



# Criminal Justice (International Co-operation) Act 1990

## 1990 CHAPTER 5

### PART I

#### CRIMINAL PROCEEDINGS AND INVESTIGATIONS

##### *Mutual provision of evidence*

### **3 Overseas evidence for use in United Kingdom**

- (1) Where on an application made in accordance with subsection (2) below it appears to a justice of the peace or a judge or, in Scotland, to a sheriff or a judge—
- (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,

he may issue a letter (“a letter of request”) requesting assistance in obtaining outside the United Kingdom such evidence as is specified in the letter for use in the proceedings or investigation.

- (2) An application under subsection (1) above may be made by a prosecuting authority or, if proceedings have been instituted, by the person charged in those proceedings.
- (3) A prosecuting authority which is for the time being designated for the purposes of this section by an order made by the Secretary of State by statutory instrument may itself issue a letter of request if—
- (a) it is satisfied as to the matters mentioned in subsection (1)(a) above; and
  - (b) the offence in question is being investigated or the authority has instituted proceedings in respect of it.
- (4) Subject to subsection (5) below, a letter of request shall be sent to the Secretary of State for transmission either—

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- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or
  - (b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.
- (5) In cases of urgency a letter of request may be sent direct to such a court or tribunal as is mentioned in subsection (4)(a) above.
- (6) In this section “evidence” includes documents and other articles.
- (7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) above be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.
- (8) In exercising the discretion conferred by section 25 of the Criminal Justice Act 1988 (exclusion of evidence otherwise admissible) in relation to a statement contained in evidence taken pursuant to a letter of request the court shall 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 taken.
- (9) In Scotland evidence obtained by virtue of a letter of request shall, without being sworn to by witnesses, be received in evidence in so far as that can be done without unfairness to either party.
- (10) In the application of this section to Northern Ireland for the reference in subsection (1) to a justice of the peace there shall be substituted a reference to a resident magistrate and for the reference in subsection (8) to section 25 of the Criminal Justice Act 1988 there shall be substituted a reference to Article 5 of the Criminal Justice (Evidence, Etc.)(Northern Ireland) Order 1988.

#### **4 United Kingdom evidence for use overseas**

- (1) This section has effect where the Secretary of State receives—
- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the United Kingdom or a prosecuting authority in such a country or territory; or
  - (b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies, a request for assistance in obtaining evidence in the United Kingdom in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.
- (2) If the Secretary of State or, if the evidence is to be obtained in Scotland, the Lord Advocate is satisfied—

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- (a) that an offence under the law of the country or territory 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 that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,
- he may, if he thinks fit, by a notice in writing nominate a court in England, Wales or Northern Ireland or, as the case may be, Scotland to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.
- (3) Where it appears to the Secretary of State or, as the case may be, the Lord Advocate that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) above unless—
- (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party; or
  - (b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in the United Kingdom.
- (4) For the purpose of satisfying himself as to the matters mentioned in subsection (2)(a) and (b) above the Secretary of State or, as the case may be, the Lord Advocate shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.
- (5) In this section “evidence” includes documents and other articles.
- (6) Schedule 1 to this Act shall have effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2) above.

## **5 Transfer of United Kingdom prisoner to give evidence or assist investigation overseas**

- (1) The Secretary of State may, if he thinks fit, issue a warrant providing for any person (“a prisoner”) serving a sentence in a prison or other institution to which the Prison Act 1952 or the Prisons (Scotland) Act 1989 applies to be transferred to a country or territory outside the United Kingdom for the purpose—
- (a) of giving evidence in criminal proceedings there; or
  - (b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.
- (2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) above and that consent may be given either—
- (a) by the prisoner himself; or
  - (b) in circumstances in which it appears to the Secretary of State inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to the Secretary of State to be an appropriate person to act on his behalf;
- but a consent once given shall not be capable of being withdrawn after the issue of the warrant.
- (3) The effect of a warrant under this section shall be to authorise—

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- (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 country or territory 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 to which he is subject.
- (4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in the United Kingdom or on board a British ship, British aircraft or British hovercraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.
- (5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges—
- (a) of a constable in the part of the United Kingdom in which that person is for the time being; or
  - (b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the prisoner is to be taken under the warrant.
- (6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant issued under this section.
- (7) In subsection (4) above—
- “British aircraft” means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft) or one of Her Majesty’s aircraft;
- “British hovercraft” means a British-controlled hovercraft within the meaning of that section as applied in relation to hovercraft by virtue of provisions made under the Hovercraft Act 1968 or one of Her Majesty’s hovercraft;
- “British ship” means a British ship for the purposes of the Merchant Shipping Acts 1894 to 1988 or one of Her Majesty’s ships;
- and in this subsection references to Her Majesty’s aircraft, hovercraft or ships are references to aircraft, hovercraft or, as the case may be, ships belonging to or exclusively employed in the service of Her Majesty in right of the Government of the United Kingdom.
- (8) In subsection (6) above “constable”, in relation to any part of the United Kingdom, means any person who is a constable in that or any other part of the United Kingdom or any person who, at the place in question has, under any enactment including subsection (5) above, the powers of a constable in that or any other part of the United Kingdom.
- (9) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and the reference in subsection (3)(b) above to a sentence shall be construed accordingly.
- (10) In the application of this section to Northern Ireland for the reference in subsection (1) to the Prison Act 1952 there shall be substituted a reference to the Prison Act (Northern Ireland) 1953.

## **6 Transfer of overseas prisoner to give evidence or assist investigation in the United Kingdom**

- (1) This section has effect where—
- (a) a witness order has been made or a witness summons or citation issued in criminal proceedings in the United Kingdom in respect of a person (“a prisoner”) who is detained in custody in a country or territory outside the United Kingdom by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
  - (b) it appears to the Secretary of State that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in the United Kingdom of an offence.
- (2) If the Secretary of State is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to the United Kingdom to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1)(b) above, he may issue a warrant under this section.
- (3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to the United Kingdom to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b) above but a consent once given shall not be capable of being withdrawn after the issue of the warrant.
- (4) The effect of the warrant shall be to authorise—
- (a) the bringing of the prisoner to the United Kingdom;
  - (b) the taking of the prisoner to, and his detention in custody at, such place or places in the United Kingdom as are specified in the warrant; and
  - (c) the returning of the prisoner to the country or territory from which he has come.
- (5) Subsections (4) to (8) of section 5 above shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.
- (6) A person shall not be subject to the Immigration Act 1971 in respect of his entry into or presence in the United Kingdom in pursuance of a warrant under this section but if the warrant ceases to have effect while he is still in the United Kingdom—
- (a) he shall 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 shall have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) shall not have effect in relation to directions for his removal given by virtue of this subsection.
- (7) This section applies to a person detained in custody in a country or territory outside the United Kingdom in consequence of having been transferred there—
- (a) from the United Kingdom under the Repatriation of Prisoners Act 1984; or
  - (b) under any similar provision or arrangement from any other country or territory,
- as it applies to a person detained as mentioned in subsection (1) above.