

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 14: Powers to arrange for evidence to be obtained

55. This section sets out the conditions which need to be satisfied before a court may be nominated to receive evidence under section 15. Subsection (1) sets out the types of court proceedings, or investigations, in connection with which evidence may be obtained for an overseas authority. In line with the requirements of Article 3 of the MLAC and Article 49(c) of the Schengen Convention, subsection (1)(b) provides that assistance may be provided in connection with administrative proceedings or an investigation into an act which is punishable in such proceedings. In some EU Member States offences such as driving infractions are classified neither as criminal nor civil proceedings, but as administrative proceedings. In the UK, there is no precise parallel to these proceedings, but legislation is needed to allow assistance to be provided to other participating countries in relation to this type of proceedings. Subsection (1)(c) provides that assistance may be provided in connection with clemency proceedings or an appeal during the judicial phase of administrative proceedings. Both clemency proceedings and administrative proceedings are defined in section 51(1). The Schengen Convention also requires assistance to be given in relation to civil proceedings joined to criminal proceedings, where a final decision has not yet been reached in the criminal proceedings. The definition of “criminal proceedings” in section 51(1) therefore allows for assistance to be provided in these cases.
56. Subsection (2) of section 14 limits the provision of assistance within subsections (1) (a) or (b) to when an offence has been committed or there are reasonable grounds for suspecting this, and when proceedings have been instituted or an investigation is being carried out. An offence for these purposes includes an act punishable in administrative proceedings. Subsection (3) provides that a certificate from the overseas authority confirming these matters is to be regarded as conclusive. In the vast majority of cases this certificate is not required. The letter of request will itself contain sufficient information for the territorial authority to be satisfied as to the matters in subsections (1) and (2). However, the certificate can be useful in particularly complex cases to set out exactly what matters are being investigated when this is not clear from the request itself.
57. Subsection (4) sets out the circumstances in which requests relating to fiscal offences may be accepted. If there is no agreement between the UK and the requesting country, and it is not a member of the Commonwealth, such requests shall be subject to a requirement of dual criminality – (that is, that the conduct, if it occurred in a part of the UK, would also constitute an offence under the law of that part of the UK). This follows existing practice.