

2004 No. 1048 (L.5)

MAGISTRATES' COURTS

**The Magistrates' Courts (Crime (International Co-operation))
Rules 2004**

<i>Made</i>	- - - -	<i>5th April 2004</i>
<i>Laid before Parliament</i>		<i>5th April 2004</i>
<i>Coming into force</i>		<i>26th April 2004</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980(a) and section 49 of the Crime (International Co-operation) Act 2003(b), after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

Citation, commencement and extent

1.—(1) These Rules may be cited as the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and shall come into force on 26th April 2004.

(2) These Rules extend to England and Wales only.

Interpretation

2. In these Rules —

“the Act” means the Crime (International Co-operation) Act 2003;

“justices' clerk”, in rules 7 to 10, means the justices' clerk for the magistrates' court which is nominated under section 15, 30 or, as the case may be, 31 of the Act;

“overseas record” means that part of the register (within the meaning of section 150(1) of the Magistrates' Courts Act 1980) in which the particulars required by rules 7, 9 and 10 are entered; and

“process” has the same meaning as in section 51(3) of the Act.

Notice required to be given by section 3(4)(b) and translations

3.—(1) The notice which by virtue of section 3(4)(b) of the Act (general requirements for service of process) must accompany any process served outside the United Kingdom must give the information specified in paragraphs (2) and (4) below.

(2) The notice must —

(a) 1980 c.43; the power in section 144 is extended by section 145 of that Act.

(b) 2003 c.32; section 49 is supplemented by section 3(4)(b) of, and paragraph 4 of Schedule 1, and paragraphs 8, 10 and 17 of Schedule 2 to, the 2003 Act.

- (a) state that the person required by the process to appear as a party or attend as a witness can obtain information about his rights in connection therewith from the relevant authority, and
 - (b) give the particulars specified in paragraph (4) about that authority.
- (3) The relevant authority where the process is served —
- (a) at the request of the prosecuting authority, is that authority;
 - (b) at the request of the defendant or the prosecutor in the case of a private prosecution, is the court by which the process is served.
- (4) The particulars referred to in paragraph (2) are —
- (a) the name and address of the relevant authority, together with its telephone and fax numbers and e-mail address;
 - (b) the name of a person at the relevant authority who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.
- (5) The justices' clerk must send, together with any process served outside the United Kingdom —
- (a) any translation which is provided under section 3(3)(b) of the Act, and
 - (b) any translation of the information required to be given by this rule which is provided to him.

Proof of service outside the United Kingdom pursuant to section 4(1)

4. A statement in a certificate given by or on behalf of the Secretary of State —
- (a) that process has been served on any person under section 4(1) of the Act (service of process otherwise than by post),
 - (b) of the manner in which service was effected,
 - (c) of the date on which process was served,

shall be admissible as evidence of any facts so stated.

Supply of copy of notice of request for assistance under section 7(1)

5. Where a request for assistance under section 7 of the Act is made by a justice of the peace and is sent in accordance with section 8(1) of the Act, the justices' clerk for that justice shall send a copy of the letter of request to the Secretary of State as soon as practicable after the request has been made.

Persons entitled to appear and take part in proceedings under Schedule 1 and exclusion of public

6. Where the court nominated under section 15(1) of the Act (nominating a court to receive evidence) is a magistrates' court, the court may —
- (a) determine who may appear or take part in the proceedings under Schedule 1 to the Act before the court and whether a party to the proceedings is entitled to be legally represented; and
 - (b) direct that the public be excluded from those proceedings if it thinks it necessary to do so in the interests of justice.

Record of proceedings before a nominated court under Schedule 1

7.—(1) This rule applies where the court nominated under section 15(1) of the Act is a magistrates' court.

- (2) The justices' clerk shall enter in the overseas record —

- (a) details of the request in respect of which the notice under section 15(1) of the Act was given;
- (b) the date on which, and place at which, the proceedings under Schedule 1 to the Act in respect of that request took place;
- (c) the name of any witness who gave evidence at the proceedings in question;
- (d) the name of any person who took part in the proceedings as a legal representative or an interpreter;
- (e) whether a witness was required to give evidence on oath or (by virtue of section 5 of the Oaths Act 1978(a)) after making a solemn affirmation; and
- (f) whether the opportunity to cross-examine any witness was refused.

(3) When the court gives the evidence received by it under paragraph 6(1) of Schedule 1 to the Act to the court or authority that made the request or to the territorial authority for forwarding to the court or authority that made the request, the justices' clerk shall send to the court, authority or territorial authority (as the case may be) a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

Interpreter for the purposes of Parts 1 and 2 of Schedule 2

8.—(1) This rule applies where the court nominated under section 30(3) (hearing witnesses in the UK through television links) or section 31(4) (hearing witnesses in the UK by telephone) of the Act is a magistrates' court.

(2) Where it appears to the justices' clerk that the witness to be heard in the proceedings under Part 1 or 2 of Schedule 2 to the Act ("the relevant proceedings") is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the proceedings to translate what is said into English.

(3) Where it appears to the justices' clerk that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the proceedings of the court referred to in section 30(1) or, as the case may be, 31(1) of the Act ("the external court") will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is either given in a language other than English or is not translated into English by an interpreter, the magistrates' court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

(5) Where a magistrates' court in Wales understands Welsh —

- (a) paragraph (2) does not apply where it appears to the justices' clerk that the witness in question is likely to give evidence in Welsh;
- (b) paragraph (4) does not apply where the evidence is given in Welsh; and
- (c) any translation which is provided pursuant to paragraph (2) or (4) may be into Welsh instead of English.

Record of the hearing before a nominated court under Part 1 of Schedule 2

9.—(1) This rule applies where the court nominated under section 30(3) of the Act is a magistrates' court.

(2) The justices' clerk shall enter in the overseas records —

- (a) details of the request in respect of which the notice under section 30(3) of the Act was given;

(a) 1978 c.19.

- (b) the date on which, and place at which, the proceedings under Part 1 of Schedule 2 to the Act in respect of that request took place;
- (c) the technical conditions, such as the type of equipment used, under which the proceedings took place;
- (d) the name of the witness who gave evidence;
- (e) the name of any person who took part in the proceedings as a legal representative or an interpreter; and
- (f) the language in which the evidence was given.

(3) As soon as practicable after the proceedings under Part 1 of Schedule 2 to the Act took place, the justices' clerk shall send to the external authority that made the request a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

Record of the hearing before a nominated court under Part 2 of Schedule 2

10.—(1) This rule applies where the court nominated under section 31(4) of the Act is a magistrates' court.

(2) The justices' clerk shall enter in the overseas records —

- (a) details of the request in respect of which the notice under section 31(4) of the Act was given;
- (b) the date, time and place at which the proceedings under Part 2 of Schedule 2 to the Act took place;
- (c) the name of the witness who gave evidence;
- (d) the name of any interpreter who acted at the proceedings; and
- (e) the language in which the evidence was given.

Overseas record

11.—(1) That part of the register (within the meaning of section 150(1) of the Magistrates' Courts Act 1980) which constitutes the overseas record shall be kept in a separate book.

(2) The overseas record shall not be open to inspection by any person except —

- (a) as authorised by the Secretary of State, or
- (b) with the leave of the court.

Falconer of Thoroton, C.

Dated 5th April 2004

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules provide for the practice and procedure to be followed in magistrates' courts in England and Wales in connection with proceedings under Part 1 of the Crime (International Co-operation) Act 2003 ("the 2003 Act").

Section 3(4) of the 2003 Act requires that process served outside the United Kingdom requiring a person to appear as a party or attend as a witness must be accompanied by a notice giving certain information. Rule 3 specifies what that information is to be.

Rule 4 provides for the proof of service where this is done, in pursuance of section 4 of the 2003 Act, in accordance with arrangements made by the Secretary of State.

Rule 5 requires a copy of a request which is sent directly abroad to be sent to the Secretary of State.

Section 15(1) of the 2003 Act enables the Secretary of State to nominate a court to receive evidence in respect of a request for assistance from overseas falling within section 13 of that Act. The proceedings before a nominated court take place under Schedule 1 to that Act and rules 6 and 7 provide for procedural matters in connection with those proceedings and the contents of the overseas record (as defined by rule 2) in respect of them.

Sections 30 and 31 of the 2003 Act concern the giving of evidence before a nominated court in the United Kingdom to a court abroad by a television link or by telephone, respectively. Rule 8 provides for the use of interpreters for these hearings and rules 9 and 10 provide for the contents of the overseas record in respect of them.

Rule 11 restricts access to the overseas record.

STATUTORY INSTRUMENTS

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