

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

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.