

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Mutual Assistance in Criminal Matters

Chapter 2: Mutual Provision of Evidence

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.