



# Criminal Justice (International Co-operation) Act 1990

## 1990 CHAPTER 5

### PART I

#### CRIMINAL PROCEEDINGS AND INVESTIGATIONS

##### *Mutual provision of evidence*

#### <sup>F13</sup> Overseas evidence for use in United Kingdom.

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##### **Textual Amendments**

- F1** Ss. 1-4 repealed (26.4.2004) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), s. 94\(1\), Sch. 5 para. 42, Sch. 6; S.I. 2004/786, art. 3](#) (with savings in [S.I. 2004/787, arts. 3, 4](#))

##### **Modifications etc. (not altering text)**

- C1** Ss. 1-6, 8-10, 12-16, 18-21, 24-30, 32, Schs. 1-3 extended (with modifications) (to Anguilla) (14.7.1994) by [S.I. 1994/1635, art.2, Sch. 1](#)
- C2** Ss. 1-4 savings for effects of 2003 c. 32, Sch. 5 para. 42 Sch. 6 (E.W.N.I.) (26.4.2004) by [The Crime \(International Co-operation\) Act 2003 \(Savings\) Order 2004 \(S.I. 2004/787\), arts. 1\(1\), 3\(3\), 4](#)

#### <sup>F14</sup> United Kingdom evidence for use overseas.

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##### **Textual Amendments**

- F1** Ss. 1-4 repealed (26.4.2004) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), s. 94\(1\), Sch. 5 para. 42, Sch. 6; S.I. 2004/786, art. 3](#) (with savings in [S.I. 2004/787, arts. 3, 4](#))

*Changes to legislation:* There are currently no known outstanding effects for the Criminal Justice (International Co-operation) Act 1990, Cross Heading: Mutual provision of evidence. (See end of Document for details)

**Modifications etc. (not altering text)**

- C2 Ss. 1-4 savings for effects of 2003 c. 32, Sch. 5 para. 42 Sch. 6 (E.W.N.I.) (26.4.2004) by [The Crime \(International Co-operation\) Act 2003 \(Savings\) Order 2004 \(S.I. 2004/787\)](#), arts. 1(1), 3(3), 4
- C3 S. 4 extended (with modifications) (to Anguilla) (14.7.1994) by [S.I. 1994/1635](#), art. 2, [Sch. 1](#)

**5 Transfer of United Kingdom prisoner to give evidence or assist investigation overseas.**

- (1) The Secretary of State may, if he thinks fit, issue a warrant providing for any person (“a prisoner”) serving a sentence in a prison or other institution to which the <sup>M1</sup>Prison Act 1952 or the <sup>M2</sup>Prisons (Scotland) Act 1989 applies to be transferred to a country or territory outside the United Kingdom for the purpose—
  - (a) of giving evidence in criminal proceedings there; or
  - (b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.
- (2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) above and that consent may be given either—
  - (a) by the prisoner himself; or
  - (b) in circumstances in which it appears to the Secretary of State inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to the Secretary of State to be an appropriate person to act on his behalf;

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.
- (3) The effect of a warrant under this section shall be to authorise—
  - (a) the taking of the prisoner to a place in the United Kingdom and his delivery at a place of departure from the United Kingdom into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and
  - (b) the bringing of the prisoner back to the United Kingdom and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

<sup>F2</sup>( 3A ) . . . . .

- (4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in the United Kingdom or on board a British ship, British aircraft or British hovercraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.
- (5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges—
  - (a) of a constable in the part of the United Kingdom in which that person is for the time being; or
  - (b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the prisoner is to be taken under the warrant.

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- (6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant issued under this section.
- (7) In subsection (4) above—
- “British aircraft” means a British-controlled aircraft within the meaning of section 92 of the <sup>M3</sup>Civil Aviation Act 1982 (application of criminal law to aircraft) or one of Her Majesty’s aircraft;
- “British hovercraft” means a British-controlled hovercraft within the meaning of that section as applied in relation to hovercraft by virtue of provisions made under the <sup>M4</sup>Hovercraft Act 1968 or one of Her Majesty’s hovercraft;
- “British ship” means a British ship for the purposes of the [<sup>F3</sup>Merchant Shipping Act 1995] or one of Her Majesty’s ships;
- and in this subsection references to Her Majesty’s aircraft, hovercraft or ships are references to aircraft, hovercraft or, as the case may be, ships belonging to or exclusively employed in the service of Her Majesty in right of the Government of the United Kingdom.
- (8) In subsection (6) above “constable”, in relation to any part of the United Kingdom, means any person who is a constable in that or any other part of the United Kingdom or any person who, at the place in question has, under any enactment including subsection (5) above, the powers of a constable in that or any other part of the United Kingdom.
- (9) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and the reference in subsection (3)(b) above to a sentence shall be construed accordingly.
- (10) In the application of this section to Northern Ireland for the reference in subsection (1) to the Prison Act 1952 there shall be substituted a reference to the <sup>M5</sup>Prison Act (Northern Ireland) 1953.

#### Textual Amendments

- F2** S. 5(3A) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4
- F3** Words in s. 5(7) substituted (1.1.1996) by [1995 c. 21](#) ss. 314(2), 316(2), [Sch. 13](#) para.87 (with s. 312(1))

#### Modifications etc. (not altering text)

- C4** S. 5 extended (with modifications) (to Anguilla) (14.7.1994) by [S.I. 1994/1635](#), art. 2, [Sch. 1](#)
- C5** S. 5 modified (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), [ss. 324\(3\)](#), 383(2); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4
- C6** S. 5(3A)-(8) applied (26.4.2004) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), [ss. 47\(9\)](#), 94(1); [S.I. 2004/786](#), art. 3(1)(2)
- C7** S. 5(4)-(8) applied (26.4.2004) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), [ss. 48\(7\)](#), 94(1); [S.I. 2004/786](#), art. 3(1)(2)
- C8** S. 5(4)-(8) applied (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\)](#), [regs. 1\(1\)](#), [20\(6\)](#), 21(7), 54(7), [55\(6\)](#) (with reg. 3)

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (International Co-operation) Act 1990, Cross Heading: Mutual provision of evidence. (See end of Document for details)*

#### **Commencement Information**

**II** S. 5 wholly in force at 10.6.1991 see s. 32(2) and [S.I. 1991/1072](#), [art. 2 Schedule Pt. I](#)

#### **Marginal Citations**

**M1** 1952 c. 52.  
**M2** 1989 c. 45.  
**M3** 1982 c. 16.  
**M4** 1968 c. 59.  
**M5** 1953 c. 18 (N.I.).

## **6 Transfer of overseas prisoner to give evidence or assist investigation in the United Kingdom.**

- (1) This section has effect where—
- (a) a witness order has been made or a witness summons or citation issued in criminal proceedings in the United Kingdom in respect of a person (“a prisoner”) who is detained in custody in a country or territory outside the United Kingdom by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
  - (b) it appears to the Secretary of State that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in the United Kingdom of an offence.
- (2) If the Secretary of State is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to the United Kingdom to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1)(b) above, he may issue a warrant under this section.
- (3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to the United Kingdom to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b) above but a consent once given shall not be capable of being withdrawn after the issue of the warrant.
- (4) The effect of the warrant shall be to authorise—
- (a) the bringing of the prisoner to the United Kingdom;
  - (b) the taking of the prisoner to, and his detention in custody at, such place or places in the United Kingdom as are specified in the warrant; and
  - (c) the returning of the prisoner to the country or territory from which he has come.
- (5) Subsections (4) to (8) of section 5 above shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.
- (6) A person shall not be subject to the <sup>M6</sup>Immigration Act 1971 in respect of his entry into or presence in the United Kingdom in pursuance of a warrant under this section but if the warrant ceases to have effect while he is still in the United Kingdom—
- (a) he shall be treated for the purposes of that Act as if he has then illegally entered the United Kingdom; and
  - (b) the provisions of Schedule 2 to that Act shall have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal

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entrant) shall not have effect in relation to directions for his removal given by virtue of this subsection.

(7) This section applies to a person detained in custody in a country or territory outside the United Kingdom in consequence of [F4 —

- (b) having been transferred there, or responsibility for his detention and release having been transferred there, from the United Kingdom under the Repatriation of Prisoners Act 1984;
- (c) having been transferred there, or responsibility for his detention and release having been transferred there, under any similar provision or arrangement from any other country or territory,]

as it applies to a person detained as mentioned in subsection (1) above.

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**Textual Amendments**

**F4** Words in s. 6(7) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 27](#); [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 48\(k\)](#)

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**Modifications etc. (not altering text)**

**C9** Ss. 1-6, 8-10, 12-16, 18-21, 24-30, 32, Schs. 1-3 extended (with modifications) (to Anguilla) (14.7.1994) by [S.I. 1994/1635](#), art. 2, [Sch. 1](#)

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**Commencement Information**

**I2** S. 6 wholly in force at 10.6.1991 see s. 32(2) and [S.I. 1991/1072](#), [art. 2 Schedule Pt. I](#)

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**Marginal Citations**

**M6** 1971 c. 77.

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice (International Co-operation) Act 1990, Cross Heading: Mutual provision of evidence.