of statutory search powers in England and Wales and Northern Ireland

- (1) Part 2 of the Police and Criminal Evidence Act 1984 (c. 60) (powers of entry, search and seizure) is to have effect as if references to serious arrestable offences in section 8 of, and Schedule 1 to, that Act included any conduct which—
 - (a) constitutes an offence under the law of a country outside the United Kingdom, and
 - (b) would, if it occurred in England and Wales, constitute a serious arrestable offence.
- (2) But an application for a warrant or order by virtue of subsection (1) may be made only—

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- (a) in pursuance of a direction given under section 13, or
 - (b) if it is an application for a warrant or order under section 8 of, or Schedule 1 to, that Act by a constable for the purposes of an investigation by an international joint investigation team of which he is a member.
- (3) Part 3 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (powers of entry, search and seizure) is to have effect as if references to serious arrestable offences in Article 10 of, and Schedule 1 to, that Order included any conduct which—
- (a) constitutes an offence under the law of a country outside the United Kingdom, and
 - (b) would, if it occurred in Northern Ireland, constitute a serious arrestable offence.
- (4) But an application for a warrant or order by virtue of subsection (3) may be made only—
- (a) in pursuance of a direction given under section 13, or
 - (b) if it is an application for a warrant or order under Article 10 of, or Schedule 1 to, that Order, by a constable for the purposes of an investigation by an international joint investigation team of which he is a member.
- (5) In this section, “international joint investigation team” has the meaning given by section 88(7) of the Police Act 1996 (c. 16).

17 Warrants in England and Wales or Northern Ireland

- (1) A justice of the peace may issue a warrant under this section if he is satisfied, on an application made by a constable, that the following conditions are met.
- (2) But an application for a warrant under subsection (1) may be made only in pursuance of a direction given under section 13.
- (3) The conditions are that—
- (a) criminal proceedings have been instituted against a person in a country outside the United Kingdom or a person has been arrested in the course of a criminal investigation carried on there,
 - (b) the conduct constituting the offence which is the subject of the proceedings or investigation would, if it occurred in England and Wales or (as the case may be) Northern Ireland, constitute an arrestable offence, and
 - (c) there are reasonable grounds for suspecting that there is on premises in England and Wales or (as the case may be) Northern Ireland occupied or controlled by that person evidence relating to the offence.
- “Arrestable offence” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60) or (as the case may be) the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)).
- (4) A warrant under this section may authorise a constable—
- (a) to enter the premises in question and search the premises to the extent reasonably required for the purpose of discovering any evidence relating to the offence,
 - (b) to seize and retain any evidence for which he is authorised to search.

18 Warrants in Scotland

- (1) If, on an application made by the procurator fiscal, it appears to the sheriff—
- (a) that there are reasonable grounds for suspecting that an offence under the law of a country outside the United Kingdom has been committed, and
 - (b) that the conduct constituting the offence would, if it occurred in Scotland, constitute an offence punishable by imprisonment,
- the sheriff has the like power to grant warrant authorising entry, search and seizure by any constable or customs officer as he has under section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46) in respect of any offence punishable at common law in Scotland.
- (2) But an application for a warrant by virtue of subsection (1) may be made only—
- (a) in pursuance of a direction given under section 13, or
 - (b) if it is an application made at the request of an international joint investigation team for the purposes of their investigation.
- “International joint investigation team” has the meaning given by section 39(6) of the Police (Scotland) Act 1967 (c. 77).

19 Seized evidence

- (1) Any evidence seized by a constable under or by virtue of section 16, 17 or 18 is to be sent to the court or authority which made the request for assistance or to the territorial authority for forwarding to that court or authority.
- (2) So far as may be necessary in order to comply with the request for assistance—
- (a) where the evidence consists of a document, the original or a copy is to be sent, and
 - (b) where the evidence consists of any other article, the article itself or a description, photograph or other representation of it is to be sent.
- (3) This section does not apply to evidence seized under or by virtue of section 16(2)(b) or (4)(b) or 18(2)(b).

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,

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- (c) any other authority in the country which appears to the territorial authority to have the function of making such orders.
- (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.

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.
- (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)).

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.

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.

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.

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—
 - (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.

*General***26 Powers under warrants**

- (1) A court in England and Wales or Northern Ireland, or a justice of the peace, may not issue a warrant under section 17 or 22 in respect of any evidence unless the court or justice has reasonable grounds for believing that it does not consist of or include items subject to legal privilege, excluded material or special procedure material.
- (2) Subsection (1) does not prevent a warrant being issued by virtue of section 22(5) in respect of excluded material or special procedure material.
- (3) In Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure), in Part 1 (powers to which the additional powers in section 50 apply)—
 - (a) paragraph 49 is omitted,
 - (b) after paragraph 73B there is inserted—

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“Crime (International Co-operation) Act 2003

73C The power of seizure conferred by sections 17 and 22 of the Crime (International Co-operation) Act 2003 (seizure of evidence relevant to overseas investigation or offence).”

- (4) References in this Chapter to evidence seized by a person by virtue of or under any provision of this Chapter include evidence seized by a person by virtue of section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure), if it is seized in the course of a search authorised by a warrant issued by virtue of or under the provision in question.
- (5) Subsection (4) does not require any evidence to be sent to the territorial authority or to any court or authority—
- (a) before it has been found, on the completion of any examination required to be made by arrangements under section 53(2) of the Criminal Justice and Police Act 2001, to be property within subsection (3) of that section (property which may be retained after examination), or
 - (b) at a time when it constitutes property in respect of which a person is required to ensure that arrangements such as are mentioned in section 61(1) of that Act (duty to secure) are in force.

27 Exercise of powers by others

- (1) The Treasury may by order provide, in relation to England and Wales or Northern Ireland—
- (a) for any function conferred on the Secretary of State (whether or not in terms) under sections 10, 11 and 13 to 26 to be exercisable instead in prescribed circumstances by the Commissioners of Customs and Excise,
 - (b) for any function conferred on a constable under those sections to be exercisable instead in prescribed circumstances by a customs officer or a person acting under the direction of such an officer.
- “Prescribed” means prescribed by the order.
- (2) The Secretary of State may by order provide, in relation to England and Wales or Northern Ireland—
- (a) for any function conferred on him under sections 13 to 26 to be exercisable instead in prescribed circumstances by a prescribed person,
 - (b) for any function conferred on a constable under those sections to be exercisable instead in prescribed circumstances by a prescribed person.
- “Prescribed” means prescribed by the order.
- (3) Subsection (2)(b) does not apply to any powers exercisable by virtue of section 16(2)(b) or (4)(b).

28 Interpretation of Chapter 2

- (1) In this Chapter—
- “domestic freezing order” has the meaning given by section 10(2),
 - “notice” means a notice in writing,
 - “overseas freezing order” has the meaning given by section 20,

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“premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60), Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (c. 29) or the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (as the case may be),

“the relevant Framework Decision” means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.

- (2) The following provisions have effect for the purposes of this Chapter.
- (3) In relation to England and Wales and Northern Ireland, “items subject to legal privilege”, “excluded material” and “special procedure material” have the same meaning as in the Police and Criminal Evidence Act 1984 or (as the case may be) the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (4) In relation to Scotland, “items subject to legal privilege” has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002.
- (5) A listed offence means—
 - (a) an offence described in Article 3(2) of the relevant Framework Decision, or
 - (b) an offence prescribed or of a description prescribed by an order made by the Secretary of State.
- (6) An order prescribing an offence or a description of offences under subsection (5) (b) may require, in the case of an overseas freezing order, that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (7) Specified information, in relation to a certificate required by section 11(4) or 20(5), means—
 - (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
 - (b) any information prescribed by an order made by the Secretary of State.
- (8) In relation to Scotland, references above in this section to the Secretary of State are to be read as references to the Scottish Ministers.
- (9) The territorial authority—
 - (a) in relation to evidence in England and Wales or Northern Ireland, is the Secretary of State,
 - (b) in relation to evidence in Scotland, is the Lord Advocate.

CHAPTER 3

HEARING EVIDENCE THROUGH TELEVISION LINKS OR BY TELEPHONE

29 Hearing witnesses abroad through television links

- (1) The Secretary of State may by order provide for section 32(1A) of the Criminal Justice Act 1988 (c. 33) or Article 81(1A) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (proceedings in which evidence may be given through television link) to apply to any further description of criminal proceedings, or to all criminal proceedings.

- (2) The Scottish Ministers may by order provide for section 273(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (proceedings in which evidence may be given through television link) to apply to any further description of criminal proceedings, or to all criminal proceedings.

30 Hearing witnesses in the UK through television links

- (1) This section applies where the Secretary of State receives a request, from an authority mentioned in subsection (2) (“the external authority”), for a person in the United Kingdom to give evidence through a live television link in criminal proceedings before a court in a country outside the United Kingdom.

Criminal proceedings include any proceedings on an appeal before a court against a decision in administrative proceedings.

- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.
- (3) Unless he considers it inappropriate to do so, the Secretary of State must by notice in writing nominate a court in the United Kingdom where the witness may be heard in the proceedings in question through a live television link.
- (4) Anything done by the witness in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.
- (5) Any statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of—
- (a) section 1 of the Perjury Act 1911 (c. 6),
 - (b) Article 3 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/ 1714 (N.I. 19)),
 - (c) sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) or, in relation to Scotland, any matter pertaining to the common law crime of perjury,
- as made in proceedings before the nominated court.
- (6) Part 1 of Schedule 2 (evidence given by television link) is to have effect.
- (7) Subject to subsections (4) and (5) and the provisions of that Schedule, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.
- (8) In relation to Scotland, references in this section and Part 1 of Schedule 2 to the Secretary of State are to be read as references to the Lord Advocate.

31 Hearing witnesses in the UK by telephone

- (1) This section applies where the Secretary of State receives a request, from an authority mentioned in subsection (2) (“the external authority”) in a participating country, for a person in the United Kingdom to give evidence by telephone in criminal proceedings before a court in that country.

Status: This is the original version (as it was originally enacted).

Criminal proceedings include any proceedings on an appeal before a court against a decision in administrative proceedings.

- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.
- (3) A request under subsection (1) must—
 - (a) specify the court in the participating country,
 - (b) give the name and address of the witness,
 - (c) state that the witness is willing to give evidence by telephone in the proceedings before that court.
- (4) Unless he considers it inappropriate to do so, the Secretary of State must by notice in writing nominate a court in the United Kingdom where the witness may be heard in the proceedings in question by telephone.
- (5) Anything done by the witness in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.
- (6) Any statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of—
 - (a) section 1 of the Perjury Act 1911 (c. 6),
 - (b) Article 3 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/ 1714 (N.I. 19)),
 - (c) sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) or, in relation to Scotland, any matter pertaining to the common law crime of perjury,
 as made in proceedings before the nominated court.
- (7) Part 2 of Schedule 2 (evidence given by telephone link) is to have effect.
- (8) Subject to subsections (5) and (6) and the provisions of that Schedule, evidence given in pursuance of this section is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.
- (9) In relation to Scotland, references in this section to the Secretary of State are to be read as references to the Lord Advocate.

CHAPTER 4

INFORMATION ABOUT BANKING TRANSACTIONS

Requests for information about banking transactions in England and Wales and Northern Ireland for use abroad

32 Customer information

- (1) This section applies where the Secretary of State receives a request from an authority mentioned in subsection (2) for customer information to be obtained in relation to a

person who appears to him to be subject to an investigation in a participating country into serious criminal conduct.

- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.
- (3) The Secretary of State may—
 - (a) direct a senior police officer to apply, or arrange for a constable to apply, for a customer information order,
 - (b) direct a senior customs officer to apply, or arrange for a customs officer to apply, for such an order.
- (4) A customer information order is an order made by a judge that a financial institution specified in the application for the order must, on being required to do so by notice in writing given by the applicant for the order, provide any such customer information as it has relating to the person specified in the application.
- (5) A financial institution which is required to provide information under a customer information order must provide the information to the applicant for the order in such manner, and at or by such time, as the applicant requires.
- (6) Section 364 of the Proceeds of Crime Act 2002 (c. 29) (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this section as if this section were included in Chapter 2 of Part 8 of that Act.
- (7) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).
- (8) Customer information obtained in pursuance of a customer information order is to be given to the Secretary of State and sent by him to the authority which made the request.

33 Making, varying or discharging customer information orders

- (1) A judge may make a customer information order, on an application made to him pursuant to a direction under section 32(3), if he is satisfied that—
 - (a) the person specified in the application is subject to an investigation in the country in question,
 - (b) the investigation concerns conduct which is serious criminal conduct,
 - (c) the conduct constitutes an offence in England and Wales or (as the case may be) Northern Ireland, or would do were it to occur there, and
 - (d) the order is sought for the purposes of the investigation.
- (2) The application may be made *ex parte* to a judge in chambers.
- (3) The application may specify—
 - (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or
 - (c) a particular financial institution or particular financial institutions.
- (4) The court may discharge or vary a customer information order on an application made by—
 - (a) the person who applied for the order,
 - (b) a senior police officer,

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- (c) a constable authorised by a senior police officer to make the application,
- (d) a senior customs officer,
- (e) a customs officer authorised by a senior customs officer to make the application.

34 Offences

- (1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—
 - (a) makes a statement which it knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

35 Account information

- (1) This section applies where the Secretary of State receives a request from an authority mentioned in subsection (2) for account information to be obtained in relation to an investigation in a participating country into criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.
- (3) The Secretary of State may—
 - (a) direct a senior police officer to apply, or arrange for a constable to apply, for an account monitoring order,
 - (b) direct a senior customs officer to apply, or arrange for a customs officer to apply, for such an order.
- (4) An account monitoring order is an order made by a judge that a financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.
- (5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (6) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (7) Account information obtained in pursuance of an account monitoring order is to be given to the Secretary of State and sent by him to the authority which made the request.

36 Making, varying or discharging account monitoring orders

- (1) A judge may make an account monitoring order, on an application made to him in pursuance of a direction under section 35(3), if he is satisfied that—
 - (a) there is an investigation in the country in question into criminal conduct, and
 - (b) the order is sought for the purposes of the investigation.
- (2) The application may be made *ex parte* to a judge in chambers.
- (3) The application may specify information relating to—
 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held.
- (4) The court may discharge or vary an account monitoring order on an application made by—
 - (a) the person who applied for the order,
 - (b) a senior police officer,
 - (c) a constable authorised by a senior police officer to make the application,
 - (d) a senior customs officer,
 - (e) a customs officer authorised by a senior customs officer to make the application.
- (5) Account monitoring orders have effect as if they were orders of the court.

Requests for information about banking transactions in Scotland for use abroad

37 Customer information

- (1) This section applies where the Lord Advocate receives a request from an authority mentioned in subsection (2) for customer information to be obtained in relation to a person who appears to him to be subject to an investigation in a participating country into serious criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Lord Advocate to have the function of making requests of the kind to which this section applies.
- (3) The Lord Advocate may direct a procurator fiscal to apply for a customer information order.
- (4) A customer information order is an order made by a sheriff that a financial institution specified in the application for the order must, on being required to do so by notice in writing given by the applicant for the order, provide any such customer information as it has relating to the person specified in the application.
- (5) A financial institution which is required to provide information under a customer information order must provide the information to the applicant for the order in such manner, and at or by such time, as the applicant requires.
- (6) Section 398 of the Proceeds of Crime Act 2002 (c. 29) (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

- (7) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).
- (8) Customer information obtained in pursuance of a customer information order is to be given to the Lord Advocate and sent by him to the authority which made the request.

38 Making, varying or discharging customer information orders

- (1) A sheriff may make a customer information order, on an application made to him pursuant to a direction under section 37(3), if he is satisfied that—
 - (a) the person specified in the application is subject to an investigation in the country in question,
 - (b) the investigation concerns conduct which is serious criminal conduct,
 - (c) the conduct constitutes an offence in Scotland, or would do were it to occur in Scotland, and
 - (d) the order is sought for the purposes of the investigation.
- (2) The application may be made ex parte to a sheriff in chambers.
- (3) The application may specify—
 - (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or
 - (c) a particular financial institution or particular financial institutions.
- (4) The court may discharge or vary a customer information order on an application made by the procurator fiscal.
- (5) Section 409 of the Proceeds of Crime Act 2002 (jurisdiction of sheriff) has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

39 Offences

- (1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—
 - (a) makes a statement which it knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

40 Account information

- (1) This section applies where the Lord Advocate receives a request from an authority mentioned in subsection (2) for account information to be obtained in relation to an investigation in a participating country into criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Lord Advocate to have the function of making requests of the kind to which this section applies.
- (3) The Lord Advocate may direct a procurator fiscal to apply for an account monitoring order.
- (4) An account monitoring order is an order made by a sheriff that a financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.
- (5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (6) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (7) Account information obtained in pursuance of an account monitoring order is to be given to the Lord Advocate and sent by him to the authority which made the request.

41 Making, varying or discharging account monitoring orders

- (1) A sheriff may make an account monitoring order, on an application made to him in pursuance of a direction under section 40(3), if he is satisfied that—
 - (a) there is an investigation in the country in question into criminal conduct, and
 - (b) the order is sought for the purposes of the investigation.
- (2) The application may be made *ex parte* to a sheriff in chambers.
- (3) The application may specify information relating to—
 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held.
- (4) The court may discharge or vary an account monitoring order on an application made by the procurator fiscal.
- (5) Section 409 of the Proceeds of Crime Act 2002 (c. 29) (jurisdiction of sheriff) has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

Disclosure of information

42 Offence of disclosure

- (1) This section applies where—

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- (a) a financial institution is specified in a customer information order or account monitoring order made in any part of the United Kingdom, or
 - (b) the Secretary of State or the Lord Advocate receives a request under section 13 for evidence to be obtained from a financial institution in connection with the investigation of an offence in reliance on Article 2 (requests for information on banking transactions) of the 2001 Protocol.
- (2) If the institution, or an employee of the institution, discloses any of the following information, the institution or (as the case may be) the employee is guilty of an offence.
- (3) That information is—
- (a) that the request to obtain customer information or account information, or the request mentioned in subsection (1)(b), has been received,
 - (b) that the investigation to which the request relates is being carried out, or
 - (c) that, in pursuance of the request, information has been given to the authority which made the request.
- (4) An institution guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (5) Any other person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

Requests for information about banking transactions for use in UK

43 Information about a person's bank account

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a prosecuting authority, that—
- (a) a person is subject to an investigation in the United Kingdom into serious criminal conduct,
 - (b) the person holds, or may hold, an account at a bank which is situated in a participating country, and
 - (c) the information which the applicant seeks to obtain is likely to be of substantial value for the purposes of the investigation,
- the judicial authority may request assistance under this section.
- (2) The judicial authorities are—
- (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any sheriff,
 - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (3) If it appears to a prosecuting authority mentioned in subsection (4) that paragraphs (a) to (c) of subsection (1) are met, the authority may itself request assistance under this section.
- (4) The prosecuting authorities are—

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- (a) in relation to England and Wales and Northern Ireland, a prosecuting authority designated by an order made by the Secretary of State,
 - (b) in relation to Scotland, the Lord Advocate or a procurator fiscal.
- (5) The assistance that may be requested under this section is any assistance in obtaining from a participating country one or more of the following—
- (a) information as to whether the person in question holds any accounts at any banks situated in the participating country,
 - (b) details of any such accounts,
 - (c) details of transactions carried out in any period specified in the request in respect of any such accounts.
- (6) A request for assistance under this section must—
- (a) state the grounds on which the authority making the request thinks that the person in question may hold any account at a bank which is situated in a participating country and (if possible) specify the bank or banks in question,
 - (b) state the grounds on which the authority making the request considers that the information sought to be obtained is likely to be of substantial value for the purposes of the investigation, and
 - (c) include any information which may facilitate compliance with the request.
- (7) For the purposes of this section, a person holds an account if—
- (a) the account is in his name or is held for his benefit, or
 - (b) he has a power of attorney in respect of the account.

In relation to Scotland, a power of attorney includes a factory and commission.

44 Monitoring banking transactions

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a prosecuting authority, that the information which the applicant seeks to obtain is relevant to an investigation in the United Kingdom into criminal conduct, the judicial authority may request assistance under this section.
- (2) The judicial authorities are—
- (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any sheriff,
 - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (3) If it appears to a prosecuting authority mentioned in subsection (4) that the information which it seeks to obtain is relevant to an investigation into criminal conduct, the authority may itself request assistance under this section.
- (4) The prosecuting authorities are—
- (a) in relation to England and Wales and Northern Ireland, a prosecuting authority designated by an order made by the Secretary of State,
 - (b) in relation to Scotland, the Lord Advocate or a procurator fiscal.
- (5) The assistance that may be requested under this section is any assistance in obtaining from a participating country details of transactions to be carried out in any period specified in the request in respect of any accounts at banks situated in that country.

45 Sending requests for assistance

- (1) A request for assistance under section 43 or 44, other than one to which subsection (3) or (4) applies, is to be sent to the Secretary of State for forwarding—
 - (a) to a court specified in the request and exercising jurisdiction in the place where the information is to be obtained, or
 - (b) to any authority recognised by the participating country in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.
- (2) But in cases of urgency the request may be sent to a court referred to in subsection (1) (a).
- (3) Such a request for assistance by the Lord Advocate is to be sent to a court or authority mentioned in subsection (1)(a) or (b).
- (4) Such a request for assistance by a sheriff or a procurator fiscal is to be sent to such a court or authority, or to the Lord Advocate for forwarding to such a court or authority.

General

46 Interpretation of Chapter 4

- (1) In this Chapter—
 - “the court” means the Crown Court or, in Scotland, the sheriff,
 - “senior police officer” means a police officer who is not below the rank of superintendent and “senior customs officer” means a customs officer who is not below the grade designated by the Commissioners of Customs and Excise as equivalent to that rank.
- (2) The following provisions apply for the purposes of this Chapter.
- (3) Serious criminal conduct means conduct which constitutes—
 - (a) an offence to which paragraph 3 of Article 1 (request for information on bank accounts) of the 2001 Protocol applies, or
 - (b) an offence specified in an order made by the Secretary of State or, in relation to Scotland, the Scottish Ministers for the purpose of giving effect to any decision of the Council of the European Union under paragraph 6 of that Article.
- (4) A financial institution—
 - (a) means a person who is carrying on business in the regulated sector, and
 - (b) in relation to a customer information order or an account monitoring order, includes a person who was carrying on business in the regulated sector at a time which is the time to which any requirement for him to provide information under the order is to relate.
 - “Business in the regulated sector” is to be interpreted in accordance with Schedule 9 to the Proceeds of Crime Act 2002 (c. 29).
- (5) A judge means—
 - (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court,
 - (b) in relation to Northern Ireland, a Crown Court judge.

CHAPTER 5

TRANSFER OF PRISONERS

47 Transfer of UK prisoner to assist investigation abroad

- (1) The Secretary of State may pursuant to an agreement with the competent authority of a participating country issue a warrant providing for any person to whom this section applies (“a prisoner”) to be transferred to that country for the purpose of assisting there in the investigation of an offence.

The offence must be one which was or may have been committed in the United Kingdom.

- (2) This section applies to a person—
- (a) serving a sentence in a prison,
 - (b) in custody awaiting trial or sentence, or
 - (c) committed to prison for default in paying a fine.
- (3) But, in relation to transfer from Scotland—
- (a) this section applies to any person detained in custody,
 - (b) references in this section to the Secretary of State are to be read as references to the Scottish Ministers.
- (4) A warrant may be issued in respect of a prisoner under subsection (1) only if—
- (a) the prisoner, or
 - (b) in the circumstances mentioned in subsection (5), a person appearing to the Secretary of State to be an appropriate person to act on the prisoner’s behalf,
- has made a written statement consenting to his being transferred for the purpose mentioned in subsection (1).
- (5) The circumstances are those in which it appears to the Secretary of State to be inappropriate for the prisoner to act for himself, by reason of his physical or mental condition or his youth.
- (6) Such consent cannot be withdrawn after the issue of the warrant.
- (7) A warrant under this section authorises—
- (a) the taking of the prisoner to a place in the United Kingdom and his delivery at a place of departure from the United Kingdom into the custody of a person representing the appropriate authority of the participating country to which the prisoner is to be transferred, and
 - (b) the bringing of the prisoner back to the United Kingdom and his transfer in custody to the place where he is liable to be detained under the sentence or order to which he is subject.
- (8) References to a prison in this section include any other institution to which the Prison Act 1952 (c. 52), the Prison Act (Northern Ireland) 1953 (c. 18 (N.I.)) or Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/ 1504 (N.I.9)) applies.
- (9) Subsections (3A) to (8) of section 5 of the 1990 Act (transfer of UK prisoner to give evidence or assist investigation overseas) have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

48 Transfer of EU etc. prisoner to assist UK investigation

- (1) The Secretary of State may pursuant to an agreement with the competent authority of a participating country issue a warrant providing for any person to whom this section applies (“the overseas prisoner”) to be transferred to the United Kingdom for the purpose of assisting in the investigation of an offence.

The offence must be one which was or may have been committed in the participating country.

- (2) This section applies to a person who is detained in custody in a participating country—
- (a) by virtue of a sentence or order of a court exercising criminal jurisdiction there, or
 - (b) in consequence of having been transferred there from the United Kingdom under the Repatriation of Prisoners Act 1984 (c. 47) or under any similar provision or arrangement from any other country.
- (3) But, in relation to transfer to Scotland—
- (a) this section applies to any person who is detained in custody in a participating country,
 - (b) the reference in subsection (1) to the Secretary of State is to be read as a reference to the Scottish Ministers.
- (4) A warrant may be issued in respect of an overseas prisoner under subsection (1) only if the competent authority provides a written statement made by the prisoner consenting to his being transferred for the purpose mentioned in that subsection.
- (5) Such consent cannot be withdrawn after the issue of the warrant.
- (6) A warrant under this section authorises—
- (a) the bringing of the prisoner to the United Kingdom,
 - (b) the taking of the prisoner to, and his detention in custody at, any place or places in the United Kingdom specified in the warrant,
 - (c) the returning of the prisoner to the country from which he has come.
- (7) Subsections (4) to (8) of section 5 of the 1990 Act have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.
- (8) A person is not subject to the Immigration Act 1971 (c. 77) in respect of his entry into or presence in the United Kingdom pursuant to a warrant under this section; but if the warrant ceases to have effect while he is still in the United Kingdom—
- (a) he is to be treated for the purposes of that Act as if he has then illegally entered the United Kingdom, and
 - (b) the provisions of Schedule 2 to that Act have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) does not have effect in relation to directions for his removal given by virtue of this subsection.

CHAPTER 6

SUPPLEMENTARY

49 Rules of court

- (1) Provision may be made by rules of court as to the practice and procedure to be followed in connection with proceedings under this Part.
- (2) Rules of court made under this section by the High Court in Scotland are to be made by Act of Adjournal.
- (3) The power to make rules of court under this section does not prejudice any existing power to make rules.

50 Subordinate legislation

- (1) Any power to make an order conferred by this Part on the Secretary of State, the Treasury or the Scottish Ministers is exercisable by statutory instrument.
- (2) Such an order may make different provision for different purposes.
- (3) A statutory instrument (other than an instrument to which subsection (5) applies) containing an order made by the Secretary of State or the Treasury is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument (other than an instrument to which subsection (5) applies) containing an order made by the Scottish Ministers is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) A statutory instrument containing an order under section 51(2)(b) designating a country other than a member State is not to be made unless—
 - (a) in the case of an order to be made by the Secretary of State, a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament,
 - (b) in the case of an order to be made by the Scottish Ministers, a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

51 General interpretation

- (1) In this Part—
 - “the 1990 Act” means the Criminal Justice (International Co-operation) Act 1990 (c. 5),
 - “the 2001 Protocol” means the Protocol to the Mutual Legal Assistance Convention, established by Council Act of 16th October 2001 (2001/C326/01),
 - “administrative proceedings” means proceedings outside the United Kingdom to which Article 3(1) of the Mutual Legal Assistance Convention applies (proceedings brought by administrative authorities in respect of administrative offences where a decision in the proceedings may be the subject of an appeal before a court),
 - “chief officer of police”—

Status: This is the original version (as it was originally enacted).

- (a) in relation to any area in Scotland, means the chief constable for the police force maintained for that area,
 - (b) in relation to any area in Northern Ireland, means the Chief Constable of the Police Service of Northern Ireland,
- “clemency proceedings” means proceedings in a country outside the United Kingdom, not being proceedings before a court exercising criminal jurisdiction, for the removal or reduction of a penalty imposed on conviction of an offence,
- “country” includes territory,
- “court” includes a tribunal,
- “criminal proceedings” include criminal proceedings outside the United Kingdom in which a civil order may be made,
- “customs officer” means an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2),
- “evidence” includes information in any form and articles, and giving evidence includes answering a question or producing any information or article,
- “the Mutual Legal Assistance Convention” means the Convention on Mutual Assistance in Criminal Matters established by Council Act of 29th May 2000 (2000/C197/01),
- “the Schengen Convention” means the Convention implementing the Schengen Agreement of 14th June 1985.
- (2) A participating country, in relation to any provision of this Part, means—
 - (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of that provision, and
 - (b) any other country designated by an order made by the Secretary of State or, in relation to Scotland, the Scottish Ministers.
 - (3) In this Part, “process”, in relation to England and Wales and Northern Ireland, means any summons or order issued or made by a court and includes—
 - (a) any other document issued or made by a court for service on parties or witnesses,
 - (b) any document issued by a prosecuting authority outside the United Kingdom for the purposes of criminal proceedings.
 - (4) In this Part, “process”, in relation to service in Scotland, means a citation by a court or by a prosecuting authority, or an order made by a court, and includes any other document issued or made as mentioned in subsection (3)(a) or (b).