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# Crime (International Co-operation) Act 2003

## 2003 CHAPTER 32

### PART 1

#### MUTUAL ASSISTANCE IN CRIMINAL MATTERS

#### CHAPTER 2

#### MUTUAL PROVISION OF EVIDENCE

#### *Assistance in obtaining evidence abroad*

### **7 Requests for assistance in obtaining evidence abroad**

- (1) If it appears to a judicial authority in the United Kingdom on an application made by a person mentioned in subsection (3)—
  - (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
  - (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,the judicial authority may request assistance under this section.
- (2) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom any evidence specified in the request for use in the proceedings or investigation.
- (3) The application may be made—
  - (a) in relation to England and Wales and Northern Ireland, by a prosecuting authority,
  - (b) in relation to Scotland, by the Lord Advocate or a procurator fiscal,

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- (c) where proceedings have been instituted, by the person charged in those proceedings.
- (4) The judicial authorities are—
- (a) in relation to England and Wales, any judge or justice of the peace,
  - (b) in relation to Scotland, any judge of the High Court or sheriff,
  - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (5) In relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request assistance under this section if—
- (a) it appears to the authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
  - (b) the authority has instituted proceedings in respect of the offence in question or it is being investigated.
- “Designated” means designated by an order made by the Secretary of State.
- (6) In relation to Scotland, the Lord Advocate or a procurator fiscal may himself request assistance under this section if it appears to him—
- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
  - (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated.
- (7) If a request for assistance under this section is made in reliance on Article 2 of the 2001 Protocol (requests for information on banking transactions) in connection with the investigation of an offence, the request must state the grounds on which the person making the request considers the evidence specified in it to be relevant for the purposes of the investigation.

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**Commencement Information**

**II** S. 7 in force at 26.4.2004 by S.I. 2004/786, art. 3

## 8 Sending requests for assistance

- (1) A request for assistance under section 7 may be sent—
- (a) to a court exercising jurisdiction in the place where the evidence is situated, or
  - (b) to any authority recognised by the government of the country in question as the appropriate authority for receiving requests of that kind.
- (2) Alternatively, if it is a request by a judicial authority or a designated prosecuting authority it may be sent to the Secretary of State (in Scotland, the Lord Advocate) for forwarding to a court or authority mentioned in subsection (1).
- (3) In cases of urgency, a request for assistance may be sent to—
- (a) the International Criminal Police Organisation, or
  - (b) any body or person competent to receive it under any provisions adopted under the Treaty on European Union,
- for forwarding to any court or authority mentioned in subsection (1).

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#### Commencement Information

**I2** S. 8 in force at 26.4.2004 by S.I. 2004/786, art. 3

### 9 Use of evidence obtained

- (1) This section applies to evidence obtained pursuant to a request for assistance under section 7.
- (2) The evidence may not without the consent of the appropriate overseas authority be used for any purpose other than that specified in the request.
- (3) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be returned to the appropriate overseas authority, unless that authority indicates that it need not be returned.
- (4) In exercising the discretion conferred by section 25 of the Criminal Justice Act 1988 (c. 33) or Article 5 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/ 1847 (N.I. 17)) (exclusion of evidence otherwise admissible) in relation to a statement contained in the evidence, the court must have regard—
  - (a) to whether it was possible to challenge the statement by questioning the person who made it, and
  - (b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being obtained.
- (5) In Scotland, the evidence may be received in evidence without being sworn to by witnesses, so far as that may be done without unfairness to either party.
- (6) In this section, the appropriate overseas authority means the authority recognised by the government of the country in question as the appropriate authority for receiving requests of the kind in question.

#### Commencement Information

**I3** S. 9 in force at 26.4.2004 by S.I. 2004/786, art. 3

VALID FROM 19/10/2009

### 10 Domestic freezing orders

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a person mentioned in subsection (4)—
  - (a) that proceedings in respect of a listed offence have been instituted or such an offence is being investigated,
  - (b) that there are reasonable grounds to believe that there is evidence in a participating country which satisfies the requirements of subsection (3), and
  - (c) that a request has been made, or will be made, under section 7 for the evidence to be sent to the authority making the request,the judicial authority may make a domestic freezing order in respect of the evidence.

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- (2) A domestic freezing order is an order for protecting evidence which is in the participating country pending its transfer to the United Kingdom.
- (3) The requirements are that the evidence—
  - (a) is on premises specified in the application in the participating country,
  - (b) is likely to be of substantial value (whether by itself or together with other evidence) to the proceedings or investigation,
  - (c) is likely to be admissible in evidence at a trial for the offence, and
  - (d) does not consist of or include items subject to legal privilege.
- (4) The application may be made—
  - (a) in relation to England and Wales and Northern Ireland, by a constable,
  - (b) in relation to Scotland, by the Lord Advocate or a procurator fiscal.
- (5) The judicial authorities are—
  - (a) in relation to England and Wales, any judge or justice of the peace,
  - (b) in relation to Scotland, any judge of the High Court or sheriff,
  - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (6) This section does not prejudice the generality of the power to make a request for assistance under section 7.

VALID FROM 19/10/2009

## 11 Sending freezing orders

- (1) A domestic freezing order made in England and Wales or Northern Ireland is to be sent to the Secretary of State for forwarding to—
  - (a) a court exercising jurisdiction in the place where the evidence is situated, or
  - (b) any authority recognised by the government of the country in question as the appropriate authority for receiving orders of that kind.
- (2) A domestic freezing order made in Scotland is to be sent to the Lord Advocate for forwarding to such a court or authority.
- (3) The judicial authority is to send the order to the Secretary of State or the Lord Advocate before the end of the period of 14 days beginning with its being made.
- (4) The order must be accompanied by a certificate giving the specified information and, unless the certificate indicates when the judicial authority expects such a request to be made, by a request under section 7 for the evidence to be sent to the authority making the request.
- (5) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (6) The certificate must be signed by or on behalf of the judicial authority who made the order and must include a statement as to the accuracy of the information given in it.

The signature may be an electronic signature.

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VALID FROM 19/10/2009

## **12 Variation or revocation of freezing orders**

- (1) The judicial authority that made a domestic freezing order may vary or revoke it on an application by a person mentioned below.
- (2) The persons are—
  - (a) the person who applied for the order,
  - (b) in relation to England and Wales and Northern Ireland, a prosecuting authority,
  - (c) in relation to Scotland, the Lord Advocate,
  - (d) any other person affected by the order.

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