

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 4: Terrorist property: freezing orders

178. **Schedule 4** implements those provisions of the 2003 Framework Decision in relation to the proceeds and instrumentalities of terrorism. It does so by building on the provisions for restraint orders contained in Schedule 4 to the Terrorism Act 2000 (the “Terrorism Act”), and sets out a procedure for transmitting such orders abroad under the 2003 Framework Decision, and for giving effect to overseas freezing orders transmitted to the UK by another Member State. Implementation of the 2003 Framework Decision so far as the freezing of evidence is concerned is covered in Part 1 of the Act.

Paragraph 3

179. This paragraph inserts new provisions after paragraph 11 of Schedule 4 to the Terrorism Act in relation to domestic and overseas freezing orders.

Paragraph 11A

180. Paragraph 11A contains a number of definitions interpreting the provisions which appear in paragraph 11B onwards. Paragraph 11A(3) defines “a listed offence” as an offence described in Article 3(2) of the 2003 Framework Decision, or as an offence prescribed, or an offence of a description prescribed, by order made by the Secretary of State. The latter provision is necessary to cater for two circumstances: firstly, if the list of offences in the 2003 Framework Decision is added to by the European Council of Ministers. Secondly, it reflects the fact that, under the 2003 Framework Decision, freezing orders can be executed in respect of offences other than those listed, but with the executing state able, if it wishes, to apply a dual criminality requirement – (that is, a requirement that the conduct be criminalised in both the issuing and executing states).
181. Paragraph 11A(5) and (6) defines the “specified information” which must be contained in the certificate to be attached to both domestic and overseas freezing orders. Paragraph 11A(7) defines which countries are to be participating countries for the purposes of Schedule 4. Paragraph 11A(9) applies to these provisions the interpretative provisions relating to the proceeds of terrorism contained in section 14(2)(a) of the Terrorism Act.

Paragraph 11B: Domestic Freezing Orders: certification

182. Paragraph 11B, together with paragraph 11C, contains provisions relating to the certification of restraint orders in England and Wales and their transmission to other participating countries for execution under the 2003 Framework Decision.
183. As with evidence freezing orders in Part 1 of the Act, restraint orders need to be accompanied by the certificate specified in Article 9 of the 2003 Framework Decision.

Paragraph 11C: Sending domestic freezing orders

184. This paragraph sets out the steps which must be followed once the High Court has made the restraint order and the certificate.
185. Paragraph 11C(1) provides that these two documents are to be sent to the Secretary of State with a view to forwarding them to either a court exercising jurisdiction in the participating country where the property in question is situated, or to any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
186. Under paragraph 11C(2) these documents must also be accompanied by a forfeiture order made under section 23 of the Terrorism Act unless the certificate indicates when the court expects such an order to be sent.

Paragraph 11D: Overseas freezing orders

187. Paragraph 11D(2)-(7) sets out the requirements which must be met before an overseas freezing order is to be enforced in the UK, including paragraphs 11D(5) and (6) which makes provision in relation to the certificate which must accompany the order. Paragraph 11D(7) provides that the freezing order must be accompanied by the forfeiture order to which it relates unless the certificate indicates when such an order is to be sent.

Paragraphs 11E, 11F and 11G: Enforcement of overseas freezing orders

188. These paragraphs provide for the enforcement of overseas freezing orders in England and Wales.
189. Paragraph 11E(1) provides that, when an overseas freezing order is received, the Secretary of State must send a copy of it to the High Court and to the Director of Public Prosecutions. The High Court is then required to consider the freezing order on its own initiative within a period to be prescribed by rules of court (paragraph 11E(2)). Under paragraph 11(G)(1), once the High Court has decided to give effect to the overseas freezing order, it must register it and provide for notice of the registration to be given to anyone affected by it.

Paragraphs 4 to 9

190. [Paragraph 4](#) provides that overseas freezing orders are excluded from the provisions relating to the enforcement of orders made in designated countries made by Order in Council under paragraph 14 of Schedule 4. These arrangements will, however, need to remain in force to cater for co-operation with countries other than those which are Member States of the EU. Paragraphs 5 to 8 make similar provision for the freezing of terrorist assets in relation to Scotland (by inserting new paragraphs 25A to 25G into Part 2 of Schedule 4 to the Terrorism Act) and Northern Ireland (by inserting new paragraphs 41A to 41G into Part 3 of that Schedule). Paragraph 9 applies the general provisions in Schedule 4 to the 2000 Act relating to insolvency proceedings to overseas freezing orders.