



Criminal Justice (International Co-operation) Act 1990

1990 CHAPTER 5

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual service of process

1 Service of overseas process in United Kingdom

- (1) This section has effect where the Secretary of State receives from the government of, or other authority in, a country or territory outside the United Kingdom—
 - (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or
 - (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,together with a request for it to be served on a person in the United Kingdom.
- (2) The Secretary of State or, where the person to be served is in Scotland, the Lord Advocate 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.
- (3) Service by virtue of this section of any such process as is mentioned in subsection (1) (a) above shall not impose any obligation under the law of any part of the United Kingdom to comply with it.
- (4) Any such process served by virtue of this section shall be accompanied by a notice—
 - (a) stating the effect of subsection (3) above;

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- (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 or territory where it was issued; and
 - (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in the United Kingdom.
- (5) Where a chief officer of police is directed under this section to cause any process or document to be served he shall after it has been served forthwith inform the Secretary of State or, as the case may be, the Lord Advocate when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the chief officer has been unable to cause the process or document to be served he shall forthwith inform the Secretary of State or, as the case may be, the Lord Advocate of that fact and of the reason.
- (6) In the application of this section to Northern Ireland for references to a chief officer of police there shall be substituted references to the Chief Constable of the Royal Ulster Constabulary.

2 Service of United Kingdom process overseas

- (1) Process of the following descriptions, that is to say—
- (a) a summons requiring a person charged with an offence to appear before a court in the United Kingdom; and
 - (b) a summons or order requiring a person to attend before a court in the United Kingdom for the purpose of giving evidence in criminal proceedings,
- may be issued or made notwithstanding that the person in question is outside the United Kingdom and may be served outside the United Kingdom in accordance with arrangements made by the Secretary of State.
- (2) In relation to Scotland subsection (1) above applies to any document which may competently be served on any accused person or on any person who may give evidence in criminal proceedings.
- (3) Service of any process outside the United Kingdom by virtue of this section shall not impose any obligation under the law of any part of the United Kingdom to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question or, in Scotland, for imposing any penalty.
- (4) Subsection (3) above is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in the United Kingdom.

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—
- (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

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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—
 - (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

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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—

- (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;

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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.

Additional co-operation powers

7 Search etc. for material relevant to overseas investigation

- (1) Part II of the Police and Criminal Evidence Act 1984 (powers of entry, search and seizure) shall have effect as if references to serious arrestable offences in section 8 of and Schedule 1 to that Act included any conduct which is an offence under the law of a country or territory outside the United Kingdom and would constitute a serious arrestable offence if it had occurred in any part of the United Kingdom.
- (2) If, on an application made by a constable, a justice of the peace is satisfied—
- (a) that criminal proceedings have been instituted against a person in a country or territory outside the United Kingdom or that a person has been arrested in the course of a criminal investigation carried on there;
 - (b) that the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the said Act of 1984 if it had occurred in any part of the United Kingdom; and
 - (c) that there are reasonable grounds for suspecting that there is on premises in the United Kingdom occupied or controlled by that person evidence relating to the offence other than items subject to legal privilege within the meaning of that Act,
- he may issue a warrant authorising a constable to enter and search those premises and to seize any such evidence found there.
- (3) The power to search conferred by subsection (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.
- (4) No application for a warrant or order shall be made by virtue of subsection (1) or (2) above except in pursuance of a direction given by the Secretary of State in response to a request received—

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- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or
 - (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section;
- and any evidence seized by a constable by virtue of this section shall be furnished by him to the Secretary of State for transmission to that court, tribunal or authority.
- (5) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the constable shall also furnish for transmission such document of that nature as may be specified in the direction given by the Secretary of State.
 - (6) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.
 - (7) The Treasury may by order direct that any powers which by virtue of this section are exercisable by a constable shall also be exercisable by, or by any person acting under the direction of, an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979; and the Secretary of State may by order direct that any of those powers shall also be exercisable by a person of any other description specified in the order.
 - (8) An order under subsection (7) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
 - (9) In the application of this section to Northern Ireland for references to the Police and Criminal Evidence Act 1984, to Part II and section 8 of and to Schedule 1 to that Act there shall be substituted references to the Police and Criminal Evidence (Northern Ireland) Order 1989, to Part III and Article 10 of and to Schedule 1 to that Order.

8 Search etc. for material relevant to overseas investigation: Scotland

- (1) If, on an application made by the procurator fiscal, it appears to the sheriff—
 - (a) that there are reasonable grounds for believing that an offence under the law of a country or territory outside the United Kingdom has been committed; and
 - (b) that the conduct constituting that offence would constitute an offence punishable by imprisonment if it had occurred in Scotland,
 the sheriff shall have the like power to grant warrant authorising entry, search and seizure by any constable as he would have at common law in respect of any offence punishable at common law in Scotland.
- (2) No application for a warrant shall be made by virtue of subsection (1) above except in pursuance of a direction given by the Lord Advocate in response to a request received by the Secretary of State—
 - (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or
 - (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purpose of this section,

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and any evidence seized by the constable by virtue of this section shall be furnished by him to the Lord Advocate for transmission to that court, tribunal or authority.

- (3) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the constable shall also furnish for transmission such document of that nature as may be specified in the direction given by the Lord Advocate.
- (4) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.
- (5) The Treasury may by order direct that any powers to enter, search or seize granted by virtue of subsection (1) above which may be exercised by a constable shall also be exercisable by, or by any person acting under the direction of, an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979; and the Secretary of State may by order direct that any of those powers shall also be exercisable by a person of any other description specified in the order.
- (6) An order under subsection (5) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

9 Enforcement of overseas forfeiture orders

- (1) Her Majesty may by Order in Council provide for the enforcement in the United Kingdom of any order which—
 - (a) is made by a court in a country or territory outside the United Kingdom designated for the purposes of this section by the Order in Council; and
 - (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed or which was used in connection with the commission of such an offence.
- (2) Without prejudice to the generality of subsection (1) above an Order in Council under this section may provide for the registration by a court in the United Kingdom of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.
- (3) An Order in Council under this section may include such supplementary and incidental provisions as appear to Her Majesty to be necessary or expedient and may apply for the purposes of the Order (with such modifications as appear to Her Majesty to be appropriate) any provisions relating to confiscation or forfeiture orders under any other enactment.
- (4) An Order in Council under this section may make different provision for different cases.
- (5) No Order in Council shall be made under this section unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) This section applies to any offence which corresponds to or is similar to an offence under the Misuse of Drugs Act 1971, a drug trafficking offence as defined in section 38(1) of the Drug Trafficking Offences Act 1986, an offence to which section 1

of the Criminal Justice (Scotland) Act 1987 relates or an offence to which Part VI of the Criminal Justice Act 1988 applies.

Supplementary

10 Rules of court

- (1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part of this Act.
- (2) Rules made for the purposes of Schedule 1 to this Act may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies and for excluding the public from any such proceedings.
- (3) An Order in Council under section 9 above may authorise the making of rules of court for any purpose specified in the Order.
- (4) Rules of court made under this section by the High Court in Scotland shall be made by Act of Adjournal.
- (5) This section is without prejudice to the generality of any existing power to make rules.

11 Application to courts-martial etc

- (1) Section 2 above applies also to a summons requiring a person charged with a civil offence to appear before a service court (whether or not in the United Kingdom) or to attend before such a court for the purpose of giving evidence in proceedings for such an offence; and a warrant may be issued under section 6 above where—
 - (a) such a summons has been issued in respect of a prisoner within the meaning of that section; or
 - (b) it appears to the Secretary of State that it is desirable for such a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation of such an offence.
- (2) Section 5 above applies also to a person serving a sentence of detention imposed by a service court or detained in custody awaiting trial by such a court.
- (3) In this section “a civil offence” has the same meaning as in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 and “service court” means a court-martial constituted under any of those Acts or a Standing Civilian Court.