



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

VALID FROM 14/07/2008

PART 6

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

VALID FROM 01/10/2009

Recognition of financial penalties: requests to other member States

80 Requests to other member States: England and Wales

(1) In Schedule 5 to the Courts Act 2003 (c. 39) (collection of fines and other sums imposed on conviction) in paragraph 38 (the range of further steps available against defaulters)—

(a) after sub-paragraph (1)(e) insert—

“(f) subject to sub-paragraph (4), issuing a certificate requesting enforcement under the Framework Decision on financial penalties;”, and

(b) after sub-paragraph (3) insert—

“(4) A certificate requesting enforcement under the Framework Decision on financial penalties may only be issued where—

(a) the sum due is a financial penalty within the meaning of section 80 of the Criminal Justice and Immigration Act 2008, and

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- (b) it appears to the fines officer or the court that P is normally resident, or has property or income, in a member State other than the United Kingdom.
- (5) In this paragraph, references to a certificate requesting enforcement under the Framework Decision on financial penalties are to be construed in accordance with section 92(3) of the Criminal Justice and Immigration Act 2008.”
- (2) The designated officer for a magistrates' court may issue a certificate requesting enforcement under the Framework Decision on financial penalties where—
- (a) a person is required to pay a financial penalty,
 - (b) the penalty is not paid in full within the time allowed for payment,
 - (c) there is no appeal outstanding in relation to the penalty,
 - (d) Schedule 5 to the Courts Act 2003 (c. 39) does not apply in relation to the enforcement of the penalty, and
 - (e) it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom.
- (3) For the purposes of subsection (2)(c), there is no appeal outstanding in relation to a financial penalty if—
- (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or
 - (b) such an appeal has been brought but the proceedings on appeal have been concluded.
- (4) Where the person required to pay the financial penalty is a body corporate, subsection (2)(e) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom.
- (5) In this section, “financial penalty” means—
- (a) a fine imposed by a court in England and Wales on a person's conviction of an offence;
 - (b) any sum payable under a compensation order (within the meaning of section 130(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6));
 - (c) a surcharge under section 161A of the Criminal Justice Act 2003 (c. 44);
 - (d) any sum payable under any such order as is mentioned in paragraphs 1 to 9 of Schedule 9 to the Administration of Justice Act 1970 (c. 31) (orders for payment of costs);
 - (e) any sum payable by virtue of section 137(1) or (1A) of the Powers of Criminal Courts (Sentencing) Act 2000 (orders requiring parents to pay fines etc.);
 - (f) any fine or other sum mentioned in section 82(4)(b)(i) to (iv), or any fine imposed by a court in Scotland, which is enforceable in a local justice area in England and Wales by virtue of section 91 of the Magistrates' Courts Act 1980 (c. 43);
 - (g) any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Lord Chancellor.

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81 Procedure on issue of certificate: England and Wales

- (1) This section applies where—
 - (a) a magistrates' court or a fines officer has, under paragraph 39(3)(b) or 40 of Schedule 5 to the Courts Act 2003 (c. 39), issued a certificate requesting enforcement under the Framework Decision on financial penalties, or
 - (b) the designated officer for a magistrates' court has issued such a certificate under section 80(2) of this Act.
- (2) The fines officer (in the case of a certificate issued by the officer) or the designated officer for the magistrates' court (in any other case) must give the Lord Chancellor the certificate, together with a certified copy of the decision requiring payment of the financial penalty.
- (3) On receipt of the documents mentioned in subsection (2), the Lord Chancellor must give those documents to the central authority or competent authority of the member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have property or income.
- (4) Where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3), no further steps to enforce the decision may be taken in England and Wales except in accordance with provision made by order by the Lord Chancellor.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office.

82 Requests to other member States: Northern Ireland

- (1) A designated officer of the Northern Ireland Court Service may issue a certificate requesting enforcement under the Framework Decision on financial penalties where—
 - (a) a person is required to pay a financial penalty,
 - (b) the penalty is not paid in full within the time allowed for payment,
 - (c) there is no appeal outstanding in relation to the penalty, and
 - (d) it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom.
- (2) For the purposes of subsection (1)(c), there is no appeal outstanding in relation to a financial penalty if—
 - (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or
 - (b) such an appeal has been brought but the proceedings on appeal have been concluded.
- (3) Where the person required to pay the financial penalty is a body corporate, subsection (1)(d) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom.
- (4) In this section—

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- (a) “designated officer of the Northern Ireland Court Service” means a member of the staff of the Northern Ireland Court Service designated by the Lord Chancellor for the purposes of this section;
- (b) “financial penalty” means—
 - (i) a fine imposed by a court in Northern Ireland on a person's conviction of an offence;
 - (ii) any sum payable under a compensation order (within the meaning of Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I.1994/2795 (N.I.15));
 - (iii) any sum payable under an order made under section 2(1), 4(1) or 5(1) of the Costs in Criminal Cases Act (Northern Ireland) 1968 (N.I. 10) or section 41(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47);
 - (iv) any sum payable by virtue of Article 35 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9) (orders requiring parents to pay fines etc.);
 - (v) any fine or other sum mentioned in section 80(5)(a) to (e), or any fine imposed by a court in Scotland, which is enforceable in a petty sessions district in Northern Ireland by virtue of Article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26));
 - (vi) any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Lord Chancellor.

83 Procedure on issue of certificate: Northern Ireland

- (1) This section applies where a designated officer has issued a certificate under section 82(1).
- (2) The designated officer must give the Lord Chancellor the certificate, together with a certified copy of the decision requiring payment of the financial penalty.
- (3) On receipt of the documents mentioned in subsection (2), the Lord Chancellor must give those documents to the central authority or competent authority of the member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have property or income.
- (4) Where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3), no further steps to enforce the decision may be taken in Northern Ireland except in accordance with provision made by order by the Lord Chancellor.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office.

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VALID FROM 01/10/2009

Recognition of financial penalties: requests from other member States

84 Requests from other member States: England and Wales

- (1) This section applies where—
- (a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—
 - (i) a certificate requesting enforcement under the Framework Decision on financial penalties, and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
 - (b) the financial penalty is suitable for enforcement in England and Wales (see section 91(1)).
- (2) If the certificate states that the person required to pay the financial penalty is normally resident in England and Wales, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the designated officer for the local justice area in which it appears that the person is normally resident.
- (3) Otherwise, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the designated officer for such local justice area as appears appropriate.
- (4) Where the Lord Chancellor acts under subsection (2) or (3), the Lord Chancellor must also give the designated officer a notice—
- (a) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see section 91(2)), and
 - (b) giving reasons for that opinion.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (2) applies as if the reference to the local justice area in which it appears that the person is normally resident were a reference to the local justice area in which it appears that the person has its registered office.
- (6) Where—
- (a) the competent authority or central authority of a member State other than the United Kingdom gives the central authority for Scotland the documents mentioned in subsection (1)(a), and
 - (b) without taking any action to enforce the financial penalty in Scotland, the central authority for Scotland gives the documents to the Lord Chancellor,
- this section applies as if the competent authority or central authority of the other member State gave the documents to the Lord Chancellor.

85 Procedure on receipt of certificate by designated officer

- (1) This section applies where the Lord Chancellor gives the designated officer for a local justice area—
- (a) a certificate requesting enforcement under the Framework Decision on financial penalties,

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- (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
 - (c) a notice under section 84(4).
- (2) The designated officer must refer the matter to a magistrates' court acting for that area.
- (3) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal apply (see section 91(2)).
- (4) The designated officer must inform the Lord Chancellor of the decision of the magistrates' court.
- (5) Subsection (6) applies unless the magistrates' court is satisfied that one or more of the grounds for refusal apply.
- (6) The enactments specified in subsection (7) apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the magistrates' court on the date when the court made the decision mentioned in subsection (4).
- (7) The enactments specified in this subsection are—
- (a) Part 3 of the Magistrates' Courts Act 1980 (c. 43) (satisfaction and enforcement);
 - (b) Schedules 5 and 6 to the Courts Act 2003 (c. 39) (collection of fines etc. and discharge of fines etc. by unpaid work);
 - (c) any subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made under the enactments specified in paragraphs (a) and (b).
- (8) If the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid, the reference in subsection (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.

86 Modification of Magistrates' Courts Act 1980

- (1) Section 90 of the Magistrates' Courts Act 1980 is modified as follows in its application to financial penalties by virtue of section 85(6) of this Act.
- (2) Subsection (1) applies as if for the words from “he is residing” to the end of that subsection there were substituted “he is residing, or has property or a source of income, in any petty sessions district in Northern Ireland—
- (a) the court or the fines officer (as the case may be) may order that payment of the sum shall be enforceable in that petty sessions district, and
 - (b) if such an order is made, the court or the fines officer must notify the Lord Chancellor.”

87 Requests from other member States: Northern Ireland

- (1) This section applies where—
- (a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—

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- (i) a certificate requesting enforcement under the Framework Decision on financial penalties, and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
 - (b) the financial penalty is suitable for enforcement in Northern Ireland (see section 91(1)).
- (2) If the certificate states that the person required to pay the financial penalty is normally resident in Northern Ireland, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the clerk of petty sessions for the petty sessions district in which it appears that the person is normally resident.
- (3) Otherwise, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the clerk of petty sessions for such petty sessions district as appears appropriate.
- (4) Where the Lord Chancellor acts under subsection (2) or (3), the Lord Chancellor must also give the clerk of petty sessions a notice—
 - (a) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see section 91(2)), and
 - (b) giving reasons for that opinion.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (2) applies as if the reference to the petty sessions district in which it appears that the person is normally resident were a reference to the petty sessions district in which it appears that the person has its registered office.
- (6) Where—
 - (a) the competent authority or central authority of a member State other than the United Kingdom gives the central authority for Scotland the documents mentioned in subsection (1)(a), and
 - (b) without taking any action to enforce the financial penalty in Scotland, the central authority for Scotland gives the documents to the Lord Chancellor,this section applies as if the competent authority or central authority of the other member State gave the documents to the Lord Chancellor.

88 Procedure on receipt of certificate by clerk of petty sessions

- (1) This section applies where the Lord Chancellor gives the clerk of petty sessions for a petty sessions district—
 - (a) a certificate requesting enforcement under the Framework Decision on financial penalties,
 - (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
 - (c) a notice under section 87(4).
- (2) The clerk must refer the matter to a magistrates' court acting for the petty sessions district.
- (3) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal apply (see section 91(2)).
- (4) The clerk must inform the Lord Chancellor of the decision of the magistrates' court.

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- (5) Subsection (6) applies unless the magistrates' court is satisfied that one or more of the grounds for refusal apply.
- (6) Part 9 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)), and any instrument made under that Part, apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the magistrates' court on the date when the court made the decision mentioned in subsection (4).
- (7) If the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid, the reference in subsection (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.

89 Modification of Magistrates' Courts (Northern Ireland) Order 1981

- (1) Part 9 of the Magistrates' Courts (Northern Ireland) Order 1981 is modified as follows in its application to financial penalties by virtue of section 88(6) of this Act.
- (2) Article 92 applies in relation to any financial penalty for an amount exceeding £20,000 as if for paragraph (5) there were substituted—
 - “(5) The period for which a person may be committed to prison under this Article in default of payment or levy of any sum or part of such sum shall not exceed the maximum period which the Crown Court could have fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 had the financial penalty been a fine imposed by the Crown Court.”
- (3) For the purposes of subsection (2), if the amount of a financial penalty is specified in a currency other than sterling, that amount must be converted to sterling by reference to the London closing exchange rate on the relevant date.
- (4) In subsection (3), the “relevant date” means the date on which the decision imposing the financial penalty was made.
- (5) Article 95 applies as if for the words from “he is residing” in paragraph (1) to the end of that paragraph there were substituted “he is residing, or has property or a source of income, in any local justice area in England and Wales—
 - (a) the court may order that payment of the sum shall be enforceable in that local justice area, and
 - (b) if such an order is made, the court must notify the Lord Chancellor.”

90 Transfer of certificates to central authority for Scotland

- (1) This section applies where—
 - (a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—
 - (i) a certificate requesting enforcement under the Framework Decision on financial penalties, and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, but
 - (b) the Lord Chancellor is not required by section 84 or 87 to give the documents to a designated officer for a local justice area in England and

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Wales or to a clerk of petty sessions for a petty sessions district in Northern Ireland.

- (2) If the certificate states that the person is normally resident or has property or a source of income in Scotland, the Lord Chancellor must give the documents to the central authority for Scotland.

VALID FROM 01/10/2009

Recognition of financial penalties: miscellaneous

91 Recognition of financial penalties: general

- (1) Schedule 18 specifies when a financial penalty is suitable for enforcement in England and Wales for the purposes of section 84(1) and when a financial penalty is suitable for enforcement in Northern Ireland for the purposes of section 87(1).
- (2) Schedule 19 specifies the grounds for refusal for the purposes of sections 84(4)(a), 85(3) and (5), 87(4)(a) and 88(3) and (5).
- (3) The Lord Chancellor may by order make further provision for or in connection with giving effect to the Framework Decision on financial penalties.
- (4) An order under section 81(4), 83(4) or subsection (3) of this section may in particular modify, amend, repeal or revoke any provision of—
- (a) any Act (including this Act and any Act passed in the same Session as this Act);
 - (b) subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made before the passing of this Act;
 - (c) Northern Ireland legislation passed, or made, before the passing of this Act;
 - (d) any instrument made, before the passing of this Act, under Northern Ireland legislation.

92 Interpretation of sections 80 to 91 etc.

- (1) In sections 80 to 91 and Schedules 18 and 19—
- “central authority”, in relation to a member State other than the United Kingdom, means an authority designated by the State as a central authority for the purposes of the Framework Decision on financial penalties;
- “central authority for Scotland” means the person or body which, by virtue of an order under section 56 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (recognition of EU financial penalties), acts as the central authority in relation to Scotland for the purposes of the Framework Decision;
- “competent authority”, in relation to a member State, means an authority designated by the State as a competent authority for the purposes of that Decision;
- “the Framework Decision on financial penalties” means the Framework Decision of the Council of the European Union made on 24 February

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2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA).

(2) In sections 84 to 91 and Schedules 18 and 19—

“decision” has the meaning given by Article 1 of the Framework Decision on financial penalties (except in sections 85(4) and 88(4));

“financial penalty” has the meaning given by that Article.

(3) References in sections 80 to 91 to a certificate requesting enforcement under the Framework Decision on financial penalties are references to such a certificate as is provided for by Article 4 of that Decision.

Repatriation of prisoners

93 Delivery of prisoner to place abroad for purposes of transfer out of the United Kingdom

In section 2(1) of the Repatriation of Prisoners Act 1984 (c. 47) (transfer out of the UK), for subsection (1) substitute—

“(1) The effect of a warrant under section 1 providing for the transfer of the prisoner out of the United Kingdom shall be to authorise—

(a) the taking of the prisoner to any place in any part of the United Kingdom, his delivery at a place of departure from the United Kingdom into the custody of an appropriate person and his removal by that person from the United Kingdom to a place outside the United Kingdom; or

(b) the taking of the prisoner to any place in any part of the United Kingdom, his removal from the United Kingdom and his delivery, at the place of arrival from the United Kingdom, into the custody of an appropriate person.

(1A) In subsection (1) “appropriate person” means a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred.”

94 Issue of warrant transferring responsibility for detention and release of an offender to or from the relevant Minister

After section 4 of the Repatriation of Prisoners Act 1984 (transfer into the United Kingdom) insert—

“Transfer of responsibility for detention and release of offender present outside the country or territory in which he is required to be detained

4A Issue of warrant transferring responsibility for detention and release of offender

(1) This section enables responsibility for the detention and release of a person to whom subsection (2) or (3) applies to be transferred between the relevant

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Minister in the United Kingdom and the appropriate authority in a country or territory outside the British Islands.

- (2) A person falls within this subsection if that person—
- (a) is a person to whom section 1(7) applies by virtue of—
 - (i) an order made in the course of the exercise by a court or tribunal in any part of the United Kingdom of its criminal jurisdiction; or
 - (ii) any of the provisions of this Act or any similar provisions of the law of any part of the United Kingdom; and
 - (b) is present in a country or territory outside the British Islands.
- (3) A person falls within this subsection if that person—
- (a) is a person to whom section 1(7) applies by virtue of —
 - (i) an order made in the course of the exercise by a court or tribunal in a country or territory outside the British Islands of its criminal jurisdiction; or
 - (ii) any provisions of the law of such a country or territory which are similar to any of the provisions of this Act; and
 - (b) is present in the United Kingdom.
- (4) Terms used in subsection (2)(a) and (3)(a) have the same meaning as in section 1(7).
- (5) Subject to the following provisions of this section, where—
- (a) the United Kingdom is a party to international arrangements providing for the transfer between the United Kingdom and a country or territory outside the British Islands of responsibility for the detention and release of persons to whom subsection (2) or (3) applies,
 - (b) the relevant Minister and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of responsibility for the detention and release of a particular person to whom subsection (2) or (3) applies (in this Act referred to as “the relevant person”), and
 - (c) in a case in which the terms of those arrangements provide for the transfer of responsibility to take place only with the relevant person's consent, that consent has been given,
- the relevant Minister shall issue a warrant providing for the transfer of responsibility for the detention and release of the relevant person from that Minister (where subsection (2) applies) or to that Minister (where subsection (3) applies).
- (6) The relevant Minister shall not issue a warrant under this section providing for the transfer of responsibility for the detention and release of a person to the relevant Minister unless—
- (a) that person is a British citizen;
 - (b) the transfer appears to the relevant Minister to be appropriate having regard to any close ties which that person has with the United Kingdom.

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- (7) The relevant Minister shall not issue a warrant under this section where, after the duty in subsection (5) has arisen, circumstances arise or are brought to his attention which in his opinion make it inappropriate that the transfer of responsibility should take place.
- (8) The relevant Minister shall not issue a warrant under this section (other than one superseding an earlier warrant) unless he is satisfied that all reasonable steps have been taken to inform the relevant person in writing in his own language—
- (a) of the substance, so far as relevant to the case, of the international arrangements in accordance with which it is proposed to transfer responsibility for his detention and release;
 - (b) of the effect in relation to the relevant person of the warrant which it is proposed to issue under this section;
 - (c) in the case of a person to whom subsection (2) applies, of the effect in relation to his case of so much of the law of the country or territory concerned as has effect with respect to transfers under those arrangements of responsibility for his detention and release;
 - (d) in the case of a person to whom subsection (3) applies, of the effect in relation to his case of the law relating to his detention under that warrant and subsequent release (including the effect of any enactment or instrument under which he may be released earlier than provided for by the terms of the warrant); and
 - (e) of the powers of the relevant Minister under section 6;
- and the relevant Minister shall not issue a warrant superseding an earlier warrant under this section unless the requirements of this subsection were fulfilled in relation to the earlier warrant.
- (9) A consent given for the purposes of subsection (5)(c) shall not be capable of being withdrawn after a warrant under this section has been issued in respect of the relevant person; and, accordingly, a purported withdrawal of that consent after that time shall not affect the validity of the warrant, or of any provision which by virtue of section 6 subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 4B(3).
- (10) In this section “relevant Minister” means—
- (a) the Scottish Ministers in a case where the person who is the subject of the proposed transfer of responsibility is—
 - (i) a person to whom subsection (2) applies who is for the time being required to be detained at a place in Scotland; or
 - (ii) a person to whom subsection (3) applies, if it is proposed that he will be detained at a place in Scotland;
 - (b) the Secretary of State, in any other case.

4B Transfer of responsibility from the United Kingdom

- (1) The effect of a warrant under section 4A relating to a person to whom subsection (2) of that section applies shall be to transfer responsibility for the detention and release of that person from the relevant Minister (as defined

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- in section 4A(10)) to the appropriate authority of the country or territory in which he is present.
- (2) Subject to subsections (3) to (6), the order by virtue of which the relevant person is required to be detained at the time such a warrant is issued in respect of him shall continue to have effect after the transfer of responsibility so as to apply to him if he comes to be in the United Kingdom at any time when under that order he is to be, or may be, detained.
 - (3) If, at any time after the transfer of responsibility, it appears to the relevant Minister appropriate to do so in order that effect may be given to the international arrangements in accordance with which the transfer took place, the relevant Minister may give a direction—
 - (a) varying the order referred to in subsection (2); or
 - (b) providing for the order to cease to have effect.
 - (4) In subsection (3) “relevant Minister” means—
 - (a) the Scottish Ministers, where Scotland is the part of the United Kingdom in which the order referred to in subsection (2) has effect; and
 - (b) the Secretary of State in any other case.
 - (5) The power by direction under subsection (3) to vary the order referred to in subsection (2) includes power by direction—
 - (a) to provide for how any period during which the detention and release of the relevant person is, by virtue of a warrant under section 4A, the responsibility of a country or territory outside the United Kingdom is to be treated for the purposes of the order; and
 - (b) to provide for the relevant person to be treated as having been released or discharged as mentioned in any paragraph of section 2(4) (b).
 - (6) Except in relation to any period during which a restriction order is in force in respect of the relevant person, subsection (2) shall not apply in relation to a hospital order; and, accordingly, a hospital order shall cease to have effect in relation to that person—
 - (a) at the time of the transfer of responsibility, if no restriction order is in force in respect of him at that time; and
 - (b) if at that time a restriction order is in force in respect of him, as soon after the transfer of responsibility as the restriction order ceases to have effect.
 - (7) In subsection (6) “hospital order” and “restriction order” have the same meaning as in section 2(6).
 - (8) References in this section to the order by virtue of which a person is required to be detained at the time a warrant under section 4A is issued in respect of him include references to any order by virtue of which he is required to be detained after the order by virtue of which he is required to be detained at that time ceases to have effect.

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4C Transfer of responsibility to the United Kingdom

- (1) The effect of a warrant under section 4A relating to a person to whom subsection (3) of that section applies shall be to transfer responsibility for the detention and release of that person to the relevant Minister (as defined in section 4A(10)) and to authorise—
 - (a) the taking of that person in custody to such place in any part of the United Kingdom as may be specified in the warrant, being a place at which effect may be given to the provisions contained in the warrant by virtue of paragraph (b); and
 - (b) the detention of that person in any part of the United Kingdom in accordance with such provisions as may be contained in the warrant, being provisions appearing to the relevant Minister to be appropriate for giving effect to the international arrangements in accordance with which responsibility for that person is transferred.
- (2) A provision shall not be contained by virtue of subsection (1)(b) in a warrant under section 4A unless it satisfies the following two conditions, that is to say—
 - (a) it is a provision with respect to the detention of a person in a prison, a hospital or any other institution; and
 - (b) it is a provision which at the time the warrant is issued may be contained in an order made either—
 - (i) in the course of the exercise of its criminal jurisdiction by a court in the part of the United Kingdom in which the person is to be detained; or
 - (ii) otherwise than by a court but for the purpose of giving effect to an order made as mentioned in sub-paragraph (i).
- (3) Section 3(3) applies for determining for the purposes of paragraph (b) of subsection (1) above what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph in a relevant person's case as it applies for the purposes of section 3(1)(c) in the case of a prisoner who is to be transferred into the United Kingdom.
- (4) Subject to subsection (6) and Part 2 of the Schedule to this Act, a provision contained by virtue of subsection (1)(b) in a warrant under section 4A shall for all purposes have the same effect as the same provision contained in an order made as mentioned in sub-paragraph (i) or, as the case may be, sub-paragraph (ii) of subsection (2)(b).
- (5) A provision contained by virtue of subsection (1)(b) in a warrant under section 4A shall take effect with the delivery of the relevant person to the place specified in the warrant for the purposes of subsection (1)(a).
- (6) Subsection (4) shall not confer any right of appeal on the relevant person against provisions contained by virtue of subsection (1)(b) in a warrant under this section.
- (7) Part 2 of the Schedule to this Act shall have effect with respect to the operation of certain enactments in relation to provisions contained by virtue of subsection (1)(b) in a warrant under section 4A.

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- (8) For the purposes of determining whether at any particular time any such order as is mentioned in subsection (2)(b) could have been made as so mentioned, there shall be disregarded both—
- (a) any requirement that certain conditions must be satisfied before the order is made; and
 - (b) any restriction on the minimum period in respect of which the order may be made.”

95 Powers to arrest and detain persons believed to fall within section 4A(3) of Repatriation of Prisoners Act 1984

After section 4C of the Repatriation of Prisoners Act 1984 (c. 47) (as inserted by section 94) insert—

“Persons believed to fall within section 4A(3): powers of arrest and detention

4D Arrest and detention with a view to establishing whether a person falls within section 4A(3) etc.

- (1) The Secretary of State or the Scottish Ministers may issue a certificate stating that the issuing authority—
 - (a) considers that there are reasonable grounds for believing that a person in the United Kingdom is a person falling within section 4A(3), and
 - (b) has requested written confirmation from the country or territory concerned of the details of that person's case.
- (2) The issuing authority may send the certificate (with any other documents appearing to the authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).
- (3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).
- (4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not he is in possession of the warrant or a copy of it).
- (5) A person arrested under this section shall, as soon as is practicable—
 - (a) be given a copy of the warrant for his arrest; and
 - (b) be brought before the appropriate judge.
- (6) The appropriate judge may order that a person before him who is the subject of a certificate under this section is to be detained from the time the order is made until the end of the period of seven days beginning with the day after that on which the order is made.
- (7) The purpose of an order under subsection (6) is to secure the detention of the person concerned while—
 - (a) written confirmation is obtained from a representative of the country or territory concerned of the details of his case;

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- (b) it is established whether he is a person falling within section 4A(3); and
 - (c) any application for an order under section 4E(6) is made in respect of him.
- (8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).
- (9) Subsection (8) ceases to apply to the detained person if, during that period, an order under section 4E is made in respect of him.
- (10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested under this section.

4E Arrest and detention with a view to determining whether to issue a warrant under section 4A

- (1) The Secretary of State or the Scottish Ministers may issue a certificate stating that the issuing authority—
- (a) considers that a person in the United Kingdom is a person falling within section 4A(3), and
 - (b) has received written confirmation from a representative of the country or territory concerned of the details of that person's case;
- and it is immaterial for the purposes of this section whether or not the person concerned has been previously arrested or detained under section 4D.
- (2) The issuing authority may send the certificate (with a copy of the written confirmation mentioned in subsection (1)(b) and any other documents appearing to that authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).
- (3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).
- (4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not that person is in possession of the warrant or a copy of it).
- (5) A person arrested under this section shall, as soon as is practicable—
- (a) be given a copy of the warrant for his arrest; and
 - (b) be brought before the appropriate judge.
- (6) The appropriate judge may, on the application of the Secretary of State or the Scottish Ministers, order that a person before the judge who—
- (a) is the subject of a certificate under this section, and
 - (b) the judge is satisfied is a person falling within section 4A(3),
- shall be detained from the time the order is made until the end of the period of fourteen days beginning with the day after that on which the order is made.
- (7) The purpose of an order under subsection (6) is to secure the detention of the person concerned until—
- (a) it is determined whether to issue a warrant under section 4A; and

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(b) if so determined, such a warrant is issued.

- (8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).
- (9) Subsection (8) ceases to apply to the detained person if, during that period, a warrant under section 4A is issued in respect of him.
- (10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested or detained under section 4D or arrested under this section.

4F Sections 4D and 4E: supplementary provisions

- (1) This section has effect for the purposes of sections 4D and 4E.
- (2) A “designated person” is a person designated by the Secretary of State or the Scottish Ministers.
- (3) The appropriate judge is—
- (a) in England and Wales, any District Judge (Magistrates' Courts) who is designated for those purposes by the Lord Chief Justice after consulting the Lord Chancellor;
 - (b) in Scotland, the sheriff of Lothian and Borders; and
 - (c) in Northern Ireland, any county court judge or resident magistrate who is designated for those purposes by the Lord Chief Justice of Northern Ireland after consulting the Lord Chancellor.
- (4) A designation under subsection (2) or (3)(a) or (c) may be made—
- (a) for the purposes of section 4D or 4E (or both); and
 - (b) for all cases or only for cases (or cases of a description) specified in the designation.
- (5) A designated person shall have all the powers, authority, protection and privileges of a constable in any part of the United Kingdom in which a person who may be arrested under section 4D or 4E is for the time being.”

96 Amendments relating to Scotland

- (1) The amendments of section 1 of the Repatriation of Prisoners Act 1984 (c. 47) made by section 44(2) and (3) of the Police and Justice Act 2006 (c. 48) (which amend the requirement for the prisoner's consent to any transfer to or from the United Kingdom) apply in relation to cases in which the relevant Minister for the purposes of section 1 is the Scottish Ministers as they apply in other cases.
- (2) In section 2(6) of the Repatriation of Prisoners Act 1984 (transfer out of the United Kingdom) in the definition of “hospital order”, after “1986” insert “ or a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995 ”.
- (3) In section 8(1) (interpretation etc.), before the definition of “international arrangements” insert—
- ““enactment” includes an enactment comprised in, or in an instrument under, an Act of the Scottish Parliament;”.

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Mutual legal assistance in revenue matters

97 Power to transfer functions under Crime (International Co-operation) Act 2003 in relation to direct taxation

- (1) In section 27(1) of the Crime (International Co-operation) Act 2003 (c. 32) (exercise of powers by others)—
 - (a) in paragraph (a), for “Commissioners of Customs and Excise” substitute “Commissioners for Revenue and Customs”; and
 - (b) in paragraph (b), for “a customs officer” substitute “an officer of Revenue and Customs”.
- (2) Paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (power under section 27(1) not applicable to former inland revenue matters etc.) ceases to have effect.

Status:

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Changes to legislation:

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