

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Mutual Assistance in Criminal Matters

Chapter 4: Information about Banking Transactions

92. Sections 32 to 46 implement the 2001 Protocol. The purpose of the 2001 Protocol is to tackle serious crime, in particular economic crime and money laundering. Countries participating in the 2001 Protocol are obliged to identify, provide information about, and monitor bank accounts at the request of other participating countries, subject to certain restrictions and conditions which are explained in more detail below. The 2001 Protocol obliges participating countries to establish mechanisms whereby they can provide the stipulated information. The manner in which they do so is left to individual participating countries.

Sections 32: Customer Information

93. Sections 32 and 33 implement the provisions of Article 1 of the 2001 Protocol in relation to incoming requests to provide information about bank accounts in the UK relating to a person who is the subject of an investigation in a participating country.
94. Section 32 applies where the Secretary of State receives such a request and authorises him to direct the appropriate police or customs officer to apply for a customer information order. A customer information order requires a financial institution specified in the application to provide details of any accounts held by the person who is the subject of an investigation into serious criminal conduct as defined in section 46(3). Subsection (6) provides that the definition of customer information in section 364 of the Proceeds of Crime Act 2002 (“POCA”) has effect to the extent specified. The scope of the 2001 Protocol is different to that of POCA, however, which is restricted to confiscation or money laundering investigations. In practice, the power will largely be used in relation to these types of investigations, but it may also be exercised in relation to other investigations into serious criminal conduct. Subsection (8) provides that information obtained should be returned to the Secretary of State for forwarding to the overseas authority which made the request. This is different to the procedure in section 19 of the Act which provides that, in general, evidence should be returned by direct channels. Transmission of information about banking transactions via the Secretary of State will enable effective monitoring of this new measure.

Section 33: Making, varying or discharging customer information orders

95. This section sets out the conditions which must be satisfied before a judge may make a customer information order and what an application to the judge contains. Subsection (2) provides that the application may be made without notice (*ex parte*) to a judge in chambers. Subsection (4) provides for the discharge or variation of an order.

Section 34: Offences

96. This section replicates section 366 of POCA, and provides for various criminal offences connected with failure to comply with customer information orders. The penalties, which are financial only, are directed at non-compliant institutions, rather than at individuals.

Section 35: Account Information

97. Sections 35 and 36 implement Article 3 of the 2001 Protocol in relation to incoming requests. Article 3 provides for requests to be made for a specified account to be monitored during a specified period of time. Such a request might be made subsequent to an Article 1 request for bank details or in cases where the investigator already has the details of the relevant account. Account monitoring procedures were introduced in the UK under POCA, but separate provision is required in this Act to ensure that the UK can respond to all requests that meet the requirements of the 2001 Protocol which has a wider scope than POCA.
98. Section 35 applies where the Secretary of State receives such a request and authorises him to direct the appropriate police or customs officer to apply for an account information order. An account information order requires a financial institution specified in the application to provide account information specified in the order (for example, details of all transactions passing through the account) during a specified period. Subsection (5) defines account information. Article 3(3) of the 2001 Protocol provides that the order shall be made with due regard for the national law of the requested Member State. Under POCA, account monitoring orders may be made for a period of up to 90 days and the same restriction will apply to requests under the 2001 Protocol. No limit is stated because the arrangements will be made between the relevant authorities on a case by case basis, as provided for in Article 3(4) of the 2001 Protocol.

Section 36: Making, varying or discharging account monitoring orders

99. This section sets out the conditions which must be satisfied before a judge may make an account monitoring order in response to an overseas request, and the types of information that an application for such an order may specify. Subsection (2) provides that the application may be made without notice (*ex parte*) to a judge in chambers.

Sections 37 to 41: Customer information and account monitoring orders (Scotland)

100. These sections are the corresponding Scottish provisions to sections 32 to 36 for England and Wales and Northern Ireland, and they have the same effect in Scotland as those sections do in the rest of the United Kingdom. They differ to take account of Scottish procedure - (for example, references to the procurator fiscal and the sheriff). They also refer to the corresponding Scottish provisions in POCA. In Scotland, the Lord Advocate carries out the functions given to the Secretary of State in the rest of the United Kingdom.

Section 42: Offence of disclosure

101. This section creates criminal offences in relation to the unlawful disclosure of information. The purpose of the section is to ensure that financial institutions do not inform their customers of any requests for customer or account information, or that an investigation is being carried out, or that information has been passed on by the financial institution. A financial institution, or an employee of the institution, is guilty of an offence if it (or, as the case may be, the employee) discloses the types of information specified in subsection (3), and subsections (4) and (5) provide for the penalties which may be imposed if such an offence is committed.

Section 43: Information about a person's bank account

102. This section makes provision for the UK to request assistance from other participating countries in obtaining details of any accounts held by a person subject to an investigation into serious criminal conduct in accordance with Article 1 of the 2001 Protocol. Whilst the general provisions of section 7 of this Act are relevant, special requirements apply to requests for information on bank accounts. An application may be made to a judicial authority (as defined in subsection (2)) to make a request for assistance under this section where a person is subject to an investigation in the UK, the person holds (or may hold) a bank account in a participating country, and the information is likely to be of substantial value to the investigation. A prosecuting authority which has been designated by order made by the Secretary of State may itself make a request for assistance under this section if the conditions specified in subsection (3) are satisfied - (in Scotland, the Lord Advocate or a procurator fiscal may likewise request assistance). Subsection (5) sets out the types of information which may be requested under this section, and subsection (6) sets out what a request for assistance must contain.

Section 44: Monitoring banking transactions

103. This section implements Article 3 of the 2001 Protocol for the purpose of outgoing requests from the UK to other participating countries to monitor transactions conducted on a specified account or accounts. Subsection (1) provides that an application may be made to a judicial authority (as defined in subsection (2)) to request assistance under this section if it appears relevant to a UK investigation into criminal conduct. A prosecuting authority designated by order made by the Secretary of State (or, in relation to Scotland, the Lord Advocate or procurator fiscal) may itself request assistance under subsection (3).

Section 45: Sending requests for assistance

104. This section provides that, in general, requests for assistance under sections 43 or 44, must be transmitted via the Secretary of State – (in Scotland, the Lord Advocate) - in contrast to the direct transmission provision introduced by section 8. This is to enable the central authority to monitor these requests, to ensure that the detailed requirements of the 2001 Protocol are met and to assess how extensively the new powers are used. It can also monitor responses to requests. The central authority will monitor incoming requests in the same way. However, in cases of urgency, a request may be sent directly to a court in the area where the information is to be obtained.

Section 46: Interpretation of Chapter 4

105. The section defines the terms used in Chapter 4. The definition of serious criminal conduct in subsection (3) refers to Article 1 of the 2001 Protocol. Article 1(3) lists the circumstances in which countries are obliged to provide assistance in tracing bank accounts. The list limits the general obligation to assist to particular circumstances: when the offence is punishable by a 4 year custodial penalty in the requesting state and 2 years in the requested state, or when the offence is one referred to in the Europol Convention or the Convention on the Protection of the European Communities' Financial Interests. The second part of the definition of serious criminal conduct in subsection (3)(b) enables it to be extended by order to cover new offences if the scope of Article 1(3) is amended by the Council of the EU at a future date.