

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 6: International co-operation in relation to criminal matters

Section 80: Requests to other member States: England and Wales

543. This section is concerned with requests made to other Member States for enforcement of financial penalties imposed in England and Wales. It firstly amends Schedule 5 to the Courts Act 2003, which is concerned with the powers of the courts and fines officers to enforce fines, costs and compensation. *Subsection (1)* adds the issue of a certificate requesting enforcement under the Council Framework Decision to the steps which can be taken against a defaulter regarding a financial penalty within the meaning of this section. This step is only available where the defaulter is normally resident, or has property or income, in another Member State.
544. *Subsection (2)* allows a certificate requesting enforcement of a financial penalty under the Council Framework Decision to be issued by a designated officer of a magistrates' court in circumstances not covered by Schedule 5 to the Courts Act 2003. This would be the case where the offender is under 18 years of age or a legal person. It is a condition that the penalty has not been paid in full within the time allowed and that there is no appeal outstanding.
545. *Subsection (3)* describes the circumstances in which it is considered that no appeal is outstanding for the purposes of subsection (2)(c).
546. *Subsection (4)* provides that in the case of corporate bodies, subsection (2)(e) applies as if references to the offender normally being resident in another Member State were to the corporate body having its registered office in a Member State other than the UK.
547. *Subsection (5)* defines "financial penalty" for the purposes of this section.

Section 81: Procedure on issue of certificate: England and Wales

548. This section requires that a certificate issued under section 80 is given to the Lord Chancellor, together with a certified copy of the decision imposing the penalty.
549. *Subsection (3)* requires the Lord Chancellor to forward the documents specified in subsection (2) to the central authority or the competent authority of the Member State in which it appears that the offender is normally resident, or has property or income.
550. *Subsection (4)*, in accordance with the terms of the Council Framework Decision, precludes any further steps being taken to enforce the financial penalty in England and Wales once it has been sent to another Member State, except in circumstances

prescribed by the Lord Chancellor by order (subject to the affirmative resolution procedure where primary legislation is amended or repealed, otherwise the negative resolution applies). This would allow the responsibility for enforcement to revert to the courts in England and Wales in certain circumstances where, for example, the other Member State is unable to enforce the financial penalty in full.

551. *Subsection (5)* corresponds to section 81(4) regarding corporate bodies.

Section 82: Requests to other member States: Northern Ireland

552. This section is concerned with requests to other Member States for enforcement of financial penalties imposed in Northern Ireland. It corresponds to section 80 except that Schedule 5 of the Courts Act 2003 does not apply to Northern Ireland.

Section 83: Procedure on issue of certificate: Northern Ireland

553. This section makes provision for Northern Ireland corresponding to section 81. It requires the Lord Chancellor to forward a certificate for enforcement of a financial penalty issued under section 82 to the central authority or the competent authority of the Member State in which it appears that the offender is normally resident, or has property or income.

Section 84: Requests from other member States: England and Wales

554. This section is concerned with financial penalties received for enforcement in England and Wales from other Member States. This applies where the Lord Chancellor receives a certificate requesting enforcement of a financial penalty under the Council Framework Decision, together with a copy of the original decision imposing the financial penalty, and the penalty is suitable for enforcement in England and Wales.
555. If the certificate states that the offender is normally resident in England and Wales, *subsection (2)* requires that the Lord Chancellor gives the documents specified in subsection (1)(a) to the designated officer for the local justice area where it appears the offender is resident. Otherwise, where the certificate states that the offender has property or income in England and Wales, *subsection (3)* requires that the Lord Chancellor gives the documents to the designated officer for such local justice area as appears appropriate. The Lord Chancellor is also required to indicate in an accompanying notice whether any of the grounds for refusing to enforce the financial penalty (as set out in Part 1 to Schedule 19) may apply in the particular case, together with the reasons for that opinion.
556. *Subsection (5)* provides that subsection (2) applies to corporate bodies as if the reference to the local justice area in which the offender is resident were to the area in which the corporate body has its registered office.
557. *Subsection (6)* provides that this section applies to financial penalties which have been sent by another Member State to the central authority for Scotland and then forwarded to the Lord Chancellor to act on.

Section 85: Procedure on receipt of certificate by designated officer

558. The designated officer and the magistrates' court must comply with certain requirements when the Lord Chancellor acts under section 84 to forward the specified documents to the designated officer.
559. *Subsection (2)* requires that the designated officer refers the matter to the magistrates' court. *Subsection (3)* then requires that the court satisfies itself whether any grounds for refusal to enforce the financial penalty apply, as specified in Part 1 of Schedule 19. The designated officer is required by *subsection (4)* to inform the Lord Chancellor of the court's decision.

560. *Subsections (5) to (7)* require that, unless a ground for refusal exists, the financial penalty will be treated as if it were a sum adjudged to be paid on a conviction by the magistrates' court from the date that it made its decision. The enforcement regime for fines and other financial penalties, as laid down in Part 3 of the Magistrates Courts Act 1980 and Schedules 5 and 6 to the Courts Act 2003 and subordinate legislation, will apply to the enforcement of the financial penalty.
561. *Subsection (8)* provides that, where the certificate indicates that a financial penalty has been partially paid before its transfer, references in subsection (6) to the amount of the financial penalty should be read as referring to the amount that remains unpaid.

Section 86: Modification of Magistrates' Courts Act 1980

562. This section modifies the effect of section 90(1) of the Magistrates' Courts Act 1980, which provides for the transfer of a fine where it appears to a court or fines officer in England and Wales that the person concerned resides in another jurisdiction in the UK. This is modified in its application to financial penalties enforced under section 85(7) to allow the transfer of a sum where it appears that the person is residing or has property or a source of income in Northern Ireland.

Section 87: Requests from other member States: Northern Ireland

563. This section makes provision for Northern Ireland corresponding to section 84. It places certain requirements on the Lord Chancellor to forward to the appropriate clerk of petty sessions a certificate for enforcement of a financial penalty received from another Member State where the penalty is suitable for enforcement in Northern Ireland.

Section 88: Procedure on receipt of certificate by clerk of petty sessions

564. This section makes provision for Northern Ireland corresponding to section 85. It places certain requirements on the clerk of petty sessions and the magistrates' court acting for the petty sessions district when the Lord Chancellor acts under section 87 to forward a certificate for enforcement of a financial penalty.

Section 89: Modification of Magistrates' Courts (Northern Ireland) Order 1981

565. This section modifies the effect of Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981 so that, where the Magistrates' Court is required by virtue of section 88 to enforce a financial penalty exceeding £20,000, the court can commit a defaulter to prison for a period not exceeding the maximum period available to a Crown Court in these circumstances. It also modifies the effect of Article 95 of the 1981 Order in a manner corresponding to section 86 to provide for the transfer of a financial penalty where it appears that the person concerned is residing or has property or a source of income in a local justice area in England and Wales.

Section 90: Transfer of certificates to central authority for Scotland

566. This section applies where the Lord Chancellor is not under a duty under section 84 or 87 to arrange for enforcement of a financial penalty in England, Wales or Northern Ireland. It requires the Lord Chancellor to transfer the certificate to Scotland if it states that the person is normally resident or has property or a source of income in Scotland.

Section 91 and Schedules 18 and 19: Recognition of financial penalties: general

567. *Schedule 18* specifies when a financial penalty is suitable for enforcement in England and Wales or Northern Ireland. This is determined primarily by whether the certificate received by the Lord Chancellor states that the person concerned is normally resident in England and Wales or Northern Ireland. The Schedule also specifies when a certificate is suitable for enforcement in England and Wales or Northern Ireland where, although

the person is not normally resident anywhere in the UK, he or she has property or a source of income in the UK.

568. The possible grounds for refusal against enforcement of a financial penalty are as set out in Schedule 19. These reflect the grounds for refusal adopted in Article 7 of the Council Framework Decision and address the following matters:
- Double jeopardy where an offender has already been dealt with for the same conduct in the executing State or in a State other than the State issuing or executing the financial penalty;
 - The absence of dual criminality, unless the conduct concerned is specified in the list contained in Part 2 of Schedule 19. This is a list of conduct, reproduced from Article 5(1) of the Framework Decision, where it has been agreed that co-operation should not be subject to a dual criminality requirement. The list is similar to that used in the Framework Decision on the European Arrest Warrant (2002/584/JHA) and other mutual recognition instruments;
 - Territoriality, if the conduct took place outside the territory of the State which issued the certificate;
 - The age of criminal responsibility under the law of the executing State;
 - Where the offender was not present and did not have an adequate opportunity to defend himself or herself; or
 - Where the financial penalty falls below 70 Euros (some £50) (the threshold specified in the Framework Decision).
569. Under *subsections (3) and (4)*, the Lord Chancellor may, by order (subject to the affirmative resolution procedure where primary legislation is amended or repealed, otherwise the negative resolution procedure applies), make further provision for the purpose of giving effect to the Council Framework Decision.

Section 92: Interpretation of sections 80 to 91 etc.

570. This section defines the terms “central authority”, “central authority for Scotland”, “competent authority”, “Framework Decision on financial penalties”, “decision” and “financial penalty” for the purposes of the sections concerned.

Section 93: Delivery of prisoner to a place abroad for purposes of transfer out of the United Kingdom

571. This section amends section 2(1) of the Repatriation of Prisoners Act 1984 to enable a sentenced person being repatriated out of the United Kingdom to be delivered to a point of arrival in the receiving State for the purpose of the continued enforcement of his or her sentence in the receiving State. This section extends the scope of section 2 as it currently restricts the delivery of a prisoner detained in the United Kingdom to a point of departure from the United Kingdom.

Section 94: Issue of warrant transferring responsibility for detention and release of offender present outside the country of territory in which he is required to be detained

572. This section inserts new sections 4A, 4B, and 4C into the Repatriation of Prisoners Act 1984.

New Section 4A of the Repatriation of Prisoners Act 1984: Issue of warrant transferring responsibility for detention and release of offender

573. This new section provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or

from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The purpose of this warrant is to prevent a prisoner from escaping the fulfilment of his sentence by removing himself to another country, and powers and processes in respect of the section 4A warrant mirror those already in place under the Repatriation of Prisoners Act 1984 in respect of a warrant for the physical transfer of a sentenced person.

New Section 4B of the Repatriation of Prisoners Act 1984: Transfer of responsibility from the United Kingdom

574. This new section provides that the effect of a warrant under section 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The powers and processes in respect of the transfer of responsibility from the United Kingdom mirror those already in place under the Repatriation of Prisoners Act in respect of a physical transfer of a sentenced person out of the United Kingdom.

New Section 4C of the Repatriation of Prisoners Act 1984: Transfer of responsibility to the United Kingdom

575. This new section provides that the effect of a warrant under section 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant. The powers and processes in respect of the transfer of responsibility to the United Kingdom for the continued enforcement of the sentence mirror those already in place under the Repatriation of Prisoners Act in respect of a physical transfer of a sentenced person into the United Kingdom.

Section 95: Powers to arrest and detain persons believed to fall within section 4A(3) of the Repatriation of Prisoners Act 1984

576. This section inserts new sections 4D, 4E, and 4F into the Repatriation of Prisoners Act 1984. It creates a procedure for the arrest and detention of a person believed to be unlawfully at large from a foreign jurisdiction and who is present in the United Kingdom. The purpose of this section is to ensure that a person can be arrested and detained in custody while the relevant Minister determines whether or not to issue a warrant transferring responsibility for the continued enforcement of the prisoner's sentence from the country in which it was imposed to the United Kingdom.

New Section 4D of the Repatriation of Prisoners Act 1984: Power to arrest and detain persons suspected of falling within section 4A(3)

577. This section provides for the court to issue a warrant for a person's arrest on receipt of a certificate issued by the relevant Minister certifying that the person named is believed to be a person falling within new section 4A(3) i.e. a person unlawfully at large from a foreign prison sentence who is present in the UK, and that relevant documentation has been requested from the sentencing State concerned.
578. The court may issue the arrest warrant if the judge is satisfied that there are reasonable grounds for believing that the person falls within new section 4A(3). Under new section 4D(4), the arrest warrant may be executed anywhere within the United Kingdom, and the arrested person will be given a copy of the arrest warrant and be brought before the court as soon as practicable (new section 4D(5)).
579. The court may then remand the person in custody for a period of 7 days (new section 4D(6)) to enable the relevant Minister to obtain the appropriate papers from the sentencing jurisdiction, establish whether the person is in the UK having fled a foreign sentence and make an application under section 4E for a person's further detention (new section 4D(7)). The person must be released no later than at the end of the 7 day

period (new section 4D(8)), unless the court has ordered a further period of 14 days' detention under section 4E (new section 4D(9)) or the relevant Minister has issued a warrant under section 4A transferring responsibility for the continued enforcement of the person's sentence. The court may remand the person in custody for 7 days whether or not a warrant for the person's arrest was previously issued under this section (new section 4D(10)).

580. If the appropriate papers are received, at whatever stage that happens, the relevant Minister may make an application for a further period of detention under section 4E

New Section 4E of the Repatriation of Prisoners Act 1984: Arrest and detention of persons believed to fall within section 4A(3)

581. New sections 4E(1) to (3) provide for the court to issue a warrant for a person's arrest on receipt of a certificate issued by the relevant Minister certifying that he considers the person named to be a person falling within section 4A(3), i.e. a person unlawfully at large from a foreign prison sentence who is present in the UK, and that the relevant documentation has been received from the sentencing State concerned. For the purpose of this section it is irrelevant whether or not the person has previously been arrested under section 4D.
582. The court may issue the arrest warrant if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4(3). Under new section 4E(4), the arrest warrant may be executed anywhere within the United Kingdom, and the arrested person will be given a copy of the arrest warrant and be brought before the court as soon as is practicable (new section 4E(5)).
583. Under new section 4E(6) the court may, on the application of the relevant Minister, remand the person in custody for a period of 14 days to enable the relevant Minister to determine whether to issue a warrant under section 4A transferring responsibility for the continued enforcement of the person's sentence and, if so, to issue the warrant.
584. The person must be released no later than at the end of the 14 day period (new section 4E(8)), unless the relevant Minister has issued a warrant under section 4A transferring responsibility for the continued enforcement of the person's sentence (new section 4E(9)). The court may remand the person in custody for 14 days whether or not a warrant for the person's arrest was previously issued under this section (new section 4E(10)).
585. It is intended that a person detained under the new procedure in section 4D and 4E would not be detained for more than 21 days while the relevant Minister consults the sentencing State and determines whether or not to issue a warrant to transfer responsibility for the continued enforcement of the prisoner's sentence. However, the amendments do not preclude a further arrest and order for detention under section 4E where a prisoner has previously been arrested and released under section 4D. For example, a person may be released because the documentation from the foreign State is not received before the expiry of the 7 day detention period in section 4D, but that would not preclude an application for the person's re-arrest and detention for a 14 day period under section 4E once the documentation has been received.
586. All time spent in custody under section 4D or 4E will be counted as time served and will be deducted from the remaining sentence if a section 4A warrant transferring responsibility for the sentence is issued.

New Section 4F of the Repatriation of Prisoners Act 1984: Sections 4D and E: supplementary provisions

587. New section 4F makes supplementary provisions in respect of 4D and 4E.

*These notes refer to the Criminal Justice and Immigration
Act 2008 (c.4) which received Royal Assent on 8 May 2008*

- 588. For the purposes of arrest warrants issued under section 4D and 4E, the “designated person” who may execute the warrants is defined as a person designated by the relevant Minister (new section 4F(2)).
- 589. New section 4F(3) defines the “appropriate judge” in each jurisdiction of the UK for the purposes of the exercise of the powers vested in the courts in section 4D and 4E.
- 590. New section 4F(4) clarifies the flexibility of the designation power and new section 4F(5) provides that a designated person will have the powers and authority etc of a constable in any part of the United Kingdom.

Section 96: Amendments relating to Scotland

- 591. This section extends section 44 of the Police and Justice Act 2006 to Scotland. Section 44(2) and (3) of the Police and Justice Act 2006 amended the circumstances under which a prisoner is required to give consent to transfer under section 1(1)(c) of the Repatriation of Prisoners Act 1984. As amended, a prisoner’s consent is only necessary where that consent is specifically required under the particular international agreement governing an individual prisoner’s transfer.

***Section 97: Power to transfer functions under Crime (International Co-operation)
Act 2003 in relation to direct taxation***

- 592. This section amends section 27(1) of the Crime (International Co-operation) Act 2003 and repeals paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 so that the Treasury may, by order (subject to the negative resolution procedure), provide for functions conferred on the Secretary of State under sections 10, 11 and 13 to 26 of the Crime (International Co-operation) Act 2003 (that is functions in relation to requests from overseas authorities to obtain evidence in the UK, and to the processing of domestic and overseas evidence freezing orders) to be exercisable instead by Her Majesty’s Commissioners for Revenue and Customs in relation to direct tax matters.