These notes refer to the Crime (International Co-operation) Act 2003 (c.32) which received Royal Assent on 30 October 2003

CRIME (INTERNATIONAL CO-OPERATION) ACT

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Crime (International Co-operation) Act 2003 which received Royal Assent on 30 October 2003. They have been prepared by the Home Office and the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act extends to the whole of the UK, with the following exceptions:

- sections 32 to 36 extend only to England and Wales and Northern Ireland (requests for information about banking transactions in England and Wales and Northern Ireland for use abroad);
- sections 37 to 41 extend only to Scotland (requests for information about banking transactions in Scotland for use abroad).

4. The Act is in five Parts, and contains six Schedules.

Part 1: Mutual Assistance in Criminal Matters

5. Part 1 largely replaces the UK's mutual legal assistance legislation, contained in Part 1 of the Criminal Justice (International Co-operation) Act 1990, which enabled the UK to request and provide assistance to all countries. It implements the mutual legal assistance provisions of the Schengen Implementing Convention of 14th June 1985 (the "Schengen Convention"), the Convention on Mutual Assistance in Criminal Matters 2000 (the "MLAC"), and the evidence-freezing provisions of the 2003 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 (the "2003 Framework Decision"). Chapter 4 of Part 1 implements the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters (the "2001 Protocol") which creates obligations for participating countries to respond to requests for assistance with locating banking accounts and to provide banking information relating to criminal investigations.

Part 2: Terrorist Acts and Threats: Jurisdiction

6. Part 2 implements the Framework Decision of 13th June 2002 on combating terrorism (the "2002 Framework Decision"), insofar as it requires the UK to take extra-territorial jurisdiction over a range of terrorist offences.

Part 3: Road Traffic

7. Part 3 implements the Convention on Driving Disqualification of 17th June 1998 drawn up on the basis of Article K.3 of the Treaty on European Union (the "Convention") which introduces the mutual recognition of driving disqualifications. Part 3 also introduces new measures to prevent drivers banned from driving in Northern Ireland from obtaining a British driving licence or vice versa.

Part 4: Miscellaneous

8. Part 4 implements additional measures set out in the Schengen Convention in the area of police co-operation, extradition and data protection. Part 4 also contains provisions which are necessary to enable the UK to implement the Framework Decision of 28th May 2001 on combating fraud and counterfeiting of non-cash means of payment (the "2001 Framework Decision"), and implements, in relation to terrorist property, the 2003 Framework Decision.

Part 5: Final Provisions

9. Part 5 contains amendments and repeals, and other miscellaneous provisions.

Schedules 1 to 6

10. A brief explanation of the Schedules follows in these explanatory notes in the Commentary on Sections.

BACKGROUND

11. The Crime (International Co-operation) Act 2003 implements several outstanding European Union ("EU") commitments in the area of police and judicial co-operation.

12. The Act includes the legislation necessary to enable the UK's partial participation in the Schengen Convention. The Schengen Convention was designed to facilitate the free movement of persons by removing internal border controls. A series of measures to enhance police and judicial co-operation was then agreed to compensate for the lifting of controls. The Schengen Convention was formally integrated into the EU treaty structure by the 1997 Treaty of Amsterdam.

13. In May 1999, the UK formally applied to participate in the provisions on police and judicial co-operation, and the Schengen Information System, a database storing criminal information from all participating countries. The UK's implementation of the Schengen Convention will be formally evaluated by the other Schengen states before its participation can be approved by the Justice and Home Affairs Ministerial Council. Legislation is required to implement some of the mutual legal assistance measures, the extradition provisions and some of the measures on police co-operation.

14. Furthermore, the Act implements several Framework Decisions of the EU in the field of Justice and Home Affairs policy. Framework Decisions were introduced by the 1997 Treaty of Amsterdam and have:

> "the purpose of approximation of the laws and regulations of the Member States. Framework Decisions shall be binding upon the Member States as to the result to be achieved, but shall leave to the national authorities the choice of form and methods": Article 34(2)(b), Treaty on European Union.

15. The UK government has agreed to the Framework Decisions contained in the Act.

Part 1: Mutual Assistance in Criminal Matters

16. Part 1 of the Act deals with mutual legal assistance and the evidence aspects of the 2003 Framework Decision. It implements both the mutual legal assistance provisions of the Schengen Convention that are not repealed and replaced by the MLAC and those of the MLAC itself. The primary aim of the MLAC is to improve judicial co-operation by developing and modernising the existing provisions governing mutual assistance, mainly by extending the range of circumstances in which mutual assistance may be requested, and by facilitating assistance so that it is quicker, more flexible, and therefore more effective. Part 1 re-enacts and updates the provisions in Part 1 of the Criminal Justice (International Co-operation) Act 1990 to widen the scope of cases in which the UK is able to request and offer assistance, and to introduce the direct transmission of legal process and requests for assistance where possible. Part 1 also implements the 2001 Protocol which extends mutual legal assistance to enable provision of a wider range of banking information than at present, including tracing any bank accounts and monitoring identified accounts held by an individual or company.

17. Part 1 of the Act also introduces the mutual recognition of freezing orders on evidence as introduced by the 2003 Framework Decision. The Tampere Council held in October 1999 - a special meeting of the European Council focusing specifically on Justice and Home Affairs matters - agreed that the mutual recognition of judicial decisions should be the "cornerstone" of the future development of judicial co-operation within the EU, rather than harmonisation of legal systems. The Justice and Home Affairs Ministerial Council held in December 2000 adopted a programme of work to implement the principle of mutual recognition. The 2003 Framework Decision, and the Framework Decision of 13th June 2002 on the European Arrest Warrant to be implemented through the Extradition Bill, are the first results of that work programme.

18. The mutual legal assistance provisions in Part 1 apply to all other countries, in line with existing legislation, except for certain new provisions which are specifically restricted to "participating countries". For the purposes of those provisions, all EU Member States will be "participating countries" (subject to their participation in the relevant instruments). Some arrangements may also be extended to other countries by order if appropriate. In such cases, countries will be designated by an order that will be laid before and approved by both Houses of Parliament, or, in relation to Scotland, the Scottish Parliament.

Part 2: Terrorist Acts and Threats: Jurisdiction

19. The 2002 Framework Decision was drafted in response to the attacks of 11 September 2001, with the purpose of ensuring that all EU Member States had effective terrorist legislation in place. The 2002 Framework Decision defines a range

of terrorist offences and requires Member States to introduce "effective, proportionate and dissuasive" criminal penalties for these offences. Much of the substance of the 2002 Framework Decision is already given effect to in existing UK legislation. However, Article 9 which deals with extra-territorial jurisdiction for certain terrorist offences is not for the most part covered. Part 2 of this Act will therefore give effect to Article 9 of the 2002 Framework Decision by allowing the UK to take extra-territorial jurisdiction both over terrorist offences committed by UK residents and nationals anywhere in the world and over attacks on UK residents, nationals and diplomatic premises wherever they occur.

Part 3: Road Traffic

20. Part 3 provides for the implementation of the Convention. Under the Convention, drivers normally resident in one Member State of the EU who are disqualified from driving in another Member State will also be disqualified in their state of residence. The duties placed on the Secretary of State for Transport under this Part will be administered by the Driver and Vehicle Licensing Agency. The Convention will come into effect when it has been ratified by all the Member States but there is also provision for the Convention to be implemented on a bilateral basis between participating Member States. Part 3 also introduces new measures to prevent drivers banned from driving in Northern Ireland from obtaining a British driving licence or vice versa.

Part 4: Miscellaneous

21. Part 4 makes various miscellaneous provisions. Section 80 provides for the disclosure of information by the Serious Fraud Office in the context of criminal investigations or proceedings. This Part also covers four different areas of the Schengen Convention. Firstly, section 81 permits the Information Commissioner to inspect any of the three European information systems which are or will be used by the UK. Section 82 provides for driver licensing information to be disclosed for the purposes of the Schengen Information System. In the realm of police co-operation, sections 83 to 85 implement the requirement of the Schengen Convention for officers from one Member State to conduct unaccompanied surveillance in another Schengen state for up to five hours in exceptional circumstances. The extradition provisions in sections 86 and 87 would allow the UK to apply the Schengen-building provisions of the 1996 Extradition Convention to non-EU Member States such as Iceland and Norway; and to apply the 1995 and 1996 Extradition Conventions to Italy and France.

22. The 2001 Framework Decision, one aspect of which is implemented in Part 4 of the Act, is intended to support the fight against fraud and counterfeiting across the EU. The measure forms part of the Commission's Fraud Prevention Action Plan. It requires Member States to criminalise different types of conduct in relation to non-cash means of payment - for example, the obtaining and possession of false or counterfeit monetary instruments for fraudulent purposes. With the exception of part of one article, the provisions of the 2001 Framework Decision are already covered within UK law.

TERRITORIAL APPLICATION: WALES

23. There is no effect on the National Assembly for Wales, and the Act's effect in Wales is no different from its effect in England.

COMMENTARY ON SECTIONS

Part 1: Mutual Assistance in Criminal Matters
Chapter 1: Mutual Service of Process etc.

Section 1: Service of overseas process in the UK

24. This section replaces and expands upon sections 1(1) and (2) of the Criminal Justice (International Co-operation) Act 1990 (the "1990 Act"), which established the procedure for service of overseas procedural legal documents in the UK. The Schengen Convention and the MLAC introduce different procedures, enabling most procedural documents to be sent directly by post from the issuing authority to persons in the UK. Other countries may also send documents directly to recipients in the UK, if so enabled by their domestic law.

25. This section regulates those cases where direct service is not used.

26. The Schengen Convention and the MLAC extend the scope of mutual legal assistance to a much broader range of proceedings, and the process to be served under section 1 will encompass documents relating to the extended categories of proceedings specified in section 1(2). Neither instrument defines the term "procedural documents", so the section is broadly drafted. The types of administrative and criminal proceedings to which this section applies are defined in section 51(1).

27. Subsection (3) replaces section 1(2) of the 1990 Act, giving the Secretary of State, (or, in Scotland, the Lord Advocate), discretion as to how to serve the document – it may be served by post, or the chief officer of police in the relevant area may be directed to serve it personally where this is required.

Section 2: Service of overseas process: supplementary

28. This section replaces subsections (3) to (6) of section 1 of the 1990 Act, and there are no material changes. Where the process served requires a person to appear as a party or witness, the process must be accompanied by a notice stating that no obligation under UK law to comply with the process is imposed, but that the person may wish to take advice on failure to comply under the laws of the overseas country, and that the person may not be accorded the same rights and privileges as he would be in the UK. Where a chief officer of police causes process to be served under section 1, that officer must inform the Secretary of State (or the Lord Advocate) when and how it was served and (if possible) provide a signed receipt: where the process cannot be served, the officer must inform the Secretary of State (or the Lord Advocate) of the reason for this.

Section 3: General requirements for service of process

29. This section, with section 4, replaces and expands on section 2 of the 1990 Act, which governs the service of UK legal process to persons in other countries. The section extends that provision to enable service of all documents issued or made for the purposes of criminal proceedings, making it consistent with the broad

interpretation of "procedural documents" envisaged in the MLAC and the Schengen Convention. It does not provide for the service of documents relating to administrative proceedings, as the UK does not have proceedings of this nature.

30. Subsection (3) creates an obligation on the person at whose request the process is issued to provide a translation where he is aware that the recipient does not understand English.

31. Subsections (4) to (7) replace section 2(3) and (4) of the 1990 Act. The serving of process does not impose an obligation under UK law to comply with that process, with the result that failure to comply does not constitute contempt of court. However, if the process is later served on the person when they are in the UK, the usual consequences for non-compliance will apply. This does not represent any change from existing practice.

Section 4: Service of process otherwise than by post

32. Although most process from the UK will be served by post, this section retains the option of serving process issued in England and Wales or Northern Ireland in accordance with arrangements made by the Secretary of State. Where the person on whom it is to be served is in a participating country, this option is available only if one of the conditions in subsection (3) is met. (The meaning of "participating country" is explained in paragraph 18 of these explanatory notes.)

33. In these cases, process may be sent via the Secretary of State to the central authority of the other country, which will transmit the process to the recipient. (The "UK central authority" is the authority for mutual legal assistance located in the Home Office, and references in these explanatory notes to overseas central authorities are to the equivalent bodies overseas.)

Section 5: General requirements for effecting Scottish citation etc.

34. This section is the Scottish equivalent to section 3. It reflects the provisions of section 3 but refers to the Scottish term "citation" rather than "process". In criminal proceedings in Scotland "citation" is the term used for the procedure whereby someone is called to court to answer an action or give evidence as a witness.

Section 6: Effecting Scottish citation etc. otherwise than by post

35. This section is the Scottish equivalent to section 4. It reflects the provisions of section 4 but provides that the Lord Advocate, rather than the Secretary of State, is to make arrangements for service of a citation or document otherwise than by post.

Chapter 2: Mutual Provision of Evidence

Section 7: Requests for assistance in obtaining evidence abroad

36. Sections 7 to 9 deal with requests to obtain evidence from abroad in relation to a prosecution or investigation taking place in the UK. These provisions develop and expand on section 3 of the 1990 Act, which they replace.

37. Section 7 sets out the authorities which may make requests for assistance, in which circumstances, and the form in which requests may be made. The judicial authorities which may request assistance under this section, (provided it appears that an offence has been committed or there are reasonable grounds for suspecting this, and proceedings or an investigation are underway), are any judge, and a justice of the

peace (in England and Wales), a sheriff (in Scotland) and a resident magistrate (in Northern Ireland). A prosecuting authority which has been designated by an order made by the Secretary of State - (or, in Scotland, the Lord Advocate or a procurator fiscal) - may also request assistance if the conditions set out in subsection (5) are satisfied. This arrangement is not new: designated prosecuting authorities were able to issue requests under the 1990 Act. The assistance which may be requested is to obtain evidence located outside the UK for use in a domestic criminal proceeding or investigation.

38. Subsection (7) requires that any outgoing requests for information about banking transactions made to participating countries under Article 2 of the 2001 Protocol must clearly state the relevance of the evidence to the investigation. This is in line with the conditions set out in the 2001 Protocol.

Section 8: Sending requests for assistance

39. This section makes provision for the transmission of UK requests to overseas authorities. It enables requests made under section 7 to be sent directly from the requesting authority in the UK to the relevant overseas authority, rather than via the central authorities of the two countries. This is a new arrangement. Under existing powers, direct transmission is possible only in cases of urgency. Direct transmission is a key tenet of the MLAC, which these provisions implement and, in general, where a request is destined for the EU it will in future be sent directly to the appropriate overseas authority from the UK authority making the request.

40. As there will be situations where direct transmission is not possible, for example where the particular executing authority is not known, where direct transmission is not permitted under the MLAC, or where the requested state is outside the EU, subsection (2) retains the option of indirect transmission via the Secretary of State (or the Lord Advocate in Scotland).

41. Subsection (3) implements Article 6(4) of the MLAC, and permits urgent requests to be submitted via Interpol or any other body able to receive it under any provisions adopted under the Treaty on European Union. This will permit, for example, EU Member States to make a request to their national member of Eurojust, a body established by Council Decision under Part VI of the Treaty on European Union with a view to reinforcing the fight in Member States against serious crime.

Section 9: Use of evidence obtained

42. This section ensures that evidence obtained from an overseas authority may be used only for the purposes for which it was requested (unless the consent of the requested overseas authority has been obtained), and is subject to the same provisions on the admissibility of evidence as evidence obtained under normal domestic arrangements. This section replicates sections 3(7) to 3(9) of the 1990 Act.

Section 10: Domestic freezing orders

43. This section provides for the issuing of domestic freezing orders, in accordance with the 2003 Framework Decision. The section deals with orders to freeze evidence only. Schedule 4 to the Act deals with orders to freeze terrorist assets, but orders to freeze property are not otherwise covered by this Act. A domestic freezing order is defined for the purposes of this section as an order for protecting evidence which is in

a participating country (explained in paragraph 18) pending the transfer of the evidence to the UK.

44. The section specifies the circumstances in which a judicial authority (as defined in subsection (5)) may make a freezing order. For a domestic freezing order to be made, it should appear to the judicial authority that proceedings in respect of an offence covered by the 2003 Framework Decision have been instituted or such an offence is being investigated, that there are reasonable grounds to believe there is evidence in a participating country which satisfies the requirements of this section (including, for example, that the evidence is likely to be of substantial value to criminal proceedings or an investigation in the UK), and that a request has been (or will be) made to the authority for the evidence to be sent to the UK.

Section 11: Sending freezing orders

45. This section provides that freezing orders must be sent via the Secretary of State (or, in Scotland, the Lord Advocate). This is in contrast to the general direct transmission provision in section 8.

46. This is necessary because freezing orders based on the concept of mutual recognition under the 2003 Framework Decision are completely new, and will be unfamiliar to those issuing and receiving them in terms of format, conditions and procedural requirements. Transmission via the central authority will enable the orders to be checked and monitored, to ensure that they comply with the requirements of the 2003 Framework Decision, and to ensure that they are responded to by the overseas authority in the appropriate manner. Under the terms of the 2003 Framework Decision the UK is allowed to require transmission via the central authority.

47. The section provides that freezing orders must be accompanied by a certificate, and lists requirements relating to the certificate. This is in accordance with Article 9 of the 2003 Framework Decision. Subsection (3) requires the judicial authority to send the order to the Secretary of State within 14 days of it being made. Whilst we expect that such orders will be transmitted without delay, the time limit has been included to ensure that they are not held up for lengthy periods.

Section 12: Variation or revocation of freezing orders

48. This section provides that a judicial authority which makes a freezing order under section 10 may vary or revoke it on application by the persons mentioned in this section.

Section 13: Requests for assistance from overseas authorities

49. This section deals with handling incoming requests for assistance with obtaining evidence located in the UK.

50. Subsection (1) provides that, if the conditions set out in section 14 are satisfied, arrangements may be made for evidence to be obtained, or for an application for a warrant to be made in response to a request for assistance.

51. Subsection (2) sets out the authorities competent to make requests for mutual legal assistance. These are courts, prosecuting authorities and other authorities which have the function of making such requests - (examining magistrates, for example). Subsection (3) also provides for requests to be received from Interpol and from bodies

or persons competent to make requests pursuant to agreements adopted under the Treaty on European Union. Eurojust is an example of such a body.

52. The section makes provision for requests to be received by "territorial authorities". These are defined in section 28(9). This enables transmission to the Secretary of State, or (for Scotland) the Lord Advocate.

53. Article 6 of the MLAC envisages direct transmission of most requests, but direct transmission is difficult to apply in our domestic system where jurisdiction is based largely on function rather than geography, and where the same authorities are not necessarily competent to both issue and execute letters of request. Misdirection of requests sent directly to the wrong authority would create delays, defeating the purpose of direct transmission which is to speed up the process. The UK therefore has a special provision in the MLAC enabling it to opt out of the direct transmission requirement.

54. Section 27 of the Act enables the Treasury by order to provide for certain functions conferred on the Secretary of State or on a constable to be exercisable by HM Customs and Excise, and for the Secretary of State by order to provide for certain functions conferred on him or on a constable to be exercisable by other persons prescribed by order. This will facilitate more extensive direct transmission in the future.

Section 14: Powers to arrange for evidence to be obtained

55. This section sets out the conditions which need to be satisfied before a court may be nominated to receive evidence under section 15. Subsection (1) sets out the types of court proceedings, or investigations, in connection with which evidence may be obtained for an overseas authority. In line with the requirements of Article 3 of the MLAC and Article 49(c) of the Schengen Convention, subsection (1)(b) provides that assistance may be provided in connection with administrative proceedings or an investigation into an act which is punishable in such proceedings. In some EU Member States offences such as driving infractions are classified neither as criminal nor civil proceedings, but as administrative proceedings. In the UK, there is no precise parallel to these proceedings, but legislation is needed to allow assistance to be provided to other participating countries in relation to this type of proceedings. Subsection (1)(c) provides that assistance may be provided in connection with clemency proceedings or an appeal during the judicial phase of administrative proceedings. Both clemency proceedings and administrative proceedings are defined in section 51(1). The Schengen Convention also requires assistance to be given in relation to civil proceedings joined to criminal proceedings, where a final decision has not yet been reached in the criminal proceedings. The definition of "criminal proceedings" in section 51(1) therefore allows for assistance to be provided in these cases.

56. Subsection (2) of section 14 limits the provision of assistance within subsections (1)(a) or (b) to when an offence has been committed or there are reasonable grounds for suspecting this, and when proceedings have been instituted or an investigation is being carried out. An offence for these purposes includes an act punishable in administrative proceedings. Subsection (3) provides that a certificate from the overseas authority confirming these matters is to be regarded as

conclusive. In the vast majority of cases this certificate is not required. The letter of request will itself contain sufficient information for the territorial authority to be satisfied as to the matters in subsections (1) and (2). However, the certificate can be useful in particularly complex cases to set out exactly what matters are being investigated when this is not clear from the request itself.

57. Subsection (4) sets out the circumstances in which requests relating to fiscal offences may be accepted. If there is no agreement between the UK and the requesting country, and it is not a member of the Commonwealth, such requests shall be subject to a requirement of dual criminality – (that is, that the conduct, if it occurred in a part of the UK, would also constitute an offence under the law of that part of the UK). This follows existing practice.

Section 15: Nominating a court etc. to receive evidence

58. This section provides for a court to be nominated to receive evidence under section 14 above, and covers proceedings currently governed by section 4 of the 1990 Act.

59. The powers to nominate a court are conferred on the Secretary of State in England, Wales and Northern Ireland and on the Lord Advocate in Scotland. Where it appears that the request relates to an offence involving serious or complex fraud, the request may be referred to the Director of the Serious Fraud Office, or, in Scotland, a direction may be made applying the powers of investigation of a nominated officer under Part IV of the Criminal Law (Consolidation) (Scotland) Act 1995.

60. Schedule 1 makes further provision in relation to proceedings of a court nominated to receive evidence.

Section 16: Extension of statutory search powers

61. Subsection (1) replicates section 7(1) of the 1990 Act, which it replaces. Subsection (3) applies the provision to Northern Ireland. As with the provision in the 1990 Act, the section enables the appropriate authorities in England, Wales and Northern Ireland to apply for and execute a search warrant or a production order in response to an overseas request, in the same circumstances as would be possible in relation to a domestic case – (that is when the conduct in question would be a serious arrestable offence if committed here).

62. Subsection (2)(b) provides that such a search warrant or production order may also be applied for and executed without an overseas request if the constable who makes the application is a member of an international joint investigation team (as defined in subsection (5)). Subsection (4)(b) provides similarly for Northern Ireland. These provisions implement Article 13(7) of the MLAC which contemplates investigative measures being undertaken without such a request by seconded members of a joint investigation team in relation to the team's investigations overseas. The constable making the application for the warrant or order would have personal knowledge of the joint investigation as he would in making such an application in a domestic investigation.

Section 17: Warrants in England and Wales or Northern Ireland

63. This section replicates section 7(2) of the 1990 Act, which it replaces. It enables search warrants to be issued if the conditions in subsection (3) are

satisfied. These conditions are that criminal proceedings overseas have been instituted or a person has been arrested in the course of a criminal investigation, the alleged criminal conduct would constitute an arrestable offence if it occurred in England and Wales or Northern Ireland, and there are reasonable grounds to suspect that there is evidence relating to the offence on premises here. This section enables the search of premises occupied or controlled by the suspect only.

Section 18: Warrants in Scotland

64. This section is the Scottish equivalent to sections 16 and 17 and it serves the same purpose as those sections do in relation to England, Wales and Northern Ireland, consistent with Scottish procedure for search warrants. It replaces and largely replicates sections 8(1) and (2) of the 1990 Act, with the exception of inclusion of a reference to section 134 of the Criminal Procedure (Scotland) Act 1995. It gives a sheriff the same power to issue a warrant authorising entry, search and seizure by a constable or customs officer, as he would have under section 134 of the Criminal Procedure (Scotland) Act 1995. Before issuing such a warrant the sheriff must be satisfied that an offence under the law of a country outside the UK has been committed and that the conduct would have constituted an offence punishable by imprisonment if it had occurred in Scotland. In Scotland, with regard to joint investigation teams, the application for a search warrant will be made by the procurator fiscal on behalf of the team.

Section 19: Seized evidence

65. This section deals with the treatment of any evidence that is seized under the procedures set out in sections 16 to 18. Article 6 of the MLAC requires the evidence to be sent directly to the court or authority which requested it. This is a departure from existing procedure established by the 1990 Act. It will speed up the provision of evidence by cutting out any central authority involvement once the evidence has been obtained. However, there will be circumstances when evidence may not be returned directly, (for example, when a country that is not party to the MLAC requires evidence to be returned via the central authority), and subsection (1) therefore provides that evidence may be sent directly to the requesting authority, or via the Secretary of State (or, in Scotland, the Lord Advocate). Subsection (3) provides that this section does not apply to evidence obtained by virtue of sections 16(2)(b) or (4)(b) or 18(2)(b) in an international joint investigation.

Section 20: Overseas freezing orders

66. This section implements one of the key measures set out in the 2003 Framework Decision: the requirement to execute an overseas order to freeze evidence for its subsequent use in any proceedings or investigation in a participating country, where the order is made by a court or other authority in that country. The UK is already able to consider requests for mutual legal assistance in similar circumstances, but the 2003 Framework Decision is based on the principle of mutual recognition, and requires the UK to recognise the validity of an overseas order from a participating country, subject to certain conditions, rather than consider it as a request for mutual legal assistance.

67. Subsection (2) defines an overseas freezing order.

68. The section sets out the authorities competent to make overseas freezing orders, and the conditions for executing the order. Provided that the other requirements

are met, the UK is obliged to execute orders relating to offences listed in the 2003 Framework Decision. The offences are defined in section 28(5) and (6) as an offence described in Article 3(2) of the 2003 Framework Decision or an offence prescribed (or of a description prescribed) by order.

69. Overseas freezing orders must be accompanied by a certificate. Article 9 of the 2003 Framework Decision requires provision of a certificate, which must follow a standard format containing the details required in order that the receiving authority can execute the order. These will include, for example, details of the issuing authority, the person and offence under investigation, and the evidence sought.

70. Frozen evidence is not automatically provided to the overseas authority that issued the order. It must issue a mutual legal assistance request, either simultaneously with the order, or at a later stage, in order for the evidence to be transmitted. This is provided for in section 24.

Section 21: Considering the order

71. This section sets out the procedure when an overseas freezing order is received in the UK.

72. Providing the conditions in section 20 are met, the territorial authority (defined in section 28 as the Secretary of State in England and Wales and Northern Ireland, and the Lord Advocate in Scotland) must refer the order to a court for execution. There is no discretion at this stage.

73. The section provides for rules of court to set time limits for the court to consider the order and sets out the grounds on which the court may decide to refuse to execute an order. The grounds are if execution of the order would be incompatible with the Convention rights (as defined in the Human Rights Act 1998) and where the principle of double jeopardy is infringed – (that is where the person to whom the order relates would be entitled to be discharged under any rule of law in the participating country or the UK relating to previous acquittal or conviction).

Section 22: Giving effect to the order

74. This section sets out how an overseas freezing order will be executed in practical terms. This will be done by issuing a domestic search warrant or production order. The procedures largely follow those provided for under the Police and Criminal Evidence Act 1984 ("PACE"). However, the warrants or orders will not be issued under PACE. They will be free-standing warrants or orders that will be issued in relation to the offences covered by the 2003 Framework Decision. PACE does not apply in Scotland which has its own search warrant procedure.

Section 23: Postponed effect

75. This section sets out circumstances (covered in Article 7 of the 2003 Framework Decision) in which UK authorities may postpone giving effect to freezing orders. If the decision is taken to postpone acting on a freezing order, the requesting country will be informed accordingly. If the grounds for postponement cease, the order will then be given effect to under section 22.

Section 24: Evidence seized under the order

76. This section provides that evidence which has been subject to a freezing order must be retained by the constable until the territorial authority gives him instructions either to send the evidence to the requesting authority or to release it. If the territorial authority has received a request from the overseas authority for the evidence to be sent, it may require a constable to send the evidence to the overseas authority. Otherwise, the territorial authority must order the release of the evidence under section 25(4).

Section 25: Release of evidence held under the order

77. Under this section, the court may, in response to an application made by one of the persons listed in subsection (2), authorise the release of evidence by the constable. This would enable the persons mentioned in subsections (2)(a) and (2)(b) to apply for the release of the evidence seized in the event that the overseas freezing order were withdrawn, or if one of the conditions for non-execution in section 21 were met.

78. It would also enable a third party affected by the order, for example the person whose property had been seized, to challenge the execution of the order on the grounds listed in subsection (1). Substantial reasons for issuing the overseas freezing order can, however, be challenged only in the country which issued the order.

Section 26: Powers under warrants

79. This section relates to issuing warrants in relation both to mutual legal assistance requests under section 17 and overseas freezing orders under section 22.

80. In line with PACE, subsection (1) prevents a warrant being issued if items sought are subject to legal privilege, excluded material or special procedure material (as defined in PACE under section 28(3)). Excluded or special procedure material must be obtained by issuing a less intrusive production order. Warrants in respect of such material can be sought only if a production order has been obtained and has failed to produce the evidence sought.

81. Subsection (3) makes an amendment to the Criminal Justice and Police Act 2001, providing that the additional powers of seizure in that Act will apply to seizure of evidence relevant to overseas offences or investigations under these provisions.

Section 27: Exercise of powers by others

82. This section provides for certain functions conferred on the Secretary of State or on a constable to be conferred upon others. This is in recognition of the MLAC requirement for direct transmission of requests. Currently, the authorities which deal with many requests for assistance, such as HM Customs and Excise, do not have the power to nominate courts or to apply for warrants in order to execute mutual legal assistance requests, and have to rely on the Secretary of State to nominate a court or issue a direction to make an application for a warrant.

83. Therefore, this section contains an order-making power to provide that certain functions conferred on the Secretary of State or a constable may be exercisable by customs officers or persons acting under their direction. The practical effect of this power is that it would enable requests to be sent directly to HM Customs and Excise and fully executed by them, without recourse to the Secretary of State, in circumstances where a court nomination or application for a warrant is

required, and will implement the principle of direct transmission more fully.

84. Subsection (2) provides for the Secretary of State to confer similar powers on prescribed persons in the future. This could apply either to authorities that already execute requests, or be extended to other authorities that may take on a role in the execution of mutual legal assistance requests.

Section 28: Interpretation of Chapter 2

85. This section defines the terms used in Chapter 2.

86. Subsection (5) defines "a listed offence" as an offence described in Article 3(2) of the 2003 Framework Decision, or as an offence prescribed, or of a description prescribed, by an order made by the Secretary of State. The latter provision is necessary to cater for two circumstances: firstly, if the list of offences in the 2003 Framework Decision is added to by the European Council of Ministers. Secondly, it reflects the fact that under the 2003 Framework Decision freezing orders can be executed in respect of offences other than those listed but with the executing state able, if it wishes, to apply a dual criminality requirement. Subsection (6) therefore provides that any order which the Secretary of State makes (or, in relation to Scotland, the Scottish Ministers) in respect of a prescribed offence may require that the conduct involved must if it occurred in a part of the UK constitute an offence in that part.

Chapter 3: Hearing Evidence through Television Links or by Telephone

Section 29: Hearing witnesses abroad through television links

87. Article 10 of the MLAC permits the hearing of witnesses by video link where it is neither possible nor desirable for the witness to travel from his Member State to that where his evidence is required.

88. Outgoing requests from the UK are currently covered by the provisions contained in section 32 of the Criminal Justice Act 1988, and section 273 of the Criminal Procedure (Scotland) Act 1995, which allow the use of video links in limited circumstances. The Act does not change the current position on the types of case when video links can be used to import evidence into UK court proceedings, although the section makes provision for the Secretary of State (or, in relation to Scotland, the Scottish Ministers) to extend this provision to other types of criminal proceedings in the future.

Section 30: Hearing witnesses in the UK through television links

89. This section introduces arrangements so that, for the first time, courts can take video evidence of witnesses for transmission abroad. All requests will be sent to the Secretary of State, (or, in Scotland, the Lord Advocate), who will then nominate a court where the hearing will take place. The proceedings will be subject to section 1 of the Perjury Act 1911, (in Northern Ireland, Article 3 of the Perjury (Northern Ireland) Order 1979, and, in Scotland, sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 or any matter pertaining to the common law crime of perjury), and the rules on contempt of court will apply to the hearing. Although the hearing will not be a UK court proceeding, states must (in accordance with Article 10(8) of the MLAC), be able to deal with witnesses who refuse to testify or do not testify according to the truth under their domestic law.

90. Subsection (6) makes reference to Schedule 2 to the Act which makes provision on procedural matters such as securing attendance of witnesses, the conduct of the hearing, and witness privilege. The domestic court must ensure that it protects the rights and privileges of the witness (such as the privilege against self-incrimination) and is to intervene where necessary to safeguard the rights of the witness. Translation must be available for the benefit of the court as well as the witness.

Section 31: Hearing witnesses in the UK by telephone

91. Article 11 of the MLAC allows for courts to hear witnesses or experts by telephone within the scope of national law. This section allows the UK to respond to requests for assistance in arranging telephone hearings at the request of a participating country. All requests will be sent to the Secretary of State, (in Scotland, the Lord Advocate) who will then nominate a court where the hearing will take place. Unlike the provisions concerning evidence by television link, the witness or expert has to give his consent, in accordance with Article 11(2) of the MLAC, and subsection (3) provides that a request for a person to give evidence in this way must state that the witness is willing to give evidence. There is, therefore, no power to compel witnesses to attend the hearing. As with section 30, proceedings will be subject to the law on perjury, and the rules on contempt of court will apply to the hearing, but, except for these limited purposes, the evidence given before the nominated court is not to be treated as evidence given in UK proceedings. Some countries find telephone hearings a useful means of taking routine statements from key witnesses. As UK law does not provide any scope for evidence to be heard in this way there is no provision made here for outgoing requests.

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.

Chapter 5: Transfer of Prisoners

Section 47: Transfer of UK prisoner to assist investigations abroad

106. This section provides for prisoners from the UK to be transferred to another participating country to assist with an investigation, implementing Article 9 of the MLAC. This differs from section 5 of the 1990 Act which covers the transfer of UK prisoners to other countries at the request of the authorities of that country to assist their investigations. This new power might be used, for example, where a prisoner assisting a UK investigation could identify a site or participate in an identification parade in another participating country. It is unlikely to be used frequently. The requirement that a prisoner (or an appropriate person acting on his behalf) must give his consent before the transfer takes place (subsections (4) and (5)) is consistent with section 5 of the 1990 Act.

Section 48: Transfer of EU etc. prisoner to assist UK investigation

107. This section provides for the transfer of a prisoner from a participating country to the UK in order to assist with that country's investigation. Section 6 of the 1990 Act allows overseas prisoners to be transferred at the UK's request to assist with a domestic investigation. The requirement that a prisoner must give his consent before the transfer takes place (subsections (4) and (5)) is consistent with section 6 of the 1990 Act.

Chapter 6: Supplementary

Section 49: Rules of court

108. This section provides that rules of court may be made governing court practice and procedure to be followed in connection with proceedings under Part 1. These are additional to the rules set out in Schedule 1 which govern the proceedings of a court nominated to receive evidence under section 15, and Schedule 2 which govern hearings through television links and by telephone under sections 30 and 31.

Section 50: Subordinate legislation

109. This section provides that the power to make orders under Part 1 is to be exercised by statutory instrument, and that the negative resolution procedure will apply to such instruments, although subsection (5) provides that an order designating a country that is not a Member State of the EU as a "participating country" under section 51(2)(b) is subject to the affirmative resolution procedure.

Part 2: Terrorist Acts and Threats: Jurisdiction

Section 52: Jurisdiction for terrorist offences

110. The main UK legislation on counter-terrorism is the Terrorism Act 2000 (the "Terrorism Act"). The Terrorism Act defines terrorism as being both a serious criminal act, and one that is designed to influence the government or to intimidate the public and made for the purpose of advancing a political, religious or ideological cause. Under UK law, in general, there are no "terrorist" offences (apart from a few specific offences such as directing terrorism, weapons training, terrorist funding and inciting terrorism). Suspected terrorists are prosecuted under criminal legislation such as murder, conspiracy to cause explosions, for example. Criminal offences falling within the definition of terrorism contained within the Terrorism Act can be investigated by the police using the powers within the Terrorism Act. The UK's extensive anti-terrorism legislation already broadly meets the requirements of the 2002 Framework Decision, with the exception of the provisions on extra-territorial jurisdiction.

111. Article 9 of the 2002 Framework Decision requires participating countries to take extra-territorial jurisdiction for specified offences where these are committed for a terrorist purpose. Existing UK legislation does not provide for this because the primary basis of criminal jurisdiction in the differing parts of the UK is territorial, which has the effect that, unless a criminal statute expressly provides for extra-territorial jurisdiction, jurisdiction is only in respect of offences which take place in that part of the UK. There is already provision for extra-territorial jurisdiction in the Terrorism Act for terrorist financing and terrorist bombing offences. These provisions allowed the UK to ratify the UN Convention for the Suppression of Terrorist bombings and the UN Convention for the Suppression of the Financing of Terrorism (see sections 62 and 63 respectively). The provisions enable the UK to meet its obligations under the "extradite or prosecute" provisions of these Conventions.

112. The purpose of Article 9 of the 2002 Framework Decision is to ensure that Member States take responsibility for terrorist activities by their own nationals and residents, no matter where those acts occur, and also to ensure that those who attack UK nationals, residents, UK diplomatic staff and EU institutions can be

prosecuted effectively. The first section inserts extra sections 63 A to E after section 63 of the Terrorism Act.

63A Other terrorist offences under this Act: jurisdiction

113. Section 63A extends the jurisdiction of specific terrorist offences included within the Terrorism Act to outside the UK for section 54 (weapons training) and sections 56 to 61 inclusive (directing a terrorist organisation, possession for terrorist purposes, collection of information, and inciting terrorism overseas). Extra-territorial jurisdiction is only taken in respect of UK nationals and residents. Subsections (2) and (3) define respectively a UK national and a UK resident for the purposes of sections 63A, 63B and 63C.

114. Where an extra-territorial offence is created, extra-territorial jurisdiction is also automatically taken over secondary and inchoate offences, such as aiding, abetting, attempting, inciting, conspiring, counselling or procuring.

63B Terrorist attacks abroad by UK residents or nationals: jurisdiction

115. Section 63B(1) gives the UK extra-territorial jurisdiction over certain specific domestic offences where they are committed by UK nationals or residents outside the UK as an act of terrorism or for the purposes of terrorism. Subsection (2) lists the specific offences. These reflect those contained in Article 1 of the 2002 Framework Decision. The 2002 Framework Decision uses a similar definition of terrorism to that in the Terrorism Act. This new section and the sections below depend on the definition of terrorism in section 1 of the Terrorism Act to ensure that extra-territorial jurisdiction is only taken for acts that would be considered acts of terrorism under the Terrorism Act.

63C Terrorist attacks abroad on UK nationals, residents and diplomatic staff etc.: jurisdiction

116. Section 63C(1) gives the UK extra-territorial jurisdiction over certain domestic offences where they are committed against UK nationals or residents and "protected persons" outside the UK as an act of terrorism or for the purposes of terrorism. The nationality or residence of the offender is irrelevant. Subsection (2) lists the offences for which the UK will take extra-territorial jurisdiction. Subsection (3) specifies those persons who are "protected persons". "Protected persons" includes all diplomatic and consular staff, whether of UK nationality or not. Since Article 9(1)(e) of the 2002 Framework Decision requires Member States to take extra-territorial jurisdiction over offences against institutions of the EU established on their territory, subsection (3)(c) includes in the definition of "protected persons" employees of the European Agency for the Evaluation of Medicinal Products, which is at present the only EU institution based in the UK. Should further EU agencies set up in the UK in future, subsection (3)(d) provides a power for the Secretary of State to add further bodies by order. Subsection (4) limits subsection (3)(d) to any future EU institution based in the UK. Subsection (5) provides that a certificate issued by the Secretary of State stating any fact relating to whether a person is a "protected person" is to be conclusive evidence of that fact.

63D: Terrorist attacks or threats in connection with UK diplomatic premises etc.: jurisdiction

117. This section gives the UK jurisdiction over terrorist offences or the threat of terrorist offences committed either against the residential or working premises or vehicles of protected persons when a protected person is in, or likely to be, on the premises or in the vehicle. This will cover attacks on UK embassies and consulates abroad. This is to give effect to Article 9(1)(e) of the 2002 Framework Decision, which requires Member States to take extra-territorial jurisdiction in cases of terrorist attack on their institutions. At present if a terrorist act is committed against UK diplomatic residencies, any proceedings have to be brought by the relevant authorities of the country in which the incident took place. Under these new provisions, the UK government would be able to prosecute effectively those who attack or threaten to attack its personnel and premises. Subsection (1) provides that the UK will take extra-territorial jurisdiction over certain domestic offences where they are committed against the premises or vehicles of protected persons when a protected person is in, or likely to be, on the premises or in the vehicle. Subsection (2) lists the offences for which the UK will take extra-territorial jurisdiction. Subsections (3) and (4) provide that in addition the UK will take extra-territorial jurisdiction over the threat offences in the Criminal Damage Act 1971, (and its Northern Ireland equivalent, and, in Scotland, breach of the peace), when committed in respect of protected persons' premises or vehicles, as an act of terrorism or for the purposes of terrorism.

63E Sections 63B to 63D: supplementary

118. This section provides that the Attorney General's consent is required for prosecutions in England and Wales in respect of conduct which would not be an offence apart from sections 63B, C and D and the consent of the Advocate General for Northern Ireland in respect of prosecutions in Northern Ireland. In relation to offences under sections 54 to 61 of the Terrorism Act, section 117 makes provision for consent to prosecution. No express provision is required for Scotland. The Lord Advocate has responsibility for all prosecutions.

Section 53: Jurisdiction for offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001

119. This section provides for extra territorial jurisdiction over offences under section 113 of the Anti-terrorism, Crime and Security Act 2001 (offences involving noxious substances) by adding section 113A. It is an offence under section 113 for a person to use or threaten to use a biological, chemical, radioactive or other noxious substance to cause various kinds of serious harm in a manner designed to influence the government or intimidate the public. Offences under this section carry a sentence of up to 14 years' imprisonment and a fine. Extra-territorial jurisdiction for offences under section 113 are confined however to those committed for a terrorist purpose in the sense that it is undertaken for the purpose of advancing a political religious or ideological cause through subsection (2). Subsection (3) outlines the circumstances when extra-territorial jurisdiction is to be taken. These are the same as in the sections above, namely; when the act is by a United Kingdom national or resident; by any person to a United Kingdom national, resident or protected person; and by anyone against the premises or vehicle of a protected person when they are in or on it.

Part 3: Road Traffic

Chapter 1: Convention on Driving Disqualifications

Section 54: Application of section 55

120. This section prescribes when the duty in section 55 to notify a central authority of an EU Member State about a disqualification will apply. The duty covers a driving disqualification imposed in the UK on a resident of another Member State. Schedule 3 lists the road traffic offences which, in the circumstances specified, would require notification of disqualification. A minimum period of disqualification must apply in respect of the offences in Part 2 but not Part 1.

121. The requirement will only apply to a disqualification which is no longer subject to appeal. The section also provides for section 55 not to apply in circumstances prescribed in regulations. Where another Member State has declared that it will apply, in full or in part, the discretionary conditions to the recognition of disqualifications described in Article 6(2) of the Convention, regulations will state when notification is not required in respect of that State.

Section 55: Duty to give notice to foreign authorities of driving disqualification of a non-UK resident

122. This section places a duty on the appropriate Minister (the Secretary of State in Great Britain or the Department of the Environment in Northern Ireland) in the circumstances specified in the previous section to notify a driving disqualification to the authorities in the Member State where the offender is normally resident. The notice must include information required by the Convention to allow the central authority to locate the offender, together with details of the offence and the order made against him. The appropriate Minister is also required to provide evidence that an offender who did not take part in the proceedings was properly notified of them. This will usually have been by way of a summons and subject to the normal conditions of service. Under Article 6(1)(e) of the Convention, the State of residence must refuse to recognise a disqualification if it considers that the person concerned did not have an adequate opportunity to defend himself. If the period of disqualification is reduced or removed by a court subsequent to the appropriate Minister sending his notification, he must also inform the central authority.

Section 56: Application of section 57

123. This section describes when under section 57 a driving disqualification, imposed in another Member State on a person normally resident in the UK, will be enforced in the UK. This will be the case where the offence which gives rise to the disqualification constitutes one of the categories of conduct specified in the Convention, or other conduct constituting an offence which results in a disqualification of at least the minimum period. The offender must have been duly notified of, and entitled to take part in, the proceedings and the disqualification must not be subject to any further appeal in the State of the offence. A disqualification will not be enforced if the relevant proceedings in the State of offence were brought later than the time provided for the commencement of summary proceedings for a corresponding offence in the United Kingdom. This accords with Article 6(1)(d) of the Convention which precludes enforcement of a disqualification where the period of limitation would have expired under the state of residence's legislation. The

appropriate Minister may make regulations about the correspondence between UK offences and other States' offences.

Sections 57 and 58: Recognition in the UK of foreign driving disqualifications

124. These sections allow for a person in the circumstances set out in the previous section, and to whom the appropriate Minister sends notification, to be disqualified from driving in the UK. The appropriate Minister should be provided under the Convention by the State of offence with the information he requires to enforce the disqualification. The appropriate Minister has discretion as to whether to enforce a disqualification where the unexpired period is less than one month. Where the disqualification is effective until a condition is satisfied, the offender is disqualified until the condition is satisfied. The UK disqualification takes effect 21 days after notification to the offender. However, the appropriate Minister has power to substitute a longer period. The intention is that the period at the end of which the disqualification takes effect should be the same as the period for appealing under section 59.

125. The Convention requires any part of the disqualification already served in the State of the offence to be taken into account in recognising the disqualification in the offender's State of residence. Section 57 grants the appropriate Minister power to make regulations to prescribe how the unexpired period of disqualification is to be determined. Although the normal appeals process will have been exhausted before the disqualification is notified to the UK, if the State of the offence removes the disqualification at any time during the unexpired period, the disqualification will also cease to have effect in the UK at that time.

Sections 59 to 62: Appeal against Disqualification and Power of Appellate Courts to Suspend Disqualification

126. Section 59 enables a person disqualified under section 57 to appeal on limited grounds to their local magistrates' court in England and Wales, the sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland. The appeal is only concerned with the imposition of the disqualification under section 57 and has no bearing on the conviction and disqualification in the State of the offence. An appeal must be made within 21 days of the notice of disqualification being issued (although the appropriate Minister may by regulations substitute a longer period). Separate provision is made in sections 60 to 62 for the appellate courts in each part of the UK, where the court thinks fit, to suspend the disqualification and notify the appropriate Minister that it has done so. If the court allows the appeal it is also required to notify the appropriate Minister.

Sections 63 to 65: Production of Licence

127. Sections 63 and 64 require a licence holder given notice of disqualification under section 57 to deliver his licence and counterpart to the appropriate Minister within 21 days of the notice being given. It is an offence not to comply with this requirement. However, there are circumstances set out in sections 63 and 64 where an offence will not be committed where the person is not in possession of his licence or has applied for a new licence. Where a Community licence is produced to the appropriate Minister by a person disqualified under section 57, the appropriate Minister is required to send the details of the holder and the disqualification to the

authority in the relevant State which issued the licence. The appropriate Minister will return the licence to the holder at the appropriate time specified in section 65(4) unless the driver would not be authorised to drive in Great Britain or Northern Ireland, in which case the licence will be returned to the issuing authority in the relevant State.

Sections 66 and 67: Effect of disqualification and Rule for determining end of period of disqualification

128. The licence is treated as revoked from the beginning of the period of UK disqualification, subject to any suspension which is granted. Similarly, any period when a disqualification has been suspended, or the driver not disqualified, will not count towards determining the end of the period of disqualification.

Sections 68 and 69: Endorsement of Licence

129. The particulars of a disqualification under section 57 must be endorsed on the counterpart of a licence. The endorsement remains effective for four years from conviction in all cases. A person may obtain a licence free from the endorsement at the end of this period. If a disqualification is removed under section 57(6), the appropriate Minister must endorse the counterpart of the licence.

Section 70: Duty of appropriate Minister to inform competent authority

130. Under this section, where the appropriate Minister has been notified of a disqualification under the Convention, in accordance with the Convention, he is required to inform the competent authority of the State where the offence took place of the details of the disqualification imposed in the UK or, if he has not recognised the disqualification, he must inform the State of his reasons.

Section 71: Notices

131. This specifies how a notice which is required to be sent under this Chapter to an individual, or a Community licence which is required to be returned to its holder, may be delivered to that person. The latest address known to the appropriate Minister will be the proper address for this purpose.

Chapter 2: Mutual Recognition with the United Kingdom

132. Chapter 2, together with its consequential amendments, removes driver licensing anomalies between Great Britain and Northern Ireland, so as to give the United Kingdom a more coherent system for the implementation of the Convention. It provides that a person disqualified from holding or obtaining a driving licence in Northern Ireland, the Isle of Man, the Channel Islands or Gibraltar is similarly disqualified in Great Britain. The Secretary of State's powers to revoke a licence either on grounds of medical disability or during a new driver's probationary period are extended to holders of Northern Ireland driving licences in Great Britain.

Section 76: Recognition in Great Britain of disqualifications in Northern Ireland etc.

133. This section amends the Road Traffic Act 1988 (“RTA 1988”) to introduce the recognition in Great Britain of driving disqualifications imposed in Northern Ireland, the Isle of Man, the Channel Islands and Gibraltar. So long as a person is subject to a driving disqualification imposed in Northern Ireland, the Isle of Man, the Channel Islands or Gibraltar, he will also be disqualified in Great Britain. This remedies an existing anomaly in the UK driver licensing system, under which none of

these jurisdictions recognised driving disqualifications imposed in any of the others. Reciprocal legislation will be needed in these territories for mutual recognition: legislation will be implemented in Northern Ireland by Order in Council under section 92 due to the current suspension of the Assembly; the Isle of Man has already implemented legislation.

Section 77: Endorsement of counterparts issued to Northern Ireland licence holders

134. This section provides that the holder of a Northern Ireland licence committing a road traffic offence in Great Britain will be able to opt for the fixed penalty system for road traffic offences, like the holder of a Great Britain licence, avoiding the inconveniences of a prosecution. The fixed penalty option is not currently available in Great Britain to the holder of a Northern Ireland licence. The section facilitates endorsement of a Northern Ireland licence for a road traffic offence or offences committed in Great Britain for which the fixed penalty system is applied.

135. Subsection (1) inserts a new section 109A of the RTA 1988, enabling the Secretary of State to issue a driving licence counterpart to the holder of a Northern Ireland licence so as to enable endorsement by authorities in Great Britain. The section makes provisions similar to those already applied to the holder of a European Community driving licence other than from Great Britain or Northern Ireland. It enables the Secretary of State to endorse a Northern Ireland licence, obliging him to return it to the holder. Section 109A(5) empowers the Secretary of State to require surrender of the counterpart or delivery of the licence to him, and to serve notice in writing that such delivery must be made and information provided within 28 days. It makes it an offence to drive a motor vehicle on a road having unreasonably failed to surrender the counterpart for endorsement or for correction of particulars of the holder's name or address.

136. Subsection (2) inserts new sections 91ZA and 91ZB into the Road Traffic Offenders Act 1988 ("RTOA 1988"), setting out the application of that Act to Northern Ireland licence holders. The provisions of the RTOA 1988 to be applied to Northern Ireland licence holders are those which apply to them the fixed penalty system for traffic offences committed in Great Britain. The court procedures followed when penalty points are endorsed on a driving licence are extended to Northern Ireland licences. In particular, this includes various aspects of procedure when a driver is both disqualified and gains penalty points at the same time.

Section 78: Prohibition on holding or obtaining Great Britain and Northern Ireland licences

137. Subsection (2) prevents a Northern Ireland licence holder who obtains a Great Britain licence from continuing to be able to drive in Great Britain by virtue of the Northern Ireland licence. It provides that, on surrender of the Northern Ireland licence when a Great Britain licence is granted, the authorisation to drive a vehicle in Great Britain by virtue of the Northern Ireland licence ceases, and that the Secretary of State must send the Northern Ireland licence and its counterpart back to the Northern Ireland authorities.

138. Subsection (3) is in respect of reciprocal provisions intended in Northern Ireland law. It requires the Secretary of State, where he is satisfied that a Northern

Ireland licence has been granted to the holder of a Great Britain licence and he has received the Great Britain licence, to serve written notice on the person concerned that the Great Britain licence is revoked.

139. Subsection (4) provides, in order to prevent duplication of licences, that a person holding a Northern Ireland licence to drive a particular class or classes of vehicle is disqualified from holding or obtaining a Great Britain licence to drive a motor vehicle of that class or classes, if he does not surrender the Northern Ireland licence to the Secretary of State and remains authorised to drive in Great Britain as a holder of that licence.

Section 79: Disability and prospective disability

140. This section amends the provisions of the RTA 1988 relating to disability and prospective disability of a licence holder. Subsection (2) inserts a new section 109B into the RTA 1988, which provides for revocation by the Secretary of State of the authorisation to drive in Great Britain conferred by a Northern Ireland licence, on grounds of disability or prospective disability. Currently the Secretary of State has a power to revoke a driving licence issued in Great Britain as set out at section 93 of the RTA 1988. The new provisions parallel those which already exist for revocation of a Great Britain licence on medical grounds, except that the revocation extends only to the right to drive in Great Britain conferred by virtue of section 109(1) RTA 1988. The Secretary of State may require the Northern Ireland licence holder to deliver up his licence and the relevant counterparts, so that it may be returned to the Northern Ireland authorities.

141. Subsection (2) also inserts a new section 109C into the RTA 1988. This amendment places the holders of Northern Ireland licences, if resident in Great Britain, under the same duty as Great Britain licence holders to provide information relating to disabilities.

142. Subsection (3) makes provision for Great Britain licences, where the right to drive in Northern Ireland has been revoked on medical grounds there under a corresponding provision of Northern Ireland law. In this event the Secretary of State may revoke the licence.

143. In either circumstance, the Secretary of State may on application grant a new licence for a period which he determines. (For example, in the case of an individual suffering from a degenerative disease likely progressively to impair his or her ability to drive, a short period licence might be granted.)

Part 4: Miscellaneous

Section 80: Disclosure of information by SFO

144. This section amends section 3 of the Criminal Justice Act 1987 (which established the Serious Fraud Office ("SFO")).

145. It extends the circumstances in which the SFO can disclose information. Currently, the SFO is permitted to disclose information, in particular circumstances, for the purposes of any prosecution: the amendment will enable that disclosure also to take place for the purposes of any criminal investigation, whether in the UK or elsewhere.

146. This section also extends the categories of persons or bodies to which information may be disclosed. At present, disclosure of information by the SFO is limited to bodies with functions equating to those of the SFO. The amendment will improve international co-operation in respect of crime, and extends to bodies established under the Treaty on European Union (designed, in particular, to facilitate exchanges of information with Eurojust) or any other treaty to which the UK is a party.

Section 81: Inspection of Information Systems

147. This section extends the functions of the Information Commissioner under Part VI of the Data Protection Act 1998 (the "1998 Act"). It allows the Information Commissioner to inspect personal data recorded in the UK sections of three European information systems without a warrant. These information systems are the Schengen Information System ("SIS"), the Europol Information System ("EIS") and the Customs Information System ("CIS"). The requirement for an independent power of supervision arises from the Conventions referred to in subsection (7) of the section, establishing the SIS, EIS and CIS. These Conventions require the supervisory authority to have free access to the national sections of the systems. At present the Commissioner is only able to enter premises to carry out inspections of the EIS either by agreement with the relevant UK body, the National Criminal Intelligence Service ("NCIS"), or on production of a warrant. The UK is not yet connected to the SIS or the CIS, but similar arrangements would apply once connection has been established.

148. As required by the Conventions, the purpose of the Information Commissioner's inspections will be to ensure that the processing of personal data in the national sections of these systems is in compliance with processing requirements under the 1998 Act. The Information Commissioner will be required to notify the relevant data controller of his intention to inspect the systems (other than in cases of urgency), but a person obstructing the Information Commissioner in the course of his inspection or failing without reasonable excuse to give him any reasonable assistance will be guilty of an offence. The penalties for the offence are as established by section 60 of the 1998 Act, which provides that a person guilty of an offence in relation to the powers of the Information Commissioner is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). However, if required for the purposes of safeguarding national security, the additional powers attributed to the Information Commissioner under this section in respect of personal data in the systems will not apply.

Section 82: Driver licensing information

149. This section provides statutory authority for the Driver and Vehicle Licensing Agency ("DVLA") and Driver and Vehicle Licensing Northern Ireland ("DVLNI") to disclose certain data for the purposes of the SIS. The relevant data held by DVLA and DVLNI relates to driver licensing and is that held in any form under Part 3 of the RTA 1988, or Part 2 of the Road Traffic (Northern Ireland) Order 1981. This information is to be shared with the United Kingdom's national section of the SIS, and will ensure that the UK fully meets the requirements of its opt-in to the Schengen Convention according to EU Council Decision 2000/365/EC.

Section 83: Foreign Surveillance Operations

150. Article 40 of the Schengen Convention provides that police officers keeping a person under surveillance in their own country because he is suspected of having committed an extraditable offence may require neighbouring Schengen countries to assist in keeping the person under surveillance if he crosses the border into their territory. In the vast majority of cases such assistance will be requested in advance and, when the surveillance enters the UK, our own officers will take over the surveillance. These UK officers will need to be properly authorised to conduct such surveillance under the Regulation of Investigatory Powers Act 2000 ("RIPA") and the Regulation of Investigatory Powers (Scotland) Act 2000. However, on occasions it will not be possible for a request to be made sufficiently far in advance for a UK team to take over the surveillance at the point of entry to the UK. This section implements Article 40(2) of the Schengen Convention, which covers such cases by making provision for a foreign surveillance operation, which was initiated in one participating country but which has had to travel unexpectedly to another participating country, to continue lawfully to keep an individual under surveillance for a period of up to five hours. To legislate for this change, this section amends RIPA by introducing a new section (Section 76A Foreign surveillance operations) to allow police or customs officers from other Member States to continue surveillance on UK territory for this period.

151. At present, UK police officers are not allowed to follow suspects across the border into the territory of another Schengen state (and vice versa foreign officers may not travel into the UK to conduct similar activities). Instead they are expected to contact the police authorities of that state, and arrange for them to take over the surveillance operation. However, in practice police officers are not always immediately available to take over the operation, and this can result in losing the suspect. The provisions set out in this section are meant to avoid this occurrence.

152. This section applies in the circumstances set out in subsection (1)(a), (b) and (c). Subsection (1)(a) provides that before crossing the border the surveillance must be lawful in the country in which it is being carried out. In addition the surveillance must be "relevant surveillance". Subsection (2) defines this as being surveillance which would fall within the definition of directed or intrusive surveillance in RIPA, therefore being covert surveillance of which the target is unaware. In addition the target of the surveillance is suspected of having committed a relevant crime.

153. Subsection (3) provides that a relevant crime is one that falls within Article 40(7) of the Schengen Convention, namely; murder, manslaughter, rape, arson, forgery of money, aggravated burglary and robbery and receiving stolen goods, extortion, kidnapping and hostage taking, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, breach of laws on arms and explosives, wilful damage through the use of explosives, illicit transportation of toxic and hazardous waste. Subsection (3)(b) sets out that a relevant crime can also be a crime as defined in other international agreements, which contain provisions on cross-border surveillance, specified by the Secretary of State by order.

154. Subsection (1)(b) provides that the surveillance can only be carried out in the UK. Subsection (1)(c) provides that the circumstances must be such that it is not

reasonably practicable for UK officers (as defined in subsection (11)) to take over the surveillance when the suspect arrives in the UK under a normal RIPA authorisation (or its Scottish equivalent).

155. The purpose of subsection (4) is to provide that urgent cross border surveillance will be lawful under RIPA if certain conditions are complied with. Two key conditions from Article 40 have been placed on the face of the Act. The first refers to subsection (6) that implements the requirement in Article 40(2) for foreign officers to contact the authorities of the state into which they have entered immediately upon crossing the border and to submit a formal request for assistance. The second in subsection (4)(b) implements the condition in Article 40(3) that prohibits the officers from entering private homes or places. The Secretary of State is also given an order-making power to specify, if needed, other appropriate conditions for the conduct of foreign officers should their surveillance operation unexpectedly cross into the UK. Failure to comply with any such conditions would mean that the surveillance would not be lawful under this new section. Subsection (4) also provides that no surveillance is lawful by virtue of this subsection, even if all the other conditions covered by the section are satisfied, if the foreign officer subsequently seeks to stop and question the person under surveillance in the United Kingdom in relation to the relevant crime. This is in line with Article 40(3)(f) which provides that the officers conducting the surveillance may neither challenge nor arrest the person. Although it is most unlikely that a foreign officer would ever stop and question the person under surveillance, this unequivocal declaration in the subsection makes clear that such conduct would be unacceptable.

156. Subsection (5) provides that foreign police officers carrying out such surveillance operations are not subject to civil liabilities in relation to conduct which is incidental to surveillance which is lawful. Incidental conduct is considered to be conduct that is inextricably associated with surveillance to the extent that it is effectively unavoidable if the surveillance, which would have to be lawful, is to continue. Incidental conduct covers an extremely narrow set of circumstances, for example trespass. The same protection is given to UK officers by section 27(2) of RIPA in respect of UK officers who conduct surveillance authorised under RIPA.

157. Subsection (7) establishes that this type of unaccompanied surveillance should not last for more than five hours. The five hour period will allow officers to continue surveillance, whilst providing time for officers in the destination country to be mobilised. If resources are available to mobilise a UK surveillance team within the five-hour period, a joint operation will be established, with the UK officers taking over the surveillance and the foreign officers adopting observer status at the point of hand-over. If the UK has not taken over the operation by the time the five hour period has elapsed then the foreign officers will no longer have lawful authority to continue and will be expected to cease the surveillance.

158. Subsection (8) and (10) set out further restrictions on the operation of such teams. Subsection (8) permits the Secretary of State to designate persons within UK law enforcement with the power to terminate surveillance operations of this kind taking place in the UK, fulfilling the requirements of Article 40(2) of the Schengen Convention. The decision to terminate might be taken because UK officers have taken

over the surveillance or because the surveillance was considered inappropriate.

159. Taking account of devolved responsibilities, the wording of this and the other order-making powers in section 76A provide for a single order to be made to cover the whole of the UK, subject to the consent of Scottish Ministers.

160. Subsection (11) includes a definition of UK officer which is relevant to subsection (1).

Section 84: Assaults on foreign officers

161. The purpose of this section is to provide, in accordance with Article 42 of the Schengen Convention, that officers from abroad conducting surveillance under the new section 76A are treated in the same way as constables while in England and Wales, Scotland or Northern Ireland with respect to offences committed against them.

162. The modifications to the relevant Acts put the foreign officers on to the same footing as domestic officers, in that just as it is already an offence to assault or obstruct a constable or a person assisting a constable in the execution of his duty, it shall also be an offence to assault or obstruct any foreign officer carrying out surveillance under section 76A of RIPA.

Section 85: Liability in respect of foreign officers

163. This section implements Article 43 of the Schengen Convention, which establishes that in the first instance the state in whose territory the surveillance operation is being undertaken, is liable to cover the cost of any damage foreign surveillance officers may commit, or legal action to which they may be subject. The UK has decided that NCIS should be responsible for such liabilities in the first instance in relation to persons carrying out surveillance under new section 76A of RIPA. Under the Schengen Convention, such sums may be recovered from the foreign state. Subsection (3) provides that such sums received from abroad by the Secretary of State shall be paid into the NCIS service fund.

Section 86: Schengen-building provisions of the 1996 Extradition Convention

164. The UK is participating in Chapter 4 of the Schengen Convention (Articles 59 to 66) which relates to extradition. No legislation is needed to implement these provisions as they have been superseded by two further Conventions on extradition in 1995 and 1996 which build on the Schengen provisions - the Convention on Simplified Extradition Procedure between Member States of the European Union (the "1995 Convention") and the Convention Relating to Extradition between Member States of the European Union (the "1996 Convention"). The 1995 Convention and the 1996 Convention have already been implemented in the UK by the European Union Extradition Regulations 2002 (S.I. 2002/419) (the "2002 Regulations"), which amended existing extradition legislation contained in the 1989 Extradition Act.

165. As non-EU Member States, Norway and Iceland were not original parties to the 1995 and 1996 Conventions but they are participants in Schengen, including the extradition provisions. As such, it is open to them, subject to the approval of the Member States, to seek to participate in those elements of the 1995 Convention and the 1996 Convention that have been classified as "Schengen-building". The 1995 Convention is entirely "Schengen-building", and such a decision would bring the Convention into force between the UK and Norway or Iceland under the 2002

Regulations. However, the 1996 Convention is only partially "Schengen-building", and if Norway and Iceland chose to participate in the "Schengen-building" parts alone, the Convention as a whole would not be in force between the UK and Norway or Iceland and the implementation of the 1996 Convention under the 2002 Regulations would not suffice. This section therefore provides a power for the UK to bring into force the relevant parts of the 1996 Convention by Order in Council, subject to the negative resolution procedure. This would enable the relevant provisions of the Extradition Act 1989 to apply to Norway and Iceland; and to any other state which may participate in these Schengen-building measures. EU Member States are currently in the process of negotiating an agreement with Norway and Iceland that will introduce surrender procedure similar to the European Arrest Warrant between them. In the light of these negotiations, Norway and Iceland are no longer interested in applying the 1995 and 1996 Conventions.

166. The Schengen-building provisions are concerned with the definition of extraditable offences; extradition for fiscal offences; statute barring of extradition; barring by amnesty; and facsimile transmission of documents in extradition requests.

Section 87: States in relation to which 1995 and 1996 Extradition Conventions are not in force

167. This section is designed to allow the UK unilaterally to apply the provisions of the 1995 Convention and the 1996 Convention to countries which have not ratified the Conventions themselves. The section is largely necessary so that the UK is able to fulfil its Schengen obligations to Italy and France, which have ratified the Schengen extradition provisions but have not subsequently ratified the 1995 Convention and the 1996 Convention.

168. Rather than introduce a different extradition regime to that for other EU Member States, this section creates an enabling power which may be used to extend to Italy and France the relevant provisions of the 1995 Convention and the 1996 Convention by providing for the application of the relevant provisions of the Extradition Act 1989. (The power could also be used to apply these to such other states as are specified by Order in Council.) It is expected that in both cases this will be a short-term measure, as it is anticipated that all existing EU Member States will have implemented the Framework Decision on the European Arrest Warrant by 1 January 2004, which will significantly alter current extradition proceedings within the EU.

Section 88: False monetary instruments: England and Wales and Northern Ireland

169. This section implements Article 2 of the 2001 Framework Decision. The purpose of the 2001 Framework Decision is to ensure that fraud and counterfeiting involving non-cash means of payment are recognised as criminal offences and are subject to effective sanctions in all EU Member States. Since these offences occur increasingly on an international scale, it was considered appropriate for action to be taken at EU level.

170. UK law already covers most of the provisions of the 2001 Framework Decision. However, Article 2 requires Member States to make it a criminal offence to misuse specified "payment instruments", where misuse includes possession of a stolen instrument or of a counterfeit instrument for fraudulent purposes. The Forgery

and Counterfeiting Act 1981 (the "1981 Act") criminalises the forgery and fraudulent use of any instrument. However, simple possession is only an offence in relation to a specific list of forged instruments, as set out under section 5(5) of the 1981 Act. The list is not quite as extensive as that covered by the 2001 Framework Decision. This section therefore extends the list of instruments covered by section 5(5) of the 1981 Act to include bankers drafts, promissory notes and debit cards, all of which fall within the scope of the 2001 Framework Decision. The section also creates a power for further monetary instruments to be added by order, should future developments require this. This power will be exercised by the Secretary of State.

Section 89: False monetary instruments: Scotland

171. This section makes provision for Scotland in relation to the 2001 Framework Decision. The position in Scotland is different from the rest of the UK because under the common law of Scotland forgery itself is not a crime and only becomes so when a false instrument is uttered as genuine. Section 5 of the Forgery and Counterfeiting Act 1981 does not apply to Scotland. This section inserts a new section 46A into the Criminal Law (Consolidation) (Scotland) Act 1995. This new provision creates an offence of counterfeiting or falsifying a specified monetary instrument - ("specified" means by order of the Scottish Ministers). It will also be an offence for a person to have in his custody or control equipment for making a specified monetary instrument. The new section 46A also makes provision relating to offences committed by companies and partnerships.

Section 90: Freezing of Terrorist Property

172. This section gives effect to Schedule 4, which introduces the mutual recognition of orders freezing terrorist assets. An explanation of Schedule 4 follows in these explanatory notes.

Part 5: Final Provisions

Section 92: Northern Ireland

173. This section will enable Northern Ireland to replicate the provisions of Chapter 2 of Part 3 of the Act (mutual recognition of driving disqualification within the UK) during suspension of devolved government by way of Order in Council subject to negative resolution procedure.

Section 93: Supplementary and consequential provision

174. This section will allow the appropriate Minister (defined in subsection (2)) to make supplementary and consequential amendments to give full effect to any provision of the Act. Section 93 provides that any statutory instrument containing an order which adds to, replaces or omits any part of the text of an Act of Parliament, or as the case may be an Act of the Scottish Parliament, is not to be made unless it has been laid in draft before, and approved by resolution of, each House of Parliament, or of the Scottish Parliament, whilst other orders will be subject to the negative resolution procedure.

Schedule 1: Proceedings of a nominated court under section 15

175. Schedule 1 makes provision for the proceedings of a nominated court to receive evidence under section 15 of the Act.

Schedule 2: Evidence given by television link or telephone

176. Schedule 2 makes provision on hearing witnesses in the UK under sections 30 and 31 of the Act and is in two Parts. Part 1 of the Schedule relates to evidence given by television link, and Part 2 relates to evidence given by telephone.

Schedule 3: Offences for the purposes of section 54

177. Schedule 3 relates to section 54 of the Act and is in two Parts. Part 1 lists the offences where an order of disqualification for a minimum period is unnecessary for the driving disqualification condition in section 54 to be met, and Part 2 lists the offences where an order of disqualification for a minimum period is necessary.

Schedule 4: Terrorist property: freezing orders

178. Schedule 4 implements those provisions of the 2003 Framework Decision in relation to the proceeds and instrumentalities of terrorism. It does so by building on the provisions for restraint orders contained in Schedule 4 to the Terrorism Act 2000 (the "Terrorism Act"), and sets out a procedure for transmitting such orders abroad under the 2003 Framework Decision, and for giving effect to overseas freezing orders transmitted to the UK by another Member State. Implementation of the 2003 Framework Decision so far as the freezing of evidence is concerned is covered in Part 1 of the Act.

Paragraph 3

179. This paragraph inserts new provisions after paragraph 11 of Schedule 4 to the Terrorism Act in relation to domestic and overseas freezing orders.

Paragraph 11A

180. Paragraph 11A contains a number of definitions interpreting the provisions which appear in paragraph 11B onwards. Paragraph 11A(3) defines "a listed offence" as an offence described in Article 3(2) of the 2003 Framework Decision, or as an offence prescribed, or an offence of a description prescribed, by order made by the Secretary of State. The latter provision is necessary to cater for two circumstances: firstly, if the list of offences in the 2003 Framework Decision is added to by the European Council of Ministers. Secondly, it reflects the fact that, under the 2003 Framework Decision, freezing orders can be executed in respect of offences other than those listed, but with the executing state able, if it wishes, to apply a dual criminality requirement – (that is, a requirement that the conduct be criminalised in both the issuing and executing states).

181. Paragraph 11A(5) and (6) defines the "specified information" which must be contained in the certificate to be attached to both domestic and overseas freezing orders. Paragraph 11A(7) defines which countries are to be participating countries for the purposes of Schedule 4. Paragraph 11A(9) applies to these provisions the interpretative provisions relating to the proceeds of terrorism contained in section 14(2)(a) of the Terrorism Act.

Paragraph 11B: Domestic Freezing Orders: certification

182. Paragraph 11B, together with paragraph 11C, contains provisions

relating to the certification of restraint orders in England and Wales and their transmission to other participating countries for execution under the 2003 Framework Decision.

183. As with evidence freezing orders in Part 1 of the Act, restraint orders need to be accompanied by the certificate specified in Article 9 of the 2003 Framework Decision.

Paragraph 11C: Sending domestic freezing orders

184. This paragraph sets out the steps which must be followed once the High Court has made the restraint order and the certificate.

185. Paragraph 11C(1) provides that these two documents are to be sent to the Secretary of State with a view to forwarding them to either a court exercising jurisdiction in the participating country where the property in question is situated, or to any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.

186. Under paragraph 11C(2) these documents must also be accompanied by a forfeiture order made under section 23 of the Terrorism Act unless the certificate indicates when the court expects such an order to be sent.

Paragraph 11D: Overseas freezing orders

187. Paragraph 11D(2)-(7) sets out the requirements which must be met before an overseas freezing order is to be enforced in the UK, including paragraphs 11D(5) and (6) which makes provision in relation to the certificate which must accompany the order. Paragraph 11D(7) provides that the freezing order must be accompanied by the forfeiture order to which it relates unless the certificate indicates when such an order is to be sent.

Paragraphs 11E, 11F and 11G: Enforcement of overseas freezing orders

188. These paragraphs provide for the enforcement of overseas freezing orders in England and Wales.

189. Paragraph 11E(1) provides that, when an overseas freezing order is received, the Secretary of State must send a copy of it to the High Court and to the Director of Public Prosecutions. The High Court is then required to consider the freezing order on its own initiative within a period to be prescribed by rules of court (paragraph 11E(2)).Under paragraph 11(G)(1), once the High Court has decided to give effect to the overseas freezing order, it must register it and provide for notice of the registration to be given to anyone affected by it.

Paragraphs 4 to 9

190. Paragraph 4 provides that overseas freezing orders are excluded from the provisions relating to the enforcement of orders made in designated countries made by Order in Council under paragraph 14 of Schedule 4. These arrangements will, however, need to remain in force to cater for co-operation with countries other than those which are Member States of the EU. Paragraphs 5 to 8 make similar provision for the freezing of terrorist assets in relation to Scotland (by inserting new paragraphs 25A to 25G into Part 2 of Schedule 4 to the Terrorism Act) and Northern Ireland (by inserting new paragraphs 41A to 41G into Part 3 of that Schedule). Paragraph 9 applies the general provisions in Schedule 4 to the 2000 Act relating to insolvency

proceedings to overseas freezing orders.

Schedule 5: Minor and consequential amendments

191. Schedule 5 contains minor and consequential amendments, including the following in relation to road traffic.

Paragraph 26: Amendment of section 109 of RTA 1988 - Northern Ireland provisional licences

192. Sub-paragraph (a) provides that the holder of a Northern Ireland provisional driving licence will no longer be treated in Great Britain as the holder of a full Northern Ireland driving licence. A person's authorisation to drive in Great Britain as the holder of a Northern Ireland licence extends only to driving in accordance with that licence.

Paragraphs 45 to 60: Amendments to the Road Traffic (New Drivers) Act 1995

193. The amendments to the Road Traffic (New Drivers) Act 1995 provide for the early termination in Great Britain of the probationary period for the holder of a Northern Ireland driving licence in similar circumstances to those applying to the holder of a Great Britain driving licence, except that, as regards revocation, it is not the licence which is revoked, but the permission to drive in Great Britain conferred by section 109(1) of the RTA 1988. As for revocations on medical grounds, the Secretary of State is obliged to inform the Northern Ireland authorities of any such revocation involving a Northern Ireland licence. The amendments also provide that a Northern Ireland licence-holder whose entitlement has been revoked under a corresponding provision of Northern Ireland law shall be subject to the requirement to satisfy the Secretary of State on a re-test.

Schedule 6: Repeals

194. Schedule 6 relates to repeals.

COMMENCEMENT

195. Section 94 provides that the provisions of this Act will come into force on such day as the Secretary of State by order appoints, but subsections (2) and (3) make provision for various provisions of Part 1 in relation to the Scottish Ministers. It is expected that there will be different commencement dates for different parts of the Act.

HANSARD REFERENCES

196. The following table sets out the date and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	19 November 2002	Vol. 641 Col.263
Second Reading	2 December 2002	Vol. 641 Cols. 971 - 1018
Committee	13 January to 3 February (5 Sessions)	Grand Committee Vol. 643 GC1-GC226 Vol. 644 GC1-GC46
Report	25 February and 3 March 2003	Vol. 645 Cols. 141-230 and Cols. 627-696
Third Reading	17 March 2003	Vol. 646 Cols. 42-66
Consideration of Commons Reasons	28 October 2003	Vol. 654 Cols. 140-145
House of Commons		
Introduction	18 March 2003	Vol. 401
Second Reading	1 April 2003	Vol. 402 Cols. 800-860
Committee	10-19 June 2003 (8 Sessions)	Standing Committee A
Report and Third Reading	14 October 2003	Vol. 411 Cols. 25-79
Royal Assent		
	30 October 2003	House of Lords Vol. 654 Col. 375 House of Commons Vol. 412 Col. 415

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